



Fox Rothschild LLP
ATTORNEYS AT LAW

Aviation Emergency Response Handbook



Foreword

Fox Rothschild LLP is a law firm with a strong litigation and regulatory compliance practice for many industries including aviation. This experience includes representation of transportation operators in major NTSB investigations following accidents. We have successfully guided operators through the NTSB investigative process and other sensitive issues that affect not only the probable cause findings, but also areas that may ultimately have bearing on civil liability, criminal liability and regulatory compliance.

We represent a multitude of transportation entities (i.e., airlines, pipelines, railroads, component manufacturers, etc.) in major and catastrophic accidents throughout the United States. This background allows us to understand what our clients experience during the aftermath of a major transportation accident, and develop plans, practices and procedures to assist our clients during such a difficult period. Our intimate knowledge of, and strong relationships throughout, the transportation industry, allow us to provide a quality of representation to our clients that is unparalleled.

This manual contains the basic advice and resource materials that we have found to be helpful in the aftermath of a transportation accident. We believe these materials will help a company faced with a major accident to avoid the common missteps that can derail an otherwise valid accident response plan. While this manual cannot replace the advice and assistance of legal and technical experts on the scene, it provides a solid basis from which an accident response plan can be developed. In fact, if you are reading this manual, you are taking the single most critical step toward ensuring the best possible outcome following an accident: you are planning ahead. The period after an accident is so overwhelming and so hostile to learning, that only by planning ahead can you hope to avoid becoming a casualty of the accident response process.

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Initial Response

1. Accident Response Checklist

ACCIDENT CHECKLIST

In general, the following priority of actions should be followed:

Protect People
Protect Property
Protect Evidence
Notify and Investigate
Accomplish Recovery

Initiate Emergency Plan

- The airline's emergency plan should be initiated. It is important for legal counsel to review the corporate emergency manual and make sure the plan is being implemented, in particular the notification of key personnel.
- Create a list of key persons and their cell phone numbers. Include both airline employees and outside contacts such as FAA, NTSB, DOD, outside counsel, insurance brokers and underwriters, etc. Provide the control center with the phone numbers of key persons on your list. Obtain extra cell phone batteries!

Notify NTSB

- The local field office of the NTSB must be notified of an accident "immediately and by the most expeditious means available," which typically means by telephone. (See 49 CFR § 830.5.) The aircraft operator may also report an accident or incident by calling the NTSB Operations Center at 844-373-9922 or 202-314-6290.
- The notification must include, to the extent then available: the type, nationality and registration marks of the aircraft; name of the owner and operator of the aircraft; name of the pilot in command; date and time of the accident; last point of departure and intended point of landing; position of aircraft with reference to some easily defined geographical point; number of persons aboard, number killed, and number seriously injured; nature of the accident, the weather, and extent of damage to the aircraft; and a description of any explosives, radioactive materials and other dangerous articles aboard. (See 49 CFR § 830.6.)

Coordinate with your Response Team

- Ensure both investigatory and family assistance teams are in motion.
- Ensure logistics such as accommodations and transportation are arranged.
- Coordinate with Public Relations Department on initial communications.
- Coordinate with inside and outside counsel for initial team briefings.

Notify Federal Aviation Administration

- The FAA Air Traffic Control System Command Center Duty Manager should be notified of the accident.
- Notify your POI, PMI and PAI as appropriate.

Notify Department of Defense

- Notify the Casualty Assistance Office of each respective service if any military or government personnel were aboard the aircraft.

Army: 800.626.3317
Navy: 800.368.3202
Air Force: 800.433.0048
Marines: 800.847.1597
Coast Guard: 202.372.2100

For civilian U.S. government personnel
casualties in international flight,
the Dept. of State Operations Center: 202.647.1512

Notify U.S. Postal Service

- The U.S. Postal Service should be notified if the aircraft was carrying US mail. For foreign accidents, notify Department of State and Civil Aeronautics Administration
- If an accident occurs abroad, the airline is expected to notify the Foreign Service Post (U.S. Embassy or Consular Office) for the consular district in which the accident occurs, as well as the nearest office of the Civil Aeronautics Administration for the country in which the accident occurred. The State Department is required to notify next of kin.

Notify Insurance Broker and Underwriters

- Aviation insurance policies typically require immediate notification in the event of an accident.

Notify Corporate Security

- Corporate security personnel should be advised of the accident so they can ensure security at key corporate facilities. It is not unusual for the press to seek access to corporate offices and key personnel immediately after an accident.
- Security at the “situation room,” the accident site and on-site facilities is especially critical.

Notify Environmental Programs Department

- The airline’s environmental programs department should be notified of the accident to evaluate for a possible fuel spill or hazardous cargo situation.
- The Environmental Protection Agency, and local government agencies, may need to be notified.

Notify Outside Counsel

- Outside counsel should be notified and advised to stand by as legal questions arise and employee interviews are requested.

Coordinate with Public Relations and Corporate Communications Departments

- All press releases and statements to the press should be reviewed and approved by the general counsel’s office.

Dispatch Legal Representative to Scene

- An attorney from the airline’s Office of General Counsel should be dispatched to the accident site to provide advice on legal issues as they arise. It is helpful to have someone permanently assigned to the accident investigation and litigation.

Provide Representation to Interviewees

- All persons interviewed by the NTSB are entitled to legal representation. (See 49 CFR § 831.7.) Given today’s potential for criminal prosecution, as well as civil liability, the airline should not allow any employee to be interviewed by the NTSB without adequate preparation and legal representation. Outside counsel may be best suited to this task.

Preserve Aircraft Wreckage

- The airline is responsible for preserving aircraft wreckage, cargo and data recorders until the NTSB takes custody of it or issues a release. (See 49 CFR § 830.10(a).)
- The wreckage and cargo cannot be disturbed or moved except where necessary to remove persons injured or trapped, to protect the wreckage from further damage, or to protect the public from injury. (See 49 CFR § 830.10(b).)
- When it is necessary to move wreckage or cargo, sketches, descriptive notes and photographs shall be made, if possible, of the original positions and condition of the wreckage and any significant impact marks. (See 49 CFR § 830.10(c).)

- Prior to turning wreckage over to the NTSB, access should be restricted to emergency workers and airline personnel whose presence is necessary.

Identify and Secure Key Documents

- The airline must retain “all records, reports, internal documents, and memoranda dealing with the accident or incident, until authorized by the NTSB to the contrary.” (See 49 § CFR 830.10(d).)
- The airline must permit an NTSB investigation to “inspection, photograph, or copy” of pertinent records, including medical records. (See 49 CFR § 831.9(a).)
- The airline should always retain the original records. There is no requirement that original records be given to the NTSB. In fact, it may be a violation of Federal Aviation Regulations if an airline does not maintain custody of certain documents.
- Create and maintain a document transmittal log that includes, at a minimum, document title or description, date of request, requested by, date delivered, person delivered to, and number of pages.
- Documents that are produced for the NTSB should generally be stamped “confidential” to ensure that proprietary information is protected. It is best to err on the side of marking documents confidential since the airline can always retract the confidential designation at a later date.
- Failure to preserve key documents is not only a violation of federal regulations, but can also be construed as spoliation of evidence in any civil litigation or criminal investigation that may ensue.
- Access to the records should be limited to NTSB personnel, persons authorized by the NTSB to participate in the investigation, and legal representatives of the airline.
- The following documents, at a minimum, should be immediately identified and secured by the airline’s general counsel’s office:
 - Aircraft Maintenance Records. All maintenance records for the accident aircraft, including any that are not normally retained, should be immediately impounded and placed under lock and key. No one, including the NTSB and FAA, should be allowed to take these documents. The NTSB takes custody of the wreckage and cargo, but the operator is responsible for retaining the records. (See 49 CFR § 830.10(d).) Do not lose control of these records!
 - Operational and Maintenance Manuals. All manuals that are updated periodically should be “frozen” in the state of revision that existed on the day of the accident. These manuals include, but are not limited to, the Flight Operations Manual, Pilot Operating Handbook, Quick Reference Handbook, Aircraft Maintenance Manual, General Maintenance Manual, Flight Attendant’s Manual, etc. Copies of the frozen manuals should be retained until the investigation and all litigation has ended.
 - Flight Records. Identify and secure all flight planning and release documents for the accident flight. (Flight plan, weather briefing, notams, aircraft maintenance history, current deferred items, planned and final weight manifest, ACARS/ARINC communications traffic.)
 - Passenger Records. Passenger tickets and computerized passenger records should be identified and secured.
 - Training Records. Flight and cabin crew training records should be identified and secured. If there seems to be a maintenance or dispatch issue, secure those records as well.
 - Personnel Records. Flight and cabin crew personnel records should be identified and secured. If there seems to be a maintenance, dispatch or ramp issue, secure those records as well.
 - Passenger and Crew List. A list of passengers and crew on board the accident aircraft should be created and maintained.
 - Company email messages that may be pertinent to the event.
 - All documents related to any code share agreement that applies to the accident flight.

Drug and Alcohol Tests for Personnel Serving a “Safety-Sensitive Function”

- Every employee serving a “safety-sensitive function” must be tested for drugs and alcohol if that employee’s performance either contributed to an accident or cannot be eliminated as a contributing factor to the accident. (See 14 CFR § 120.109 and § 120.217.)
- Drug tests must be accomplished as soon as possible, but no later than 32 hours after the accident. (See 14 CFR § 120.109(c).)
- Alcohol tests must be accomplished as soon as possible. If not done within two hours, reasons for the failure to test must be documented. If not done within eight hours, cease attempts at testing. (See 14 CFR 120.217(b)(2).)

Assist in Selection of Airline Participants in NTSB Investigation

- The NTSB will request the airline to assign personnel to various NTSB working groups, such as flight operations, maintenance, aircraft systems, cockpit voice recorder, flight data recorder, air traffic control, hangar performance meteorology, etc.
- Expect that the NTSB will require FDR and CVR specialist travel to Washington, DC, as soon as practical after the accident.
- The airline should assign its very best people to these groups. Many of them will be key witnesses in civil litigation and possibly criminal investigations. All of them must be capable of recognizing and intervening when the airline’s interests are being compromised by actions taken, or neglected, by the NTSB or other parties.
- The NTSB will also seek representatives from the pilots’ union, the mechanics’ union, and the flight attendants’ union. Be mindful that the unions have their own interests, some of which may be adverse to the airline. Be sure to consider union affiliation and activity when choosing the airline’s representatives.
- Brief the personnel assigned to the NTSB about their role and the meaning of party status.

Brief All Personnel Involved in the Investigation on Legal Ground Rules

Discussing the accident

- NTSB. No one should give an impromptu interview to the NTSB. All such interviews should be arranged through the airline’s Party Coordinator to the NTSB. Counsel should be present for all employee interviews, which is a right provided by NTSB regulations. (See 49 CFR § 831.7.) If anyone observes an unapproved NTSB interview, he or she should intervene to stop the interview and reschedule it for a later time.
- Press. All press contacts and all requests for information should be directed to the corporate communications department or some other person or department designated to be the primary press contact. You should emphasize corporate policy on contacts with the press, which typically requires employees to refer reporters to a particular person or department.
- Law Enforcement. Be mindful that it is illegal to instruct employees not to speak with law enforcement officials. You may, however, advise employees that they are free to speak with law enforcement personnel, if they choose to do so, but are urged to coordinate interviews with the airline’s in-house or outside legal counsel.
- Employee Communications. All employee communications should be made through normal company channels. It should be assumed that all communications, even those to be distributed internally, will be made public. The rules for public disclosures should apply.
- Cause of Accident and Admission of Liability. Under no circumstances should an airline employee speculate about the cause of an accident or admit liability or wrongdoing on the part of the airline or any employee.

Release of Documents

- No documents should be given to anyone, including the NTSB and the FAA, until they have been copied, cataloged and cleared through legal counsel.
- All documents provided to the NTSB should be accompanied by a cover letter, as approved by counsel.

- Company documents should be considered confidential and proprietary unless and until legal counsel determines otherwise. Documents provided to the NTSB and FAA should generally be stamped “confidential.”

Signing Things

- Under no circumstances should an airline employee sign anything without approval of counsel. This is particularly important for airline personnel participating in the NTSB investigation. For example, NTSB field notes that are incomplete, inaccurate and misleading are frequently signed by airline employees who are pressured by the NTSB to sign them. This can cause great difficulties in any ensuing civil litigation and criminal investigations.

Nature of the NTSB Process

- Airline employees who participate in the investigation should be warned that other parties to the investigation, such as the aircraft manufacturer and the FAA, have interests that differ from and often conflict with the airline’s interests.
- Other parties to the investigation, in particular the aircraft manufacturer and the FAA, have a lot of experience in accident investigations and therefore know the NTSB investigators and the NTSB process. These parties can manipulate the investigation by suggesting certain areas of inquiry, downplaying areas that are problematic to them, and providing information and analysis that is slanted to serve their interests. The airline’s representatives on the investigation team should be made aware of this fact and be ready to intervene if something is being improperly driven in a direction that could have a negative impact on the airline.
- Personnel assigned to the investigation will be expected by the NTSB to participate for the entire investigation and generally may not be replaced by alternates or relieved of duty without the NTSB approval.
- The Party Coordinator will be the primary focal point for all contact with the NTSB on the accident investigation.

Potential for Criminal Investigation

- Recent history has demonstrated that law enforcement officials are quick to initiate criminal investigations following an aircraft accident.
- Everything that is developed in an NTSB investigation has potential to be used in a criminal prosecution of both the airline and its employees. This makes it critically important that those involved in the investigation follow these guidelines and remain in close communication with counsel.

Key Legal Issues

- Criminal Investigation. The trend is for law enforcement officials to consider a criminal investigation whenever there is an airline accident. They no longer focus just on “intent” crimes, but also look for criminal negligence on the part of the airline and its employees, including officers of the corporation. The legal standard is akin to gross negligence and may be met in circumstances little worse than simple negligence, particularly if there was an operational or profit motive for the subject actions.
- Under federal law, if an employee commits a crime in the course of his or her employment, the employer is also guilty of a crime. Legal counsel may consider criminal defense counsel for the airline as well as certain employees if there is any suggestion of criminal negligence or a criminal investigation.
- Family Assistance Act. The Family Assistance Act governs an airline’s communications with accident victims and their families. The Act prohibits any unsolicited contact with injured passengers or the families of deceased passengers for 30 days following an accident for the purpose of discussing settlement, claims or litigation. The Act also required airlines to develop family assistance plans. The general airline’s counsel office should ensure that the Family Assistance Act and the airline’s family assistance plan are being followed.
- Liability for Losses Arising From the Accident. There are many laws and treaties that may affect an airline’s liability for injuries, wrongful death, clean-up, and rescue and recovery operations. They should be explored early to determine the losses for which the airline may be liable.

2. Foreign Accident Supplemental Checklist

SUPPLEMENTAL CHECKLIST FOR ACCIDENTS/INCIDENTS IN FOREIGN COUNTRIES

In General

- The International Civil Aviation Organization (ICAO) is the United Nations civil aviation agency that sets international standards and regulations necessary for safe, regular, efficient air transport, and serves as the medium for cooperation in all fields of civil aviation among the 187 Contracting States, i.e., country. (See Tab 37.)
- Article 26 of the Convention on International Civil Aviation states that, in the event of an accident to an aircraft of a contracting State occurring in the territory of another contracting State, and involving death or serious injury, or indicating serious technical defect in the aircraft, **the State in which the accident occurs will institute an inquiry** into the circumstances of the accident, in accordance, so far as its law permits, with ICAO procedures.
- The State of Registry, the State of the Operator, the State of the aircraft design and the State of the aircraft manufacturer are each entitled to appoint an accredited representative to participate in the accident investigation. (ICAO Annex 13, § 5.18.) Each accredited representative is entitled to appoint one or more advisors, proposed by the Operator, to assist. (ICAO Annex 13, § 5.19.)
- When there is an accident involving an International Civil Aviation flight, Annex. 13 of the International Civil Aviation Convention sets forth the rules on notification, investigation and reporting of the accident. (See FAA Order 8020.11C, pp. 1-8, 7-1.)
- The NTSB and FAA may participate in foreign accident investigations upon request by the State in which the accident occurred. (See FAA Order 8020.11C, pp. 7-1 – 7-2.)
- The NTSB is responsible for investigating accidents/incidents involving civil aircraft that occur outside the United States when the accident/incident is not in the territory of another country (i.e., international waters). (49 CFR § 31.22.)

Notification

- If the incident/accident involves a civil aircraft of the United States, notify the local field office of the NTSB “immediately and by the most expeditious means available.” (See 49 CFR §§ 830.1(a) & 830.5.)
- The notification must include, to the extent then available: the type, nationality and operator of the aircraft; name of the owner and operator of the aircraft; name of the pilot in command; date and time of the accident; last point of departure and intended point of landing; position of aircraft with reference to some easily defined geographical point; number of persons aboard; number killed and number seriously injured; nature of the accident, the weather and extent of damage to the aircraft; and a description of any explosives, radioactive materials and other dangerous articles aboard. (See 49 CFR § 830.6.)
- Notify the Foreign Service Post (US Embassy or Consular Office) for the consular district in which the accident occurs, and the nearest office of the civil aeronautics administration for the country in which the accident occurs. The U.S. State Department is required to notify next of kin of US victims. (See 22 U.S.C. § 5503.)
- Notify the Managing Director of Overseas Citizen Services, Bureau of Consular Affairs, U.S. Department of State immediately if the operator is a U.S. certificated air carrier or foreign air carrier and the accident flight was to or from the United States – 202.647.1512 (U.S. Dept. of State Operations Center). (See 14 CFR § 243.11.)
- Notify the Casualty Assistance Office of each respective service if any military or government personnel were aboard the aircraft.

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| Army: | 800.626.3317 |
| Navy: | 800.368.3202 |
| Air Force: | 800.433.0048 |
| Marines: | 800.847.1597 |

- Notify U.S. Postal Service if the aircraft was carrying U.S. mail.
- Notify your insurance broker and underwriters. Aviation insurance policies typically require immediate notification in the event of an accident.
- Notify corporate security. Corporate security personnel should be advised of the accident so that security can be ensured at key corporate facilities because the press may seek access to corporate offices and key personnel immediately after an accident. Security at the “situation room,” accident site and on-site facilities is especially crucial.
- Notify Environmental Programs Department. The airline/company environmental programs department should be notified of the accident in order to evaluate for a possible fuel spill or hazardous cargo situation.
- Notify code share partners.
- Notify outside counsel. Outside counsel should be notified and advised to stand by as legal questions arise and employee interviews are requested.

Coordinate with Response Team

- Ensure both investigatory and family assistance teams are in motion.
- Ensure logistics such as accommodations and transportation for response teams are arranged.
- Coordinate with the Public Relations Department on initial communications.
- Coordinate with inside and outside counsel for initial team briefings.

Provide Passenger Manifest to U.S. State Department

- If the accident flight was operated by a US or foreign air carrier to or from the United States, the airline must provide a passenger manifest to the U.S. State Department Operations Center “not later than one hour after any such carrier is notified of an aviation disaster” or, if not technologically reasonable or feasible within one hour, then as expeditiously as possible but no later than three hours after such notification. (See 7 FAM § 1834.1; 14 CFR § 243.11(b).)

Coordinate with Public Relations and Corporate Communications Department

- All press releases and statements should be reviewed and approved by the general counsel’s office.

Dispatch Legal Representative to Scene

- An attorney should be dispatched to the accident site to provide advice on legal issues as they arise. It is helpful to have someone permanently assigned to the accident investigation and litigation.
- In addition, coordinate with local legal representation to protect the company/employees in the context of accident investigation, civil litigation and criminal issues.

Provide Representation to Interviewees

- All persons interviewed should be entitled to legal representation. An airline/company should not allow any employee to be interviewed by investigating personnel without adequate preparation and legal representation. Outside counsel may be best suited to this task.

Protect/Preserve Aircraft Wreckage

- In a foreign accident, the State where the accident occurred is responsible for protecting the evidence and maintaining safe custody of the aircraft and its contents for such a period as may be necessary for purposes of the investigation. (ICAO Annex 13 § 3.3.)
- Protection of evidence will include preservation of any evidence that may be removed or destroyed. (ICAO Annex 13 § 3.2.)

3. Practical Considerations for Emergency Response

PRACTICAL CONSIDERATIONS FOR EMERGENCY RESPONSE

The most successful emergency response is thoroughly planned and regularly practiced. Review your emergency response manual and procedures to ensure you have considered the following:

- Family assistance plan.
- Primary and alternate contacts for each person/entity on your notification list.
- On-site work may continue for several days or even weeks. Plan on back-up personnel to relieve those on site too long.
- Have a specific, easily identifiable location where the go-team meets. Make sure the location is known by all response personnel and is written in their manuals.
- If someone gets left behind, have an alternate plan for them to get to the accident site.
- Plan transportation to the accident scene:
 - Designate a go-aircraft or how to select one on short notice.
 - Plan should include dispatching and crewing.
 - If an accident results in airport closure, be prepared to travel to nearest suitable airport and travel by car to accident site.
 - Consider and plan for bad weather at and near the scene.
 - All response personnel should join a frequent car rental program to speed the process.
 - Designate and train certain pass bureau/company travel personnel to handle short-notice travel plans.
- Plan what equipment and personnel needed on go-plane.
 - Plan on how to transport heavy items from aircraft to scene.
 - Weigh and size “go-kits.”
- For communications:
 - Ensure emergency response center has conference call capability and that it works.
 - Ensure long distance calls can be made from the phones that will be used during response.
 - Consider adding a satellite phone to the go-team in case cell coverage is unavailable.
- Review emergency manual entries on a regular basis for accurate contact names and numbers.
- Replace perishable items in go-kits on a regular basis. Extra dead batteries will not help.
- Consider, plan for and train personnel how to deal with immediate media inquiries.
- Plan hotel needs for team:
 - How many rooms
 - Who will reserve rooms
 - Consider security measures at hotel for team and equipment
- Consider and plan who will need identification/badge for on-site visits:
 - Go-team members
 - Company officers

- Legal counsel
- Third-party partners
- Agencies and clergy

Every member of the accident response team (go-team) should have a “go-kit” ready to go with the following items:

Personal gear:

- Personal protective equipment for biohazards
- Insect repellent
- Sunblock
- Basic first aid kit
- Gloves
- Weather-appropriate clothing and footwear
- Other safety equipment

Identification and money access:

- Company identification
- Passport
- Vaccination record
- Driver’s license
- Credit and ATM cards
- Expense forms

General support items:

- Cell phone
- Cell phone batteries and charger
- Digital camera with extra batteries
- Laptop computer with cellular wireless card, extra battery and charger
- At least one response member should have a satellite phone
- Batteries
- Instructions for use
- Emergency response manual
- Contact lists
- Notepads

4. Media Relations at a Major Aviation Accident

MEDIA RELATIONS AT A MAJOR AVIATION ACCIDENT Airlines and the NTSB

If an airline experiences a major accident, that company will be confronted with many public relations challenges. This document has been prepared by the National Transportation Safety Board (NTSB or Safety Board) to help the airline public relations staff understand the Board's philosophy and procedures in the hours and days immediately following a major airline accident, and specifically to provide companies with guidance about parameters established by Safety Board procedures that an affected air carrier, as a party to the investigation, has agreed to follow.

The Safety Board understands and appreciates the multiple public affairs responsibilities that the air carrier faces when a major accident occurs. It is the policy of the Safety Board to work cooperatively with the public relations representatives of the affected carrier both as the air carrier and the NTSB are responding to the scene and at the scene of the accident, itself. However, it should be understood that the NTSB public affairs staff are few and until such time as a routine working relationship is established on-scene, it would benefit the carrier's representatives to seek out Safety Board public affairs staff for information, guidance and coordination.

Congress created the National Transportation Safety Board in 1967, charging it with, among other things, investigating all civil aviation accidents in the United States. In addition to determining probable cause, the Board issues safety recommendations in an effort to prevent future accidents. The Safety Board is an independent agency, not part of the Department of Transportation, and has no organizational connection to the Federal Aviation Administration (FAA).

For more than 30 years, the Board has conducted investigations under a party system, using experts from other agencies and organizations to provide expertise it does not or may not possess. By legislation, the FAA has the right to be a party to the investigation. All other parties are selected by the NTSB based on the Board's needs for that particular investigation. Generally some or all of the following groups will be parties to an investigation: the airline; the aircraft manufacturer; the engine manufacturer; unions representing the airline's pilots, flight attendants, machinists and dispatchers; the airport authority; the National Air Traffic Controllers Association; and local crash/fire/rescue authorities. Additional parties may be added as needed.

Upon being notified of a major accident, the Board dispatches a "go team" from Washington. The closest NTSB regional office will immediately respond to control the scene until the go team arrives. The team conducts an on-site investigation typically lasting anywhere from four to 10 days (some, notably ValuJet Flight 592 and TWA Flight 800, have lasted a substantially longer period of time). Sometimes there is a public hearing held near the accident location (usually about six months later), and the Board's final report is typically issued 12 to 24 months after the accident. Parties will be afforded the opportunity to provide the Safety Board with their findings, conclusions and analysis of the events of the accident, although they will not participate in developing NTSB's analysis or probable cause. Throughout this period, press and public interest can be relentless. It is important to know what areas of inquiry are appropriately answered by the airline, and which are to be answered by the Safety Board. A more detailed account follows.

The First Few Hours

The Board is almost always initially notified of a major aviation accident by the FAA's Operations Center in Washington. An evaluation is quickly made to determine the level of NTSB response. Sometimes, an accident can be handled by one of the Board's regional or field offices (list attached), but for most major airline accidents (both Part 121 and Part 135), a full go team is assembled. The team usually travels to the accident on a government aircraft, but occasionally flies commercial transportation.

Representatives of the Board's Public Affairs Office always accompany the go team. This office has an answering machine that during non-duty (evening and weekend) hours gives the home telephone number of the public affairs officer (PAO) on call. Therefore, someone can often be reached in an emergency.

Safety Board family support personnel also travel to the accident scene. They facilitate and integrate the resources of the federal government and other organizations to support the activities and efforts of the local and state government and the airline to meet the needs of victims and their families.

Airline Public Affairs Response

When an air carrier has been involved in an accident, we encourage one of its public relations representatives to call the NTSB's Public Affairs Office at (202) 314-6100. If the office is closed, the answering machine during the evening and on weekends will have the name and home number of the PAO on call; this individual will likely be the Board's primary press officer at the scene. A Safety Board PAO will attempt to contact a public relations representative from the airline in those initial hours after an accident.

The Go Team

The go team could consist of as many as a dozen or more NTSB investigators. The Investigator-in-Charge (IIC), a career employee of the Safety Board, manages the investigation. The investigative team is made up of NTSB investigators who are experts in various disciplines. Each of these investigators serves as a group chairman with representatives from the appropriate parties, including the airline, assigned to his or her group. Typically, groups are formed on scene in all or some of the following disciplines: structures, systems, power plants, operations, air traffic control, weather, survival factors, human performance, aircraft performance and witness interviews. Flight data recorder (FDR) and cockpit voice recorder (CVR) groups work out of NTSB headquarters in Washington.

In addition to the investigative teams, the NTSB group is also made up of support teams covering public affairs and family affairs. Press officers are dispatched to accompany go teams, sometimes with a Board member who serves as principal spokesperson. The IIC can also fulfill that responsibility. Safety Board legal officers may also provide support.

There are five members of the National Transportation Safety Board, nominated by the President and confirmed by the Senate to serve five-year non-concurrent terms. The members serve on go teams on a rotating basis and accompany the teams to serve as principal spokespersons for the investigation while on scene. It is the five Board members who, under law, will eventually analyze the factual information collected by the investigators to determine probable cause and issue safety recommendations.

If the aircraft was operated by a foreign carrier or is manufactured outside the United States, the foreign government authority will also be present in accordance with international agreement.

At the Accident Scene

The Safety Board immediately establishes a command post as close to the accident scene as possible, most often in a hotel. Press telephones are installed and those numbers are publicized as soon as they are known.

Once the go team arrives on scene, the Board holds an organizational meeting during which parties are designated and the investigative groups are defined. Every evening, a progress meeting will be held. Public relations representatives from the parties, attorneys and news media are not permitted in these meetings. The airline's party representative (known as the coordinator) should brief public relations staff on the progress of the investigation, but PR representatives should not hesitate to arrange to meet with NTSB PAOs on-scene on a regular basis. The initial meeting should be held as soon after the go team's arrival as possible.

It is during the organizational meeting that the parties agree to follow the Board's procedures, part of which affects airline PR staff. The IIC's standard prepared opening statement contains the following paragraph:

"The Safety Board will disseminate to the public all information regarding the accident [investigation], either through our Board Member, public affairs officer, or me. We will hold regular briefings to the press. Please refrain from discussing the accident [investigation] in public, or giving information about it to the press. Any violation of this request will be considered a serious infraction of Board rules."

This rule protects everyone. Typically, the NTSB conducts press briefings during the day and at night following the progress meeting. Only factual information – that all the parties have heard – is released. The NTSB does not speculate or give out unverified information. With all parties deferring to the Board to release information on the investigation, the team speaks in a coordinated, consistent and orderly manner. Through this procedure, competition for “spin” is thus minimized, and the maximum opportunity for coordination and cooperation among the parties is maintained.

The Board has no objection if the airline sends a public relations representative to the accident site. In fact, because there are many questions the press asks that we cannot or will not comment upon (see below), we encourage carriers to send public relations staff to the scene, keeping in mind the rules of participation. If the airline does send press representatives to the scene, we encourage that person to make contact as soon as possible with the NTSB PAO so that formal communication lines are established. It is the goal of the NTSB not to “blind side” anyone and to work cooperatively with the air carrier within the established guidelines. This is facilitated by regular discussions during the on-scene phase.

Access to the accident site is controlled by the NTSB. At a time deemed appropriate by the IIC, the press is usually escorted to a site close to the wreckage, either in total or represented by a pool. Under recent federal laws for protecting people from blood-borne pathogens, it has become increasingly more difficult to allow the press access to the accident site immediately.

What A Carrier Can Do

The Safety Board is cognizant of the increasing pressures all of us are subjected to because of the changed nature of our news media. We do not wish to prevent an airline from assuring its customers, employees and the general public of their concern for the victims and their commitment to aviation safety.

We intend to give airline spokespersons latitude to meet the press and disseminate information, provided that such information does not interfere with the goals of our investigation and does not damage the integrity of the party process. Therefore, an airline should stay away from any judgments about the significance of issues, and nothing that is released should suggest that another party (or other entity) may have played a role in causing the accident. Remember, one benefit of our procedures is to prevent a party from offending—inadvertently or otherwise—another party and provoking a reaction in kind.

Admittedly, this is not a matter that lends itself to plain black and white assessments or rules. There is some factual information that is obviously related to the investigation that nevertheless can be released without compromising the integrity of the investigation or damaging the party system. For example, the date the aircraft was purchased is a fact we will need for our investigation, yet its revelation by you in the hours after the accident will not harm the investigation in any way and is therefore not prohibited under our regulations. Similarly, the release of the last date of major inspection or a description of the airline’s inspection program would be permitted, but a statement like “This aircraft has no maintenance issues relevant to this accident” would clearly be prohibited because it calls for a judgment that is not the carrier’s to make; that matter will be a subject of the investigation.

Information readily available to the public in the FAA data base may be released by the airline without first presenting it to the NTSB.

The following is a non-exhaustive list of what an airline may say following an accident and what it may not. There is no way all situations can be foreseen, but this list should provide a carrier with enough guidance that, combined with common sense and a commitment to our shared goal of promoting aviation safety, spokespersons should have a good idea of what is an appropriate post-accident response.

What Can Be Said

In considering what would be appropriate to say, a carrier can start off with the concept that anything that could have been said the day before the accident can be said the day of the accident and thereafter. However, even this needs to

be carefully considered. In general, after giving the information to the NTSB, the airline should feel free to discuss the aircraft's registration number and history, and the pilots' training and work history, in general terms. Here are things that can definitely be discussed in a post-crash press conference:

The Aircraft:

- Registration and serial numbers
- Dates of manufacture and acquisition
- Cabin configuration and cargo capacity
- Systems aboard the aircraft (however, this could be troublesome as questions could easily lead a spokesperson to speculate on how these systems could have been used)
- When it last underwent a major inspection and its general inspection schedule
- Whether it is fly-by-wire or not
- How many of these aircraft are in the airline's fleet
- Manifest information like numbers of passengers aboard (in-lap infants if known) and cargo listed on the manifest

The Crew:

- Their names (and personal information like their ages)
- How long they've been employed by the carrier
- What aircraft they're type-rated for
- Where they were on their trip (the second day of the three-day trip, for example)
- What previous legs they flew that day and how long they'd been on duty
- (All of this information should be given by your company to the NTSB first under any circumstances.)

The Accident:

- When the airline was notified of the accident and how it responded, both with family matters and in providing support and cooperation to the NTSB in its investigation
- Only general circumstances of the accident should be discussed; for example, it was raining, the flight was on time or 30 minutes late, etc.

The Company:

- In general terms, factual information about your corporate philosophy and structure, and practices on training, maintenance and operations
- Company size, number of employees
- History (including previous accidents)
- Business alliance
- Size and makeup of aircraft fleet

Family Assistance:

Virtually anything connected with this is well within the carrier's purview for post-accident press conferences at any time. An airline should feel free to discuss its family disaster plan and publicize its toll-free number. Carriers are strongly encouraged to keep the media informed about the carrier's progress in contacting family members of the passengers and crew involved in the accident. For example, let the media know that 24 families of the 120 passengers have been contacted. An hour later, the airline could report that 52 families have been contacted. Such reports should continue until all passengers' families have been contacted.

What the Airline Shouldn't Say

The Aircraft:

- Characterizations of what is in the maintenance records or any other characterization that calls for a judgment or implies involvement or non-involvement in the accident
- Any speculation about the possible role the plane's components might have played
- Any discussion of wreckage patterns or aircraft breakup

The Crew:

- Actions of the crew leading up to the accident
- Any relationship between crew training and the accident
- Any speculation about what the crew might have done or not done during the accident sequence or to prevent the accident
- While there's nothing wrong with saying the captain is a good pilot (why else would you employ him or her?), stay away from statements that suggest the unlikelihood of the crew doing something wrong, or that implicitly or explicitly point fingers at others

The Accident:

- Descriptions of the plane's "final moments"
- What the investigation will focus on or how it will be structured
- Descriptions about wreckage path or suppositions about break-up sequence
- Announcements about finding flight recorders and how they will be handled
- Descriptions of airport equipment and capabilities
- Speculation on the role elements like the weather or air traffic control might have played in the accident
- No judgments about what the issues in the investigation are going to be and nothing that implicitly or explicitly points the finger at another potential party to the investigation

Family Assistance:

Avoid commenting on areas that the medical examiner or coroner should officially address. Such areas include:

- Identification procedures and length of time it may take to complete all positive identifications
- The search and recovery process
- Condition of recovered remains
- It is also important to let the medical examiner or coroner officially release the names of the fatalities that have been positively identified. Once this information is released by the medical examiner/coroner, the carrier is free to discuss this with the media.

While the Safety Board does not officially prohibit parties from providing spokespersons on morning or evening news and interview programs, as the investigation progresses it generally will be less and less appropriate for an airline to do so.

Family Assistance: The Airline and the NTSB

At all times following an accident—both on-scene and in the months that follow—public discussion by the airline about what it is doing in the area of family affairs is appropriate.

Immediately after it is known that an accident has occurred, the involved airline starts the process of notifying families of the passengers and crew. It is the airline's prerogative to determine how often and in what manner it wishes to brief the public on its efforts to support the survivors and the families of those involved.

While the airline will always be the primary source of public information on these matters, the Safety Board's family assistance officer will probably be asked to disseminate information on the Board's interaction with the airline and other supporting organizations, the medical examiner and the families.

After the On-Scene Investigation

When the Board shuts down its on-scene press activity, the press officers return to Washington and issue any information from there. Several days after that, the investigators themselves come home.

There are a few significant milestones during the course of the investigation. First, several months after the accident, when we have verified the contents of the certified transcript of the air traffic control communications, we will authorize the FAA to release the recorded ATC communications and transcript to the public. These are not to be confused with the CVR tape, the audio portion of which is never authorized to be released to the public by the NTSB. The original CVR tape is always returned to the airline. The transcript is released by the NTSB when it opens the public docket—months after the accident.

In an effort to collect additional information from sworn witnesses, the Board sometimes holds a public hearing (or, less often, staff-conducted depositions). The hearing is typically held near the accident location, usually around six to eight months after the accident. The factual reports from the various investigative groups, as well as the transcript of the pertinent portions of the CVR, are released on the first day of the hearing. If no hearing is held, those documents are released in a public docket from the Board's Washington headquarters, again about six months after the accident.

Toward the end of the process, parties have an opportunity to submit to the Board (and provide to all other parties) their proposed conclusions, findings of probable cause and safety recommendations. There are no restrictions on public release of these documents, although traditionally parties have tended not to discuss them until the time of the Board meeting.

Eventually, the Board members discuss and vote upon a final report on the investigation—the draft of which is prepared by NTSB staff—in a public “Sunshine” meeting (so named after the government in the Sunshine Act). The final report is the vehicle through which the Board determines the probable cause of the accident and announces its safety recommendations (although recommendations can be issued at any time during the investigation). An abstract of the conclusions, probable cause and safety recommendations is issued within an hour of the end of the meeting and placed on the Board's website. The full report will appear on the website some weeks after the meeting, with printed copies available a few weeks after that.

During all of these post-accident-scene events, an airline will be asked by the media to comment on the information released. As a party to the investigation, the carrier cannot speculate as to the cause of the accident or offer analysis of the factual information. Keep in mind at all times the guidance in our regulations, Part 831.13, Chapter 49 of the Code of Federal Regulations, “Provision and dissemination of accident or incident information:”

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...[N]o information concerning the accident or incident may be released to any person not a party representative to the investigation...before initial release by the Safety Board without prior consultation and approval of the IIC.

Accidents Overseas

Under international treaty obligations, the Safety Board provides the US Accredited Representative to accidents occurring in foreign territories involving aircraft of US design, manufacture, registration or operator, or having major U.S.-made components. The airline's participation in these investigations will be under the NTSB accredited representative and will function as a technical advisor. Only the investigating nation may release information on the findings of the investigation.

Therefore, the Safety Board refers inquiries to that country's investigating agency, and an airline would be required to do the same.

Summary

The NTSB was established in 1967. Since that time, we've investigated more than 110,000 aviation accidents.

We are a public agency, doing the public's business. Our release-of-information procedures have worked well for decades. We hope an airline never needs the information in this document, but please do not hesitate to contact us if more assistance is needed.

5. NTSB Document Collection/Production

NTSB Document Collection/Production

Collecting and producing documents to the NTSB can be one of the most difficult efforts a party will undertake immediately following an accident. It is also an area where mistakes are frequently made. The NTSB will apply heavy pressure for prompt production of key documents, sometimes with multiple requests to multiple party employees. Notwithstanding this urgency, it is critical that you control and protect the flow of documents. The key is to have a single point of contact for documents and establish a system by which documents can quickly be found, logged, digitized, marked confidential and produced to the NTSB. All requests for documents should flow through a single person and all group participants should be instructed that they are not to produce anything to the NTSB directly.

The person in charge of documents should direct the collection of key documents, assemble the documents, log them into a production log, stamp or watermark them as confidential and arrange for their production to the NTSB. If possible, all documents should be digitized. Once that is done, a PDF watermark can be applied identifying documents that should not be released by the NTSB to the public. Regulations require that each page of a confidential document be so designated. If a confidential document is produced in hard copy, each page of the document must be stamped confidential. While a generic "Confidential" stamp will suffice, we recommend a stamp or watermark that says:

**Trade Secret and/or
Confidential Commercial Information
[Company Name]**

The standard for whether a document should be designated as confidential is whether it is "of a kind that would customarily not be released to the public." *Critical Mass Energy Project v. Nuclear Reg. Comm'n*, 975 F.2d 871 (D.C. Cir. 1992 (en banc)). This is the most liberal of the court rulings on this topic. While the NTSB may later argue that another standard applies, the use of this standard in the beginning will prevent you from producing documents that may be protected from public disclosure under federal law. Once designated as confidential, the NTSB must advise you that it wishes to disclose the document publically. When in doubt, it is better to designate a document as confidential. You can always waive that designation later. If a document is not readily available to the public, we recommend that you designate it as confidential.

Quick Summary:

- Make one person responsible for producing all documents to NTSB
- If a document is not readily available to the public, mark each page confidential
- If possible, digitize all documents before producing them
- Log all documents before producing to NTSB and keep a copy

Identifying and Isolating Key Documents

The NTSB provides its investigators with checklists of key documents, organized by investigation group. The list that appears below is adapted from those checklists. Not all of these documents will be relevant to every accident, but you should immediately isolate all of these documents to the extent you believe they may be relevant to your accident.

Operations/Training

1. Airline Operations Specifications
2. Operations Manual
3. Aircraft Flight Manual
4. Flight Attendant Manual
5. Ground Operations Manual
6. Weight & Balance Manual

7. Training Program Manuals (Flight Crew, Cabin Crew, Dispatch, Maintenance)
8. Training Materials and Syllabi (Flight Crew, Cabin Crew, Dispatch, Maintenance)
9. Check Airman Manual
10. Dispatch/Flight Following Manual
11. Minimum Equipment List (MEL)/Configuration Deviation List (CDL) Manual
12. Performance Manual
13. Ground School/Simulator Instructor Manual
14. Company Organizational Chart
15. Checklists (Normal and Emergency)
16. Quick Reference Handbook
17. Safety Briefing Card
18. Service Difficult Reports for Cabin Safety Equipment
19. Cockpit Panels
20. Company Pilot Bulletins in Effect
21. Dispatch/Flight Release
22. Weather Package provided to crew
23. Aircraft Maintenance Log
24. Aircraft Communications, Addressing, and Reporting System (ACARS) Communications
25. Computer Flight Plan
26. Current Navigational Charts and Approach Plates
27. Notice to Airmen (NOTAMs)
28. De-Icing Records
29. Weight & Balance/Load Manifest
30. Cargo Manifest
31. Passenger Manifest
32. Fuel and Oil Records
33. Documentation of Flight Crew Pre-Employment Checks
34. Personnel Records for Crew, Dispatcher and other involved employees
35. Training Records for Crew, Dispatcher and other involved employees
36. Duty Schedules for Crew, Dispatcher and other involved employees
37. Documentation of Toxicological Testing
38. Toxicological Test Results
39. DOD Audit Records
40. International Air Transport Association Operational Safety Audit (IOSA) Records
41. Air Transportation Oversight System (ATOS) Job Aids/Audits

Maintenance

1. Parts "D" and "E" of the Operating Specifications
 - a. General aircraft maintenance requirements
 - b. Short-term escalation authorization
 - c. Leased aircraft maintenance program (U.S.)
 - d. Leased aircraft maintenance program (foreign)
 - e. Parts-borrowing authorization/program
 - f. ETOPS maintenance program authorization
 - g. Maintenance inspection time limitations
 - h. Minimum equipment list and configuration deviation list authorization/program
2. The operator's General Maintenance Manual
3. Aircraft Maintenance Manual and Relevant Component Maintenance Manuals
4. A copy of the general airframe manuals

5. A diagram (with names) showing the structure of the maintenance management system. This diagram should delineate management positions down to the level of shop supervisor for each shop (e.g., avionics, engines, etc.)
6. A list of all maintenance and non-maintenance bases (to include the maintenance level classification of each base).
7. A list of all contract maintenance providers (to include maintenance level authorizations and the primary point of contact at each station).
8. A copy of the components repetitive inspection list for the accident aircraft model list component inspections by ATA code.
9. A copy of the conditional inspections list for the model aircraft involved in the accident. (These inspections are only performed when the aircraft has experienced some uncommon condition, e.g., severe turbulence, hard landing, flap over speed, etc.)
10. A list of all of the operator's aircraft by make, model and tail number.

Collect the following items for the accident aircraft:

1. Aircraft maintenance logs for the last 90 days. Make sure to record the station identifier, mechanic's identification number and ATA chapter code for any suspicious write-up or corrective action.
2. Aircraft maintenance history data printout for the last 120 days. Print out this history by an ATA code and for any time period that you feel is important.
3. All non-routine work cards for the last periodic check and for the last "D" or "C" level Heavy Check. For a transport category aircraft, there will probably be hundreds of cards from a "C" or "D" check.
4. All overhaul records for the aircraft's engines, propellers and primary system components.
5. Routine work cards. If there is a suspect system or component, the routine work cards signed off during the last applicable inspection should be requested. Each action box on the relevant card should be reviewed for inspection findings and corrective actions taken.
6. Conditional inspection history for life of aircraft. Because these inspections are only performed if the aircraft has experienced a special or unusual condition, it is important to search the work cards for evidence of damage and repairs.
7. Contract maintenance before final flight. Talk directly to the contract shop supervisor to determine if maintenance was performed.
8. Aircraft damage report. This might be the only place that will say if the aircraft was damaged while out of service (e.g., service truck colliding with engine pylon while aircraft is parked at gate overnight).
9. List of major repairs and alterations.
10. A list of all Supplemental Type Certificate (STC) work that has been accomplished on the accident aircraft.
11. Engine condition monitoring data for the last 30 days. There may be a formal or informal program or just untracked data recorded on the daily aircraft maintenance log.
12. Engine change log. This log will show you which aircraft within the fleet the engines on the accident aircraft have been on in the past. If there is a suspect engine, you can review its maintenance history (by engine ATA code) for the period it was on the previous aircraft.
13. Engine and airframe vibration monitoring data.
14. List of MEL/CDL items currently being carried on the accident aircraft. Determine from the master MEL the category (A, B, C or D) of any carried items, and whether any B or C category items are on an extension.
15. List of all Airworthiness Directives (ADs) for the accident aircraft. Confirm compliance date and methods.

16. Service difficulty reports (SDR) or maintenance defect reports (MDR) for any suspect component. Data may be obtained through the local Flight Standards District Office (FSDO) or by calling 405.954.6509. Be very specific and narrow the request as much as possible (there may be thousands of MDRs for a specific model of aircraft.)
17. List of service bulletins/letters, by title, that apply to the accident aircraft and its components.
18. List of cancellations/diversions/deviations for the accident aircraft (and all others of the same model) for the last six months. If possible, have data listed separately for each maintenance base.
19. Weight and balance sheet. If weight or cg might an issue, check the compliance date, location and method used for the last weight and balance check. If electronic scales were used, check the method and date of calibration and certification.
20. Import and return-to-service documentation. If the accident aircraft or its engines were imported from a foreign country in the recent past, review all import process documentation and the actions taken qualifying the aircraft to be returned to service. You may have to contact and possibly interview the involved designated airworthiness representative (DAR) who handled this process. You may also need to contact the FAA office that provided oversight of the DAR.
21. Maintenance training program. Collect in-house training program documentation for engine, airframe and systems, to include curriculum, instructor qualification/training, participation percentage, recurrent training, training on special systems and record-keeping.

6. NTSB Form 6120.1 – Pilot/Operator Aircraft Accident/Incident Report

[INSERT FORM]

NATIONAL TRANSPORTATION SAFETY BOARD

NTSB Form 6120.1

PILOT/OPERATOR AIRCRAFT ACCIDENT/INCIDENT REPORT

Email the pilot/operator aircraft accident/incident report to the investigator-in-charge of your accident/incident. If email is not available, mail the report per the instructions below.

If your accident/incident occurred in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Mississippi, Alabama, Georgia, Florida, the District of Columbia, Puerto Rico, or the US Virgin Islands, send the form to: NTSB, ERA, 45065 Riverside Parkway, Ashburn, VA 20147.

If your accident/incident occurred in Ohio, Michigan, Indiana, Wisconsin, Illinois, Minnesota, Iowa, Missouri, Arkansas, Louisiana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Colorado, or New Mexico, send the form to: NTSB, CEN, 4760 Oakland Street, Suite 500, Denver, CO 80239.

If your accident/incident occurred in Montana, Wyoming, Idaho, Utah, Arizona, Nevada, Washington, Oregon, California, Hawaii, or the territories of Guam or American Samoa, send the form to: NTSB, WPR, 505 South 336th Street, Suite 540, Federal Way, WA 98003.

If your accident/incident occurred in Alaska, send the form to: NTSB, ANC, 222 West 7th Avenue, Room 216, Box 11, Anchorage, AK 99513.

Rules pertaining to notification of aircraft accidents and incidents, as well as overdue aircraft are found in 49 *Code of Federal Regulations* (CFR) Part 830 http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr830_main_02.tpl. These rules state the authority of the NTSB, define accidents, incidents, injuries, and other terms, and provide procedures for initial and immediate notification of accidents and incidents by aircraft pilots/operators.

A. APPLICABILITY

The pilot/operator of an aircraft shall send a report to the office listed above, based on accident/incident location; immediate notification is required by 49 CFR 830.5(a). **The report shall be filed within 10 days after an accident for which notification is required by Section 830.5, or after 7 days if an overdue aircraft is still missing.**

An aircraft accident, as defined in 49 CFR 830.2, is determined as an occurrence that involves a fatality or serious injury, or substantial damage to the aircraft. For occurrences that do not involve a fatality, the determination that the occurrence is an accident can be appealed by writing to the Director, Office of Aviation Safety, NTSB, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

INSTRUCTIONS TO PILOTS/OPERATORS FOR COMPLETING THIS FORM

It is necessary that ALL questions on this report be answered completely and accurately.

If more space is needed, continue on a blank sheet of paper.

Nearest City/Place: Use the name of the nearest community in the state where the accident/incident occurred.

Date/Time: Indicate the date and local time of the event. Be sure to indicate the time zone.

Phase of Operation: Indicate the phase of operation during which the accident/incident occurred.

Aircraft Information: Enter aircraft make and model information as indicated on the aircraft registration certificate, including series. If the involved aircraft is certified as "amateur-built," include the name of the producer of the kit or plans, unless an NTSB employee instructs otherwise.

Maximum Gross Weight: Enter the certificated maximum gross weight for the aircraft involved in the occurrence. This should be the same as the maximum gross weight indicated on the aircraft weight and balance documents.

Engine: Enter engine make and model information as indicated on the engine data plate.

The NTSB uses this form for aircraft accident prevention activities and for statistical purposes. NTSB regulations (49 CFR Part 830) require that **ALL** questions be answered completely and accurately. Completion of this form will take approximately 60 minutes. The NTSB does not guarantee the privacy of any information provided in this form. You need not complete this form unless it displays a valid OMB control number, in accordance with 5 C.F.R. § 1320.5(b), which applies to this collection of information.

B. DEFINITIONS

1. "Aircraft Accident" means an occurrence associated with the operation of an aircraft that takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death, or serious injury, or in which the aircraft receives substantial damage. For purposes of this form, the definition of "aircraft accident" includes "unmanned aircraft accident," as defined at 49 CFR 830.2.

2. "Substantial Damage" means damage or failure that adversely affects the structural strength, performance or flight characteristics of the aircraft, and that would normally require major repair or replacement of the affected component. NOTE: Engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairing or cowlings, dented skin, small puncture holes in the skin or fabric, ground damage to rotor or propeller blades, and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wing tips are not considered "substantial damage" for purposes of this report.

3. "Operator" means any person who causes or authorizes the operation of an aircraft, such as the owner, lessee, or bailee of an aircraft.

4. "Fatal Injury" means any injury that results in death within thirty (30) days of the accident.

5. "Serious Injury" means any injury that (1) requires hospitalization for more than 48 hours, commencing within 7 days from the date the injury was received; (2) results in a fracture of any bone (except simple fracture of fingers, toes, or nose); (3) causes severe hemorrhages, nerve, muscle, or tendon damage; (4) involves injury to any internal organ; or (5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

Type of Fire Extinguishing System: If a fire extinguishing system was used to fight an aircraft fire, specify the type(s) of extinguishing system(s) used. Examples include handheld extinguisher, engine fire bottle, cargo/baggage compartment fire suppression system, or airport emergency ground equipment.

Owner/Operator Information: Enter the owner information as shown on the registration certificate. Commercial operators, enter the operator information, including "doing business as" when applicable, as shown on the operator certificate.

Revenue Sightseeing Flight: Indicate whether the accident aircraft was conducting **revenue** sightseeing operations under 14 CFR Part 91 at the time of the accident.

Air Medical Flight: Indicate whether the accident flight was being conducted for the purpose of carrying medical personnel, patient(s), or organs.

Public Aircraft: Federal, state or local government flight operations such as official travel, law-enforcement, low-level observation, aerial application, firefighting, search and rescue, biological or geological resource management, or aeronautical research. Indicate whether the flight was conducted by the armed forces, federal, state, or local government.

Purpose of Flight: 14 CFR Parts 91, 103, 133, 136, and 137: Indicate the type of operation that was being conducted at the time of the occurrence using the following definitions:

AERIAL APPLICATION--Operations using an aircraft to perform aerial application or dispersion of any substance. Examples include agricultural, health, forestry, cloud seeding, firefighting, insect control, etc.

AERIAL OBSERVATION--These flights include aerial mapping/photography, patrol, search and rescue, hunting, highway traffic advisory, ranching, surveillance, oil and mineral exploration, criminal pursuit, fish spotting, etc.

AIR DROP--Aerial operations, other than aerial application, that are intended to release items in flight.

AIR RACE/SHOW--Includes any flight operations conducted as part of an organized air race or public demonstration.

BUSINESS--includes all personal flying without a paid professional crew for reasons associated with furthering a business, including transportation to and from business meetings or work. This does not include corporate/executive operations, air taxi, or commuter operations.

EXECUTIVE/CORPORATE--Company flying with a paid, professional crew.

FERRY--Non-revenue flight under a special flight or "ferry" permit. Refer to 14 CFR 21.197 for details of special flight permit issuance.

FLIGHT TEST--Flight for the purpose of investigating the flight characteristics of an aircraft/aircraft component or evaluating an applicant for a pilot certificate or rating.

INSTRUCTIONAL--Flying while under the supervision of a flight instructor or receiving air carrier training. Personal proficiency flight operations and personal flight reviews, as required by federal air regulations, are excluded.

OTHER WORK USE--Miscellaneous flight operations conducted for compensation or hire such as construction work (not 14 CFR Part 135 operation), parachuting, aerial advertising, towing gliders, etc.

PERSONAL--Flying for personal reasons (excludes business transportation) including pleasure or personal transportation. This also includes practice or proficiency flights performed under flight instructor supervision and not part of an approved flight training program.

POSITIONING--Non-revenue flight conducted for the primary purpose of relocating the aircraft. Examples include moving the aircraft to a maintenance facility or to load passengers or cargo etc.

UNKNOWN--Use only if the primary purpose of flight is not known.

Other Aircraft--Collision: For all accidents involving a collision with another aircraft, including parked aircraft, check "Collision with other aircraft" under Basic Information and complete this section indicating details about the OTHER aircraft involved in the collision.

Airport Information: Complete this section if the accident/incident occurred on approach, landing, takeoff, departure, or within 3 statute miles of an airport. Please refer to the FAA Airport/Facility Directory or other official source for airport information.

Airport Identifier: Provide the official 3 or 4 character airport identifier number.

Runway: Indicate the number of the runway used, including L, R, or C if applicable.

Runway/Landing Surface: Indicate the type of intended runway/landing surface (do not indicate surface conditions). If the surface type was mixed, check all that apply.

Condition of Runway/Landing Surface: Indicate the condition of the intended runway/landing surface. If multiple conditions existed at the time of the accident, check all that apply.

Weather Information at the Accident/Incident Site: Indicate the weather conditions reported at the accident/incident site at the time of occurrence. If no weather reporting was available for the accident/incident site, indicate the reported conditions at the nearest reporting site. Specify the weather reporting site identifier, the observation time, and distance from the accident/incident.

Sky/Lowest Cloud Condition: Indicate the height above ground level of the lowest cloud condition present at the time of the accident/incident and whether coverage was reported as few, scattered, broken or overcast. Also indicate the height above ground level and coverage of the lowest cloud ceiling present at the time of the accident/incident (reported as broken or overcast).

NOTAMS (D and FDC), AIRMETs, SIGMETs, PIREPs: Describe all NOTAMS (distant (D) or Flight Data Center (FDC), if known), AIRMETs, SIGMETs, and PIREPs in effect near the accident/incident.

Flight Crewmember Information: Indicate the category that best describes the capacity served by this flight crewmember at the time of the accident. The designators "Flight Crewmember 1" and "Flight Crewmember 2" do not refer to a specific pilot position or responsibility. If more than one pilot is aboard, they may be entered in any order and their capacity entered as appropriate.

Degree of Injury: See Definitions on the top half of Page 1 of the instructions. Minor injury is not defined. If an injury does not meet the criteria for another injury category, select Minor.

Date of Last Flight Review or Equivalent: Enter the date of the most recent flight review, or equivalent, completed by this pilot. Refer to 14 CFR 61.56 for accepted equivalents.

Type Ratings: List all type ratings on the pilot certificate. If the pilot holds no type ratings indicate "none." If the pilot holds a pilot certificate other than student and was flying an aircraft requiring an endorsement, enter the type and date of any logbook endorsement(s) for that aircraft. See 14 CFR 61 for examples of required endorsements.

Student Endorsements: If the pilot holds a student pilot certificate, enter all solo endorsements and dates on the student pilot certificate.

Flight Time: Complete the flight time matrix. Solo flight time should be included as "Pilot-in-Command (PIC)" and all dual flight instruction given should be included as "Time as Instructor."

Additional Flight Crewmembers: Complete this section if there were more than two required flight crewmembers on the aircraft. This also includes a check airman performing official duties but does not include cabin crew. State the capacity served by each included crewmember at the time of the accident.

Passenger(s)/Other Personnel: Enter identification and injury severity information for all passengers, cabin crew, and other personnel involved in the accident. See Page 1 of the instructions for the official definition of injury levels.

Several questions throughout the form allow for multiple responses; when appropriate, choose all responses that apply.

These instructions only pertain to major issue areas covered by NTSB Form 6120.1 Pilot/Operator Aircraft Accident/Incident Report. For additional definitions of questions and responses, please refer to www.nts.gov.

NATIONAL TRANSPORTATION SAFETY BOARD PILOT/OPERATOR AIRCRAFT ACCIDENT/INCIDENT REPORT

This form to be used for reporting civil and public aircraft accidents and incidents

BASIC INFORMATION

Accident/Incident Location

Nearest City/Place: _____ State: _____

ZIP: _____ Country: _____

Latitude: _____ Longitude: _____

(Enter in decimal degrees or degrees:minutes:seconds)

Accident/Incident Date/Time

Date: _____ Local Time: _____

mm/dd/yyyy

Time Zone: _____

Collision with Other Aircraft: ☐ Midair ☐ On-ground ☐ None

AIRCRAFT INFORMATION

Registration Number: _____

Manufacturer: _____

Model: _____

Serial Number: _____

Year of Manufacture: _____

Amateur-Built: ☐ Yes ☐ No *If Yes:* ☐ Kit/Plans ☐ Original Design **Make:** _____

☐ IFR-Equipped and Certified

☐ Commercial Space Flight

☐ Unmanned Aircraft

Maximum Gross Weight: _____ lbs

Weight at Time of Accident/Incident: _____ lbs

Number of Seats: _____ **Flight Crew Seats:** _____

Cabin Crew Seats: _____ **Passenger Seats:** _____

Number of Engines: _____

Category of Aircraft

- ☐ Airplane
- ☐ Balloon
- ☐ Blimp/Dirigible
- ☐ Glider
- ☐ Gyroplane
- ☐ Helicopter
- ☐ Powered Lift
- ☐ Rocket
- ☐ Ultralight
- ☐ Unknown

Type of Airworthiness Certificate

(Check all that apply)

Standard

- ☐ Normal
- ☐ Aerobatic
- ☐ Balloon
- ☐ Commuter
- ☐ Transport
- ☐ Utility

Special

- ☐ Restricted
- ☐ Limited
- ☐ Provisional
- ☐ Special Flight
- ☐ Experimental
- ☐ Special Light-Sport
- ☐ Experimental Light-Sport

☐ Certificate of Authorization or Waiver (COA)

☐ None

☐ Unknown

Landing Gear

(Check all that apply)

☐ Retractable

☐ Tricycle

☐ Tailwheel

☐ Amphibian

☐ High Skid

☐ Emergency Float

☐ Skid

☐ Float

☐ Ski

☐ Hull

☐ Ski/Wheel

☐ Other Launch/Recovery System

☐ None

☐ Unknown

Engine Type (Select one)

- ☐ Reciprocating
- ☐ Turbo Shaft
- ☐ Turbo Prop
- ☐ Turbo Jet
- ☐ Turbo Fan
- ☐ Electric
- ☐ Liquid Rocket
- ☐ Solid Rocket
- ☐ Hybrid Rocket
- ☐ None
- ☐ Unknown

Fuel System Type (Reciprocating)

☐ Carburetor ☐ Fuel-Injected

| Engine | Engine Manufacturer | Engine Model/Series | Manufacturer's Serial Number | Date of Mfg. mm/dd/yyyy | Rated Power <input type="radio"/> Horsepower or <input type="radio"/> lbs of Thrust | Total Time (hours) | Time Since: Inspection (hours) | Overhaul (hours) |
|--------|---------------------|---------------------|------------------------------|----------------------------|---|-----------------------|--------------------------------------|---------------------|
| Eng. 1 | | | | | | | | |
| Eng. 2 | | | | | | | | |
| Eng. 3 | | | | | | | | |
| Eng. 4 | | | | | | | | |

Last Inspection Type

- ☐ 100-Hour
- ☐ AAIP
- ☐ Annual
- ☐ Continuous Airworthiness
- ☐ Conditional Inspection
- ☐ Unknown

Date Last Inspection: _____

mm/dd/yyyy

Airframe Total Time: _____ hrs

hours measured at (Select one)

☐ Last Inspection ☐ Time of Accident/Incident

Type of Maintenance Program (Select one)

- ☐ Annual
- ☐ Conditional (Amateur-built only)
- ☐ Manufacturer's Inspection Program
- ☐ Other Approved Inspection Program (AAIP)
- ☐ Continuous Airworthiness
- ☐ Other, specify: _____

Description of Fire Extinguishing System

- ☐ None
- ☐ Specify:

Propeller 1

- ☐ Fixed Pitch
- ☐ Controllable Pitch
- ☐ Ground Adjustable

Manufacturer: _____

Model: _____

Propeller 2

- ☐ Fixed Pitch
- ☐ Controllable Pitch
- ☐ Ground Adjustable

Manufacturer: _____

Model: _____

ELT Installed: ☐ Yes ☐ No

If Yes:

ELT Manufacturer: _____

Model or Part No.: _____

TSO No.: ☐ C91 (121.5 MHz) ☐ C91a (121.5 MHz)
☐ C126 (406 MHz)

Was ELT still mounted in aircraft? ☐ Yes ☐ No

Was ELT still connected to antenna? ☐ Yes ☐ No

Did ELT Activate? ☐ Yes ☐ No

If activated:

Did ELT Aid in Locating Aircraft? ☐ Yes ☐ No

If not activated:

- Indicate Reason:**
- ☐ Impact Damage
 - ☐ Fire Damage
 - ☐ Battery Expired/Damaged
 - ☐ Unknown

Additional Equipment (Check all that apply)

- ☐ ADS-B
- ☐ Airframe Parachute
- ☐ Angle of Attack Indicator
- ☐ Autopilot
- ☐ Data Recorder
- ☐ Electronic Flight Bag or Handheld Device
- ☐ Electronic Multifunction Display
- ☐ Electronic Primary Flight Display
- ☐ Handheld GPS
- ☐ Heads Up Display
- ☐ Onboard Weather
- ☐ Satellite Tracking Device
- ☐ Stall Warning System
- ☐ Video Recording Device
- ☐ Other, Specify: _____

OWNER/OPERATOR INFORMATION**Registered Aircraft Owner**

Name: _____

City: _____

Fractional Ownership Aircraft: ☐ Yes ☐ No

State: _____ ZIP: _____

Country: _____

Operator of Aircraft☐ Same As Registered Owner☐ Same Address as Registered Owner

Name: _____

City: _____

Doing Business As: _____

State: _____ ZIP: _____

Air Carrier/Operator Designator (4 Character Code): _____

Country: _____

Operating Certificates Held

(Check all that apply)

- ☐ None
☐ Flag Carrier Operating Certificate (FAR 121)
☐ Supplemental
☐ Air Cargo
☐ Foreign Air Carriers (FAR 129)
☐ Rotorcraft External Load (FAR 133)
☐ Commuter Air Carrier (FAR 135)
☐ On-Demand Air Taxi (FAR 135)
☐ Commercial Air Tour (FAR 136)
☐ Agricultural Aircraft (FAR 137)
☐ Pilot School (FAR 141)
☐ Certificate of Authorization or Waiver (COA)
☐ Commercial Space Transportation
Experimental Permit
☐ Commercial Space Transportation License
☐ Other Operator of Large Aircraft

Regulation Flight Conducted Under

- ☐ FAR 91 ☐ FAR 129 ☐ FAR 415
☐ FAR 103 ☐ FAR 133 ☐ FAR 431
☐ FAR 121 ☐ FAR 135 ☐ FAR 435
☐ FAR 125 ☐ FAR 137 ☐ FAR 437
- ☐ FAR 91 Special Flight
☐ Non-US, Commercial
☐ Non-US, Non-commercial
- ☐ Public Aircraft (Select one)
☐ Armed Forces
☐ Federal
☐ State
☐ Local
☐ Unknown

Revenue Operation for FAR 121, 125, 129, 135

(Select one for each group)

- ☐ Scheduled or Commuter ☐ Domestic
☐ Non-Scheduled or Air Taxi ☐ International
- ☐ Passenger
☐ Cargo
☐ Mail Contract Only

Purpose of Flight for FAR 91, 103, 133, 137

(Select one)

- ☐ Aerial Application ☐ Firefighting ☐ Unknown
☐ Aerial Observation ☐ Flight Test
☐ Air Drop ☐ Glider Tow
☐ Air Race/Show ☐ Instructional
☐ Banner Tow ☐ Other Work Use
☐ Business ☐ Personal
☐ Executive/Corporate ☐ Positioning
☐ External Load ☐ Skydiving
☐ Ferry

Revenue Sightseeing Flight☐ Yes ☐ No**Air Medical Flight**☐ Yes ☐ No**AIRPORT INFORMATION (Fill in if accident/incident occurred on approach, landing, takeoff, departure, or within 3 miles of an airport)**

Airport Name: _____

Distance From Airport Center: _____ sm

Airport Identifier: _____

Direction From Airport: _____ degrees true

Proximity to Airport: ☐ Off Airport/Airstrip ☐ On Airport/Airstrip ☐ N/A

Airport Elevation: _____ ft. msl

Runway Information

Runway ID: _____ (L/R/C) Length: _____ ft Width: _____ ft

Runway/Landing Surface (Check all that apply)

- ☐ Asphalt ☐ Grass/Turf ☐ Macadam ☐ Water
☐ Concrete ☐ Gravel ☐ Metal/Wood
☐ Dirt ☐ Ice ☐ Snow ☐ Unknown

Condition of Runway/Landing Surface (Check all that apply)

- ☐ Dry ☐ Snow-Compacted ☐ Water-Calm
☐ Holes ☐ Snow-Crusted ☐ Water-Choppy
☐ Ice Covered ☐ Snow-Dry ☐ Water-Glassy
☐ Rough ☐ Snow-Wet ☐ Wet
☐ Rubber Deposits ☐ Soft
☐ Slush-Covered ☐ Vegetation ☐ Unknown

Approach/Departure Segment (Select one)

- ☐ Taxi ☐ VFR Departure ☐ On Instrument Approach ☐ Downwind ☐ Low Approach
☐ Takeoff ☐ IFR Departure Procedure/Clearance ☐ Landing ☐ Base ☐ Go Around
☐ Initial Climb ☐ Aborted Landing (after touchdown)
☐ Crosswind ☐ Unknown

IFR Approach (Check all that apply)

- ☐ None
- ☐ ADF/NDB ☐ PAR ☐ MLS ☐ Practice
☐ SDF ☐ Sidestep ☐ LDA ☐ GPS
☐ VOR/TVOR ☐ ILS ☐ ASR
☐ VOR/DME ☐ Localizer Only ☐ Visual
☐ TACAN ☐ LOC-back course ☐ Contact
☐ RNAV ☐ Circling
☐ Unknown

VFR Approach (Check all that apply)

- ☐ None
- ☐ Traffic Pattern ☐ Stop and Go
☐ Straight-In ☐ Touch and Go
☐ Valley/Terrain Following ☐ Simulated Forced Landing
☐ Go Around ☐ Forced Landing
☐ Full Stop ☐ Precautionary Landing
☐ Unknown

"FLIGHT CREWMEMBER 1" INFORMATION

"Flight Crewmember 1" Responsibilities at the Time of Accident/Incident

☐ Pilot
 ☐ Co-Pilot
 ☐ Student Pilot
 ☐ Flight Instructor
 ☐ Check Pilot
 ☐ Flight Engineer
 ☐ Other Flight Crew

"Flight Crewmember 1" was pilot flying ☐ Yes ☐ No

"Flight Crewmember 1" Identification

First Name: _____

City of Residence: _____

Middle Initial: _____

State: _____ ZIP: _____

Last Name: _____

Country: _____

Age at time of Accident/Incident: _____ Date of Birth: _____ mm/dd/yyyy

Certificate Number: _____

Degree of Injury

☐ None ☐ Fatal
☐ Minor ☐ Unknown
☐ Serious

Seat Occupied

☐ Left ☐ Front ☐ Unknown
☐ Right ☐ Rear
☐ Center ☐ Single

Restraint Type

Available

☐ None
☐ Lap only
☐ 3-point
☐ 4-point
☐ 5-point
☐ Unknown

Used

☐ None
☐ Lap only
☐ 3-point
☐ 4-point
☐ 5-point
☐ Unknown

Inflatable Restraints

☐ Not Installed
☐ Installed
☐ Not Deployed
☐ Deployed
☐ Unknown

Pilot Certificate(s) (Check all that apply)

☐ None ☐ Flight Instructor ☐ Commercial ☐ US Military
☐ Private ☐ Recreational ☐ Airline Transport ☐ Foreign
☐ Student ☐ Sport ☐ Flight Engineer

Principal Occupation

☐ Pilot
☐ Other
☐ Unknown

Medical Certificate

☐ None ☐ Class 3
☐ Class 1 ☐ Driver's License (Sport Pilot only)
☐ Class 2 ☐ Unknown

Medical Certificate Validity

☐ Without limitations/waivers ☐ Unknown
☐ With limitations/waivers ☐ N/A
☐ Special Issuance

Date of Last Medical

_____ mm/dd/yyyy

Medical Certificate Limitations

Medical Certificate Special Issuance

Date of Last Flight Review or Equivalent, Including FAR 121/135 Checks:

_____ mm/dd/yyyy

Flight Review Aircraft

Make: _____

Model: _____

Airplane Rating(s) (Check all that apply)

☐ None
☐ Single-Engine Land
☐ Single-Engine Sea
☐ Multiengine Land
☐ Multiengine Sea

Other Aircraft Rating(s) (Check all that apply)

☐ None
☐ Airship
☐ Balloon
☐ Glider
☐ Gyroplane
☐ Helicopter
☐ Powered Lift

Instrument Rating(s) (Check all that apply)

☐ None
☐ Airplane
☐ Helicopter
☐ Powered Lift

Instructor Rating(s) (Check all that apply)

☐ None ☐ Instrument Airplane
☐ Airplane Single-Engine ☐ Instrument Helicopter
☐ Airplane Multi-Engine ☐ Helicopter
☐ Gyroplane ☐ Glider
☐ Powered Lift ☐ Sport

Type Ratings

Student Endorsements (Include dates)

| Flight Time (Enter appropriate number of hours in each box) | All Aircraft | This Make & Model | Airplane Single Engine | Airplane Multiengine | Night | Instrument | | Rotorcraft | Glider | Lighter Than Air |
|---|--------------|-------------------|------------------------|----------------------|-------|------------|-----------|------------|--------|------------------|
| | | | | | | Actual | Simulated | | | |
| Total Time | | | | | | | | | | |
| Pilot in Command (PIC) | | | | | | | | | | |
| Time as Instructor | | | | | | | | | | |
| This Make/Model | | | | | | | | | | |
| Last 90 Days | | | | | | | | | | |
| Last 30 Days | | | | | | | | | | |
| Last 24 Hours | | | | | | | | | | |

“FLIGHT CREWMEMBER 2” INFORMATION

“Flight Crewmember 2” Responsibilities at the Time of Accident/Incident

☐ Pilot
 ☐ Co-Pilot
 ☐ Student Pilot
 ☐ Flight Instructor
 ☐ Check Pilot
 ☐ Flight Engineer
 ☐ Other Flight Crew

“Flight Crewmember 2” was pilot flying ☐ Yes ☐ No

“Flight Crewmember 2” Identification

First Name: _____ City of Residence: _____
 Middle Initial: _____ State: _____ ZIP: _____
 Last Name: _____ Country: _____
 Age at time of Accident/Incident: _____ Date of Birth: _____ mm/dd/yyyy
 Certificate Number: _____

Degree of Injury

☐ None ☐ Fatal
☐ Minor ☐ Unknown
☐ Serious

Seat Occupied

☐ Left ☐ Front ☐ Unknown
☐ Right ☐ Rear
☐ Center ☐ Single

Restraint Type

Available

☐ None
☐ Lap only
☐ 3-point
☐ 4-point
☐ 5-point
☐ Unknown

Used

☐ None
☐ Lap only
☐ 3-point
☐ 4-point
☐ 5-point
☐ Unknown

Inflatable Restraints

☐ Not Installed
☐ Installed
☐ Not Deployed
☐ Deployed
☐ Unknown

Pilot Certificate(s) (Check all that apply)

☐ None ☐ Flight Instructor ☐ Commercial ☐ US Military
☐ Private ☐ Recreational ☐ Airline Transport ☐ Foreign
☐ Student ☐ Sport ☐ Flight Engineer

Principal Occupation

☐ Pilot
☐ Other
☐ Unknown

Medical Certificate

☐ None ☐ Class 3
☐ Class 1 ☐ Driver's License (Sport Pilot only)
☐ Class 2 ☐ Unknown

Medical Certificate Validity

☐ Without limitations/waivers ☐ Unknown
☐ With limitations/waivers ☐ N/A
☐ Special Issuance

Date of Last Medical

_____ mm/dd/yyyy

Medical Certificate Limitations

Medical Certificate Special Issuance

Date of Last Flight Review or Equivalent, Including FAR 121/135 Checks:

_____ mm/dd/yyyy

Flight Review Aircraft

Make: _____

Model: _____

Airplane Rating(s)

(Check all that apply)

☐ None
☐ Single-Engine Land
☐ Single-Engine Sea
☐ Multiengine Land
☐ Multiengine Sea

Other Aircraft Rating(s)

(Check all that apply)

☐ None
☐ Airship
☐ Balloon
☐ Glider
☐ Gyroplane
☐ Helicopter
☐ Powered Lift

Instrument Rating(s)

(Check all that apply)

☐ None
☐ Airplane
☐ Helicopter
☐ Powered Lift

Instructor Rating(s)

(Check all that apply)

☐ None ☐ Instrument Airplane
☐ Airplane Single-Engine ☐ Instrument Helicopter
☐ Airplane Multi-Engine ☐ Helicopter
☐ Gyroplane ☐ Glider
☐ Powered Lift ☐ Sport

Type Ratings

Student Endorsements (Include dates)

| Flight Time (Enter appropriate number of hours in each box) | All Aircraft | This Make & Model | Airplane Single Engine | Airplane Multiengine | Night | Instrument | | Rotorcraft | Glider | Lighter Than Air |
|---|--------------|-------------------|------------------------|----------------------|-------|------------|-----------|------------|--------|------------------|
| | | | | | | Actual | Simulated | | | |
| Total Time | | | | | | | | | | |
| Pilot in Command (PIC) | | | | | | | | | | |
| Time as Instructor | | | | | | | | | | |
| This Make/Model | | | | | | | | | | |
| Last 90 Days | | | | | | | | | | |
| Last 30 Days | | | | | | | | | | |
| Last 24 Hours | | | | | | | | | | |

| ADDITIONAL FLIGHT CREWMEMBERS (Exclusive of cabin crew, complete the following information) | | | | | | |
|--|--|--|--|--|--|--|
| Crew Name and Address | | | Seat Occupied | | Injury | |
| First Name: _____ City of Residence: _____ Middle Initial: _____ State: _____ ZIP: _____ Last Name: _____ Country: _____ | | | <input type="radio"/> Left <input type="radio"/> Front <input type="radio"/> Center <input type="radio"/> Rear <input type="radio"/> Right <input type="radio"/> Single <input type="radio"/> Unknown | | <input type="radio"/> None <input type="radio"/> Minor <input type="radio"/> Serious <input type="radio"/> Fatal <input type="radio"/> Unknown | |
| Pilot Certificate(s) (Check all that apply) <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> None <input type="checkbox"/> Private <input type="checkbox"/> Student </div> <div> <input type="checkbox"/> Flight Instructor <input type="checkbox"/> Recreational <input type="checkbox"/> Sport </div> <div> <input type="checkbox"/> Commercial <input type="checkbox"/> Airline Transport <input type="checkbox"/> Flight Engineer </div> <div> <input type="checkbox"/> US Military <input type="checkbox"/> Foreign </div> </div> | | | Restraint Type: <div style="display: flex;"> <div style="flex: 1;"> Available <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> <div style="flex: 1;"> Used <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> </div> | | Inflatable Restraints <input type="checkbox"/> Not Installed <input type="checkbox"/> Installed <input type="checkbox"/> Not Deployed <input type="checkbox"/> Deployed <input type="checkbox"/> Unknown | |
| Type Rating/Endorsement for Accident/Incident Aircraft? <input type="checkbox"/> Yes <input type="checkbox"/> No | | Total Flight Time at the Time of this Accident/Incident: _____ hrs | | | | |
| Crew Name and Address | | | Seat Occupied | | Injury | |
| First Name: _____ City of Residence: _____ Middle Initial: _____ State: _____ ZIP: _____ Last Name: _____ Country: _____ | | | <input type="radio"/> Left <input type="radio"/> Front <input type="radio"/> Center <input type="radio"/> Rear <input type="radio"/> Right <input type="radio"/> Single <input type="radio"/> Unknown | | <input type="radio"/> None <input type="radio"/> Minor <input type="radio"/> Serious <input type="radio"/> Fatal <input type="radio"/> Unknown | |
| Pilot Certificate(s) (Check all that apply) <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> None <input type="checkbox"/> Private <input type="checkbox"/> Student </div> <div> <input type="checkbox"/> Flight Instructor <input type="checkbox"/> Recreational <input type="checkbox"/> Sport </div> <div> <input type="checkbox"/> Commercial <input type="checkbox"/> Airline Transport <input type="checkbox"/> Flight Engineer </div> <div> <input type="checkbox"/> US Military <input type="checkbox"/> Foreign </div> </div> | | | Restraint Type: <div style="display: flex;"> <div style="flex: 1;"> Available <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> <div style="flex: 1;"> Used <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> </div> | | Inflatable Restraints <input type="checkbox"/> Not Installed <input type="checkbox"/> Installed <input type="checkbox"/> Not Deployed <input type="checkbox"/> Deployed <input type="checkbox"/> Unknown | |
| Type Rating/Endorsement for Accident/Incident Aircraft? <input type="checkbox"/> Yes <input type="checkbox"/> No | | Total Flight Time at the Time of this Accident/Incident: _____ hrs | | | | |
| PASSENGER(S) / OTHER PERSONNEL (Include cabin crew; continue on separate sheet if necessary) | | | | | | |
| Name and Address | | Seat | Injury | Restraint Type | | Inflatable Restraints |
| First Name: _____ City : _____ Middle Initial: _____ State: _____ ZIP: _____ Last Name: _____ Country: _____ <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input type="radio"/> Crew <input type="radio"/> Passenger <input type="radio"/> Other </div> | | <input type="radio"/> Left <input type="radio"/> Center <input type="radio"/> Right <input type="radio"/> Unknown Row: _____ | <input type="radio"/> None <input type="radio"/> Minor <input type="radio"/> Serious <input type="radio"/> Fatal <input type="radio"/> Unknown | <div style="display: flex;"> <div style="flex: 1;"> Available <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> <div style="flex: 1;"> Used <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> </div> | | <input type="checkbox"/> Not Installed <input type="checkbox"/> Installed <input type="checkbox"/> Not Deployed <input type="checkbox"/> Deployed <input type="checkbox"/> Unknown |
| | | | | | | <input type="checkbox"/> Under 5 years <i>If Under 5,</i> <input type="radio"/> Child Restraint <input type="radio"/> Lap-Held <input type="radio"/> Unknown |
| First Name: _____ City : _____ Middle Initial: _____ State: _____ ZIP: _____ Last Name: _____ Country: _____ <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input type="radio"/> Crew <input type="radio"/> Passenger <input type="radio"/> Other </div> | | <input type="radio"/> Left <input type="radio"/> Center <input type="radio"/> Right <input type="radio"/> Unknown Row: _____ | <input type="radio"/> None <input type="radio"/> Minor <input type="radio"/> Serious <input type="radio"/> Fatal <input type="radio"/> Unknown | <div style="display: flex;"> <div style="flex: 1;"> Available <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> <div style="flex: 1;"> Used <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> </div> | | <input type="checkbox"/> Not Installed <input type="checkbox"/> Installed <input type="checkbox"/> Not Deployed <input type="checkbox"/> Deployed <input type="checkbox"/> Unknown |
| | | | | | | <input type="checkbox"/> Under 5 years <i>If Under 5,</i> <input type="radio"/> Child Restraint <input type="radio"/> Lap-Held <input type="radio"/> Unknown |
| First Name: _____ City : _____ Middle Initial: _____ State: _____ ZIP: _____ Last Name: _____ Country: _____ <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input type="radio"/> Crew <input type="radio"/> Passenger <input type="radio"/> Other </div> | | <input type="radio"/> Left <input type="radio"/> Center <input type="radio"/> Right <input type="radio"/> Unknown Row: _____ | <input type="radio"/> None <input type="radio"/> Minor <input type="radio"/> Serious <input type="radio"/> Fatal <input type="radio"/> Unknown | <div style="display: flex;"> <div style="flex: 1;"> Available <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> <div style="flex: 1;"> Used <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> </div> | | <input type="checkbox"/> Not Installed <input type="checkbox"/> Installed <input type="checkbox"/> Not Deployed <input type="checkbox"/> Deployed <input type="checkbox"/> Unknown |
| | | | | | | <input type="checkbox"/> Under 5 years <i>If Under 5,</i> <input type="radio"/> Child Restraint <input type="radio"/> Lap-Held <input type="radio"/> Unknown |
| First Name: _____ City : _____ Middle Initial: _____ State: _____ ZIP: _____ Last Name: _____ Country: _____ <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input type="radio"/> Crew <input type="radio"/> Passenger <input type="radio"/> Other </div> | | <input type="radio"/> Left <input type="radio"/> Center <input type="radio"/> Right <input type="radio"/> Unknown Row: _____ | <input type="radio"/> None <input type="radio"/> Minor <input type="radio"/> Serious <input type="radio"/> Fatal <input type="radio"/> Unknown | <div style="display: flex;"> <div style="flex: 1;"> Available <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> <div style="flex: 1;"> Used <input type="radio"/> None <input type="radio"/> Lap Only <input type="radio"/> 3-point <input type="radio"/> 4-point <input type="radio"/> 5-point <input type="radio"/> Unknown </div> </div> | | <input type="checkbox"/> Not Installed <input type="checkbox"/> Installed <input type="checkbox"/> Not Deployed <input type="checkbox"/> Deployed <input type="checkbox"/> Unknown |
| | | | | | | <input type="checkbox"/> Under 5 years <i>If Under 5,</i> <input type="radio"/> Child Restraint <input type="radio"/> Lap-Held <input type="radio"/> Unknown |

FLIGHT ITINERARY INFORMATION

| | | | |
|---|---|--|---|
| Last Departure Point Airport ID: _____ City: _____ State: _____ Country: _____ | Time of Departure Time: _____ Time Zone: _____ | Destination Airport ID: _____ City: _____ State: _____ Country: _____ | Type Flight Plan Filed <input type="radio"/> None <input type="radio"/> VFR/IFR <input type="radio"/> Company VFR <input type="radio"/> IFR <input type="radio"/> Military VFR <input type="radio"/> Unknown <input type="radio"/> VFR Activated? <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Unknown |
|---|---|--|---|

Type of ATC Clearance/Service (Check all that apply)

| | | | | |
|-------------------------------|--------------------------------------|--------------------------------------|---|---------------------------------------|
| <input type="checkbox"/> None | <input type="checkbox"/> Special VFR | <input type="checkbox"/> Special IFR | <input type="checkbox"/> VFR Flight Following | <input type="checkbox"/> Cruise |
| <input type="checkbox"/> VFR | <input type="checkbox"/> IFR | <input type="checkbox"/> VFR On Top | <input type="checkbox"/> Traffic Advisory | <input type="checkbox"/> Unknown / NA |

Airspace where the accident/incident occurred (Check all that apply)

| | | | | |
|--|---|---|---|--|
| <input type="checkbox"/> Class A <input type="checkbox"/> Class B <input type="checkbox"/> Class C <input type="checkbox"/> Class D <input type="checkbox"/> Class E | <input type="checkbox"/> Class G <input type="checkbox"/> Demo Area <input type="checkbox"/> Warning Area <input type="checkbox"/> Prohibited Area <input type="checkbox"/> Restricted Area | <input type="checkbox"/> Military Operations Area (MOA) <input type="checkbox"/> Airport Advisory Area <input type="checkbox"/> Jet Training Area <input type="checkbox"/> TRSA <input type="checkbox"/> FAR 93 | <input type="checkbox"/> Special <input type="checkbox"/> Air Traffic Control Area <input type="checkbox"/> Unknown | Altitude of In-Flight Occurrence: _____ ft msl |
|--|---|---|---|--|

WEATHER INFORMATION AT THE ACCIDENT/INCIDENT SITE

Source of Pilot Weather Information

(Check all that apply)

| | |
|--|---|
| <input type="checkbox"/> National Weather Service <input type="checkbox"/> Flight Service Station <input type="checkbox"/> TV/Radio <input type="checkbox"/> Automated Report <input type="checkbox"/> Commercial Weather Service (DUATS) <input type="checkbox"/> On-Board Weather | <input type="checkbox"/> Company <input type="checkbox"/> Military <input type="checkbox"/> Internet <input type="checkbox"/> None <input type="checkbox"/> Unknown |
|--|---|

Weather Observation Facility

Facility ID: _____
 Observation Time: _____
 Time Zone: _____
 Distance from Accident Site: _____ nm
 Direction from Accident Site: _____ degrees true

Basic Conditions

☐ VMC
☐ IMC
☐ Unknown

Light Condition

☐ Dawn ☐ Dusk ☐ Dark Night ☐ Unknown
☐ Day ☐ Night ☐ Bright Night

Sky/Lowest Cloud Condition

☐ Clear ☐ Thin Broken
☐ Few ☐ Thin Overcast
☐ Partial Obscuration ☐ Unknown
☐ Scattered

Lowest Cloud Condition Height

_____ ft agl

Ceiling

☐ None (Clear) ☐ Obscured
☐ Broken ☐ Indefinite
☐ Overcast ☐ Unknown

Ceiling Height

_____ ft agl

Temperature: _____ (C) or _____ (F)

Dew Point: _____ (C) or _____ (F)

Altimeter Setting: _____ in. Hg
or _____ MB

Wind Direction

☐ Variable

-or-
Direction: _____ degrees true

Wind Speed

☐ Calm
☐ Light and Variable

-or-
Speed: _____ kts

Wind Gusts

☐ Not Gusting

-or-
Speed: _____ kts

Visibility _____ miles

RVR: _____ feet

RVV: _____ miles

Density Altitude: _____ ft

Intensity of Precipitation

☐ Light
☐ Moderate
☐ Heavy
☐ N/A
☐ Unknown

Type of Precipitation (Check all that apply)

| | | |
|---------------------------------------|---------------------------------------|---|
| <input type="checkbox"/> None | <input type="checkbox"/> Drizzle | <input type="checkbox"/> Freezing Rain |
| <input type="checkbox"/> Rain | <input type="checkbox"/> Ice Pellets | <input type="checkbox"/> Snow Shower |
| <input type="checkbox"/> Snow | <input type="checkbox"/> Snow Pellets | <input type="checkbox"/> Ice Pellets Shower |
| <input type="checkbox"/> Hail | <input type="checkbox"/> Snow Grains | <input type="checkbox"/> Freezing Drizzle |
| <input type="checkbox"/> Rain Showers | <input type="checkbox"/> Ice Crystals | |

Restriction to Visibility (Check all that apply)

| | |
|--|-------------------------------------|
| <input type="checkbox"/> None | <input type="checkbox"/> Fog |
| <input type="checkbox"/> Blowing Dust | <input type="checkbox"/> Ground Fog |
| <input type="checkbox"/> Blowing Sand | <input type="checkbox"/> Haze |
| <input type="checkbox"/> Blowing Snow | <input type="checkbox"/> Ice Fog |
| <input type="checkbox"/> Blowing Spray | <input type="checkbox"/> Smoke |
| <input type="checkbox"/> Dust | <input type="checkbox"/> Unknown |

Icing Forecast

| Amount | Type |
|--------------------------------|-------------------------------|
| <input type="radio"/> None | <input type="radio"/> N/A |
| <input type="radio"/> Trace | <input type="radio"/> Rime |
| <input type="radio"/> Light | <input type="radio"/> Clear |
| <input type="radio"/> Moderate | <input type="radio"/> Mixed |
| <input type="radio"/> Severe | <input type="radio"/> Unknown |
| <input type="radio"/> Unknown | |

Icing Actual

| Amount | Type |
|--------------------------------|-------------------------------|
| <input type="radio"/> None | <input type="radio"/> N/A |
| <input type="radio"/> Trace | <input type="radio"/> Rime |
| <input type="radio"/> Light | <input type="radio"/> Clear |
| <input type="radio"/> Moderate | <input type="radio"/> Mixed |
| <input type="radio"/> Severe | <input type="radio"/> Unknown |
| <input type="radio"/> Unknown | |

Turbulence

| Type (Check all that apply) | Severity |
|--|-----------------------------------|
| <input type="checkbox"/> None | <input type="checkbox"/> Light |
| <input type="checkbox"/> Clear Air | <input type="checkbox"/> Moderate |
| <input type="checkbox"/> Terrain-Induced | <input type="checkbox"/> Severe |
| <input type="checkbox"/> Convective Turbulence | <input type="checkbox"/> Extreme |

NOTAMs (D and FDC), AIRMETs, SIGMETs, PIREPs in effect at the time of the accident/incident:

DAMAGE TO AIRCRAFT AND OTHER PROPERTY**Aircraft Damage**

- ☐ None ☐ Substantial
☐ Minor ☐ Destroyed
 ☐ Unknown

Aircraft Fire

- ☐ None ☐ Both Ground and In-Flight
☐ In-Flight ☐ Fire at Unknown Time
☐ On-Ground ☐ Unknown

Aircraft Explosion

- ☐ None ☐ Both Ground and In-Flight
☐ In-Flight ☐ Explosion at Unknown Time
☐ On-Ground ☐ Unknown

Description of Damage to Aircraft and Other Property *(Use additional sheet if necessary)*

NARRATIVE HISTORY OF FLIGHT (Please type or print in ink)

Describe what occurred in chronological order, including circumstances leading to and nature of accident/incident. Describe terrain and include wreckage distribution sketch if pertinent. Attach extra sheets if needed. State departure time and location, services obtained, and intended destination. Provide as much detail as possible.

RECOMMENDATION (How could this accident/incident have been prevented?)

Operator/Owner Safety Recommendation

MECHANICAL MALFUNCTION/FAILURE (If more space is needed, continue on separate sheet)

Was there Mechanical Malfunction/Failure? ☐ Yes ☐ No
(If yes, list the name of the part, manufacturer, part no., serial no., and describe the failure.)

**Total Time/Cycles
On Part**

_____ Hours

_____ Cycles

**Time Since This Part
Inspected/Overhauled**

_____ Hours

FUEL & SERVICES INFORMATION

Fuel on Board at Last Takeoff
(Convert from pounds, as necessary)

_____ Gallons

Fuel Type

☐ 80/87 ☐ 115/145 ☐ Jet B ☐ Other, specify _____
☐ 100 Low Lead ☐ Jet A ☐ JP8
☐ 100/130 ☐ Jet A-1 ☐ Automotive

Other Services, if Any, Prior to Departure**EVACUATION OF AIRCRAFT**

Was an emergency evacuation of the aircraft performed? ☐ Yes ☐ No

Method of Exit – Describe how the occupants exited and how many occupants evacuated each location

OTHER AIRCRAFT – COLLISION (If air or ground collision occurred, complete this section for other aircraft)**Aircraft Registration Number**

Manufacturer: _____**Model:** _____**Damage to Other Aircraft**

☐ Destroyed ☐ Minor
☐ Substantial ☐ None

Registered Owner of Other Aircraft

Name: _____

City: _____

State: _____ ZIP: _____

Country: _____

Pilot of Other Aircraft

Name: _____

City: _____

State: _____ ZIP: _____

Country: _____

ADDITIONAL INFORMATION (Please type or print in ink)

Use this space if additional space is needed for any answers.

I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Date of this Report

mm/dd/yyyy

Name of Pilot/Operator: _____

Signature: _____

-- or -- ☐ Check here to electronically sign this document

If a Person Other than Pilot/Operator is Filing Report

Name: _____ **Title:** _____

Signature: _____

-- or -- ☐ Check here to electronically sign this document

FOR NTSB USE ONLY

NTSB Accident/Incident No.

Reviewed by NTSB Regional Office

Name of Investigator

Date Report Received

7. 49 CFR §830: Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo and Records

**TITLE 49—TRANSPORTATION
CHAPTER VIII--NATIONAL TRANSPORTATION SAFETY BOARD
PART 830 NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS**

Subpart A—General

§830.1 Applicability.

This part contains rules pertaining to:

- (a) Initial notification and later reporting of aircraft incidents and accidents and certain other occurrences in the operation of aircraft, wherever they occur, when they involve civil aircraft of the United States; when they involve certain public aircraft, as specified in this part, wherever they occur; and when they involve foreign civil aircraft where the events occur in the United States, its territories, or its possessions.
- (b) Preservation of aircraft wreckage, mail, cargo, and records involving all civil and certain public aircraft accidents, as specified in this part, in the United States and its territories or possessions.

[60 FR 40112, Aug. 7, 1995]

§830.2 Definitions.

As used in this part the following words or phrases are defined as follows:

Aircraft accident means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage. For purposes of this part, the definition of “aircraft accident” includes “unmanned aircraft accident,” as defined herein.

Civil aircraft means any aircraft other than a public aircraft.

Fatal injury means any injury which results in death within 30 days of the accident.

Incident means an occurrence other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of operations.

Operator means any person who causes or authorizes the operation of an aircraft, such as the owner, lessee, or bailee of an aircraft.

Public aircraft means an aircraft used only for the United States Government, or an aircraft owned and operated (except for commercial purposes) or exclusively leased for at least 90 continuous days by a government other than the United States Government, including a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of that government. “Public aircraft” does not include a government-owned aircraft transporting property for commercial purposes and does not include a government-owned aircraft transporting passengers other than: transporting (for other than commercial purposes) crewmembers or other persons aboard the aircraft whose presence is required to perform, or is associated with the performance of, a governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management; or transporting (for other than commercial purposes) persons aboard the aircraft if the aircraft is operated by the Armed Forces or an intelligence agency of the United States. Notwithstanding any limitation relating to use of the aircraft for commercial purposes, an aircraft shall be considered to be a public aircraft without regard to whether it is operated by a unit of government on behalf of another unit of government pursuant to a cost reimbursement agreement, if the unit of

government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation was necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator was reasonably available to meet the threat.

Serious injury means any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) causes severe hemorrhages, nerve, muscle, or tendon damage; (4) involves any internal organ; or (5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

Substantial damage means damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. Engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairings or cowling, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades, and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered “substantial damage” for the purpose of this part.

Unmanned aircraft accident means an occurrence associated with the operation of any public or civil unmanned aircraft system that takes place between the time that the system is activated with the purpose of flight and the time that the system is deactivated at the conclusion of its mission, in which:

- (1) Any person suffers death or serious injury; or
- (2) The aircraft has a maximum gross takeoff weight of 300 pounds or greater and sustains substantial damage.

[53 FR 36982, Sept. 23, 1988, as amended at 60 FR 40112, Aug. 7, 1995; 75 FR 51955, Aug. 24, 2010]

Subpart B—Initial Notification of Aircraft Accidents, Incidents, and Overdue Aircraft

§830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (NTSB) office,¹ when:

¹NTSB headquarters is located at 490 L'Enfant Plaza SW., Washington, DC 20594. Contact information for the NTSB's regional offices is available at <http://www.nts.gov>. To report an accident or incident, you may call the NTSB Response Operations Center, at 844-373-9922 or 202-314-6290.

- (a) An aircraft accident or any of the following listed serious incidents occur:
 - (1) Flight control system malfunction or failure;
 - (2) Inability of any required flight crewmember to perform normal flight duties as a result of injury or illness;
 - (3) Failure of any internal turbine engine component that results in the escape of debris other than out the exhaust path;
 - (4) In-flight fire;
 - (5) Aircraft collision in flight;
 - (6) Damage to property, other than the aircraft, estimated to exceed \$25,000 for repair (including materials and labor) or fair market value in the event of total loss, whichever is less.
 - (7) For large multiengine aircraft (more than 12,500 pounds maximum certificated takeoff weight):

- (i) In-flight failure of electrical systems which requires the sustained use of an emergency bus powered by a back-up source such as a battery, auxiliary power unit, or air-driven generator to retain flight control or essential instruments;
 - (ii) In-flight failure of hydraulic systems that results in sustained reliance on the sole remaining hydraulic or mechanical system for movement of flight control surfaces;
 - (iii) Sustained loss of the power or thrust produced by two or more engines; and
 - (iv) An evacuation of an aircraft in which an emergency egress system is utilized.
- (8) Release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact;
- (9) A complete loss of information, excluding flickering, from more than 50 percent of an aircraft's cockpit displays known as:
- (i) Electronic Flight Instrument System (EFIS) displays;
 - (iii) Engine Indication and Crew Alerting System (EICAS) displays;
 - (iv) Electronic Centralized Aircraft Monitor (ECAM) displays; or
 - (v) (Other displays of this type, which generally include a primary flight display (PFD), primary navigation display (PND), and other integrated displays;
- (10) Airborne Collision and Avoidance System (ACAS) resolution advisories issued when an aircraft is being operated on an instrument flight rules flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft.
- (11) Damage to helicopter tail or main rotor blades, including ground damage, that requires major repair or replacement of the blade(s);
- (12) Any event in which an operator, when operating an airplane as an air carrier at a public-use airport on land:
- (i) Lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or
 - (ii) Experiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision.
- (b) An aircraft is overdue and is believed to have been involved in an accident.

[53 FR 36982, Sept. 23, 1988, as amended at 60 FR 40113, Aug. 7, 1995; 75 FR 927, Jan. 7, 2010; 75 FR 35330, June 22, 2010; 80 FR 77587, Dec. 15, 2015]

§830.6 Information to be given in notification.

The notification required in §830.5 shall contain the following information, if available:

- (a) Type, nationality, and registration marks of the aircraft;
- (b) Name of owner, and operator of the aircraft;
- (c) Name of the pilot-in-command;
- (d) Date and time of the accident;
- (e) Last point of departure and point of intended landing of the aircraft;
- (f) Position of the aircraft with reference to some easily defined geographical point;
- (g) Number of persons aboard, number killed, and number seriously injured;
- (h) Nature of the accident, the weather and the extent of damage to the aircraft, so far as is known; and
- (i) A description of any explosives, radioactive materials, or other dangerous articles carried.

Subpart C—Preservation of Aircraft Wreckage, Mail, Cargo, and Records

§830.10 Preservation of aircraft wreckage, mail, cargo, and records.

- (a) The operator of an aircraft involved in an accident or incident for which notification must be given is responsible for preserving to the extent possible any aircraft wreckage, cargo, and mail aboard the aircraft, and all records, including all recording mediums of flight, maintenance, and voice recorders, pertaining to the operation and maintenance of the aircraft and to the airmen until the Board takes custody thereof or a release is granted pursuant to §831.12(b) of this chapter.
- (b) Prior to the time the Board or its authorized representative takes custody of aircraft wreckage, mail, or cargo, such wreckage, mail, or cargo may not be disturbed or moved except to the extent necessary:
 - (1) To remove persons injured or trapped;
 - (2) To protect the wreckage from further damage; or
 - (3) To protect the public from injury.
- (c) Where it is necessary to move aircraft wreckage, mail or cargo, sketches, descriptive notes, and photographs shall be made, if possible, of the original positions and condition of the wreckage and any significant impact marks.
- (d) The operator of an aircraft involved in an accident or incident shall retain all records, reports, internal documents, and memoranda dealing with the accident or incident, until authorized by the Board to the contrary.

Subpart D—Reporting of Aircraft Accidents, Incidents, and Overdue Aircraft

§830.15 Reports and statements to be filed.

- (e) Reports. The operator of a civil, public (as specified in §830.5), or foreign aircraft shall file a report on Board Form 6120. 1/2 (OMB No. 3147-0001)² within 10 days after an accident, or after 7 days if an overdue aircraft is still missing. A report on an incident for which immediate notification is required by §830.5(a) shall be filed only as requested by an authorized representative of the Board.

² Forms are available from the Board field offices (see footnote 1), from Board headquarters in Washington, DC, and from the Federal Aviation Administration Flight Standards District Offices.
- (f) Crewmember statement. Each crewmember, if physically able at the time the report is submitted, shall attach a statement setting forth the facts, conditions, and circumstances relating to the accident or incident as they appear to him. If the crewmember is incapacitated, he shall submit the statement as soon as he is physically able.
- (g) Where to file the reports. The operator of an aircraft shall file any report with the field office of the Board nearest the accident or incident.

[53 FR 36982, Sept. 23, 1988, as amended at 60 FR 40113, Aug. 7, 1995]

Families & Employees

8. Overview of the Aviation Disaster Family Assistance Act

OVERVIEW OF THE AVIATION DISASTER FAMILY ASSISTANCE ACT

Efforts by family members who lost loved ones in aviation crashes have led to the development of a coordinated response to assist family members in the aftermath of mass-fatality events. The families approached the NTSB and shared their stories about the way they were treated after losing their loved ones in aviation crashes. The families expressed the need for one agency to lead a coordinated crisis response to reduce the chaos they had experienced.

While every mass-fatality event presents unique challenges, all present the constant challenge of trying to provide for the basic needs of the victims' family members. This challenge is best met through the designation of a single entity responsible for coordinating the myriad efforts brought to bear in the wake of an aviation disaster.

On September 9, 1996, then-President Clinton, in a Memorandum on Assistance to Families Affected by Aviation and Other Transportation Disasters, designated the NTSB as the coordinator of federal services to victims and their families in major transportation disasters. As the designated responsible agency, the NTSB ensures that the following family services will be provided in a sensitive and timely manner: notification of the accident, updates about search and recovery efforts, updates about the investigation, delivery of mental health support and establishment of a place in which victims' families can grieve in private.

Families affected by past aviation disasters became the driving force behind the creation of new legislation called the Aviation Disaster Family Assistance Act of 1996 (49 U.S.C. § 1136). Family members were asked to participate on a task force designed to determine the best methods for treating and better assisting the victims of major aviation accidents and their families. The task force generated over 60 recommendations that were presented to the federal government, the airline industry and other organizations.

Pursuant to the Act, the NTSB created the Office of Family Affairs, known now as the Office of Transportation Disaster Assistance, and assigned it the responsibility for coordinating the provision of federal services to victims and their families after major aviation disasters. The coordination for these services is outlined in the NTSB's Federal Family Assistance Plan for Aviation Disasters. A summary of the victim support tasks performed by various agencies follows.

National Transportation Safety Board

- Coordinates federal assistance efforts with local and state authorities.
- Coordinates and conducts briefings for victims' families to provide information about resources for recovery, progress of the investigation, and identification of victims and their personal effects and belongings.
- Coordinates with the investigator in charge of the accident and local and state authorities to try to arrange a family visit to the crash site or to an appropriate alternative site.

Airline

- Notifies the families of passengers in a timely manner that their relatives may have been on the flight.
- Secures a facility to establish a family assistance center in which family members can receive investigative updates, support and protection from the media.
- Supports logistically those family members who want to travel to the accident city and maintains contact with the families who stay at home.

American Red Cross

- Coordinates the mental health services and emotional care and support for families as designated by NTSB.
- Manages and coordinates volunteer and support services.

- Arranges suitable interfaith memorial services.

U.S. Department of Health and Human Services, supported by U.S. Department of Defense

- Assists with victim identification, mortuary support and the setup of temporary morgue facilities if the medical examiner or coroner reports insufficient resources to support the operation.
- Provides experienced personnel to collect antemortem information from the victims' next of kin.
- Assists the designated medical examiner or coroner with notifying victims' families of positive identification, providing particular expertise in explaining how identification was made.

U.S. Department of State

- Assists foreign families and interested parties with translations.
- Aids with collection of antemortem medical and dental radiographs and records from non-U.S. passengers.
- Assists in returning the deceased to their native countries.

Federal Emergency Management Agency

- Provides communications assets in the event the accident site is in a remote location and there is no way to convey information.
- Provides personnel to assist with disseminating public information.
- Assists in the event of an urban aviation disaster.

U.S. Department of Justice

- Provides, on request, the FBI Disaster Squad to assist local jurisdictions with fingerprint identification for criminal and noncriminal events.
- Provides information, through the Office for Victims of Crime, to victims of criminal acts and their families about programs to which they are entitled.

Along with assigning responsibilities for various tasks, the Aviation Disaster Family Assistance Act also prohibits unsolicited communication concerning a potential lawsuit. Under the Act, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee or other representative of an attorney) or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident. This provision protects victims and families from unscrupulous operators who might attempt to take advantage of a family member's vulnerable state of mind.

Prior to passage of the Aviation Disaster Family Assistance Act, the families of people killed or injured in a commercial aircraft accident had been primarily assisted by the involved airline. Often local and state agencies, including volunteer organizations, also responded, but oftentimes the effort was uncoordinated. While the airline remains a major participant, the NTSB is now able to apply federal resources to augment local and state efforts and coordinate the overall family assistance support system. The act has resulted in a greatly improved system for aiding the families of disaster victims.

9. Federal Family Assistance Plan for Aviation Disasters – NTSB 2008

[insert Federal Family Assistance Plan for Aviation Disasters]



**FEDERAL FAMILY ASSISTANCE PLAN
FOR
AVIATION DISASTERS**

**Prepared by
National Transportation Safety Board
Office of Transportation Disaster Assistance**

**REVISED
December 2008**

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PURPOSE

This plan, which is designed to serve as guidance, assigns responsibilities and describes how air carriers and Federal agencies should respond to an aviation accident involving a significant number of passenger fatalities and/or injuries. Organizations given authority or responsibility by legislation should develop procedures specific to their role. Supporting legislation is located in appendix A.

IMPLEMENTATION

This plan shall be executed in full or part by the Director, Office of Transportation Disaster Assistance (TDA), under the direction of the Chairman, National Transportation Safety Board (NTSB).

1. The Director shall recommend to the Chairman activation of the plan or portions thereof.
2. Federal agencies that have responsibilities under this plan shall maintain control of their resources while supporting the NTSB in accordance with the above references. (For purposes of this document, the terms “Federal agencies” and “Federal staff” include the American Red Cross.)
3. The NTSB, through its communications center, will initiate notification of Federal agencies to activate planning and will coordinate with the air carrier an appropriate response based on the magnitude of the aviation accident. As factual information about the accident is confirmed, additional resources may be requested to support the overall family assistance response. Upon instruction by the Director, the NTSB communications center will notify any or all of the following operations centers:
 - a. American Red Cross
 - b. Department of State (DOS)
 - c. Department of Health and Human Services (DHHS) Secretary’s Operations Center
 - d. Federal Bureau of Investigation Operations Center (FBI-SIOC)
 - e. Federal Emergency Management Agency (FEMA)
 - f. Department of Defense (DOD)
 - g. Department of Homeland Security (DHS)
4. Under the Aviation Disaster Family Assistance Act of 1996, the NTSB serves as the coordinator for the integration of Federal government resources and the resources of other organizations to support efforts of local and State governments and the air carrier to meet the needs of aviation disaster victims and their families. Crisis intervention, victim identification and forensic services, communication with foreign governments, and translation services are among Federal government services available to help local authorities and the air carrier respond to a major aviation disaster. Local government emergency services should provide a representative from the Joint Family Support

Operations Center (JFSOC) to participate in the local, air carrier, and Federal response. Details of the JFSOC are provided in appendix C. The layout of the JFSOC will depend on the facilities and rooms available near the disaster location.

5. Local authorities maintain the same jurisdictional responsibilities in regard to the initial accident response, recovery, security, site cleanup, and medical examiner operations, and the NTSB leads the aviation accident investigation. If a criminal act is believed to have caused the accident, the FBI becomes the lead investigative agency and is supported by the NTSB.
6. The air carrier has a fundamental responsibility to victims and their families affected by an aviation disaster. The air carrier is primarily responsible for family notification and all aspects of victim and family logistical support. The Aviation Disaster Family Assistance Act of 1996 (appendix A) and the Foreign Air Carrier Family Support Act (appendix A) place the air carrier, as well as other support organizations, in a collaborative relationship with families.
7. All personnel involved in providing services to assist victims and their family members should be trained in crisis response and must demonstrate compassion, technical expertise, and professionalism. Personal information provided by family members and victims through discussions, interviews, counseling, or any other form of information exchange should remain confidential and shall not be used for future litigation purposes.

SCOPE

This plan pertains to any domestic or foreign commercial aviation accidents occurring within the United States, its territories, possessions, and territorial seas.

ASSUMPTIONS

1. The Chairman of the NTSB will request Federal agencies to support the NTSB in accordance with the references included in appendix A.
2. Pursuant to the Aviation Disaster Family Assistance Act of 1996, the NTSB has the primary Federal responsibility for facilitating victim recovery and identification. It is understood that the presiding medical examiner or coroner is legally responsible for victim recovery and identification. (It is noted that there are differences between a medical examiner and coroner. For the purposes of this document, the term “medical examiner” is used interchangeably with “coroner.”) To ensure adequate resources for medical examiners to accomplish their jurisdictional responsibilities, the NTSB coordinates the resources of various Federal agencies to effect victim recovery and identification. The NTSB supports the use of State and local mass fatality teams and other trained experience personnel under the direction of the medical examiner.
3. For purposes of this document, the terms “family,” “family members,” “friends,” and “relatives” are used to refer to those people who have a relationship to a person involved in the accident. Although these terms have slightly different meanings, they are used interchangeably throughout the document.
4. Large numbers of family members of those killed in the accident will travel to the city closest to the accident and will utilize the accommodations provided by the air carrier. Other family members will remain at their local residences.
5. Most, if not all, families of those seriously injured will travel to where the injured are hospitalized; once the injured are released from the hospital, these family members and the injured will return home.
6. Implementation of this plan assumes that the accident will occur in a geographical area where the resources described above are available. Air carriers operating equipment over remote areas (for instance, Alaska) should contact NTSB TDA about modifications needed for accident response in those locations.

GENERAL MISSION TASKS

The family assistance mission tasks following an aviation accident are as follows:

1. Notify family members of victims involved in the aviation accident based on manifest documents and other available information.
2. Monitor search and recovery operations, and offer assistance as needed.
3. Determine the status and location of injured victims.
4. Obtain approval of the local medical examiner for Federal assistance (for instance, the Disaster Mortuary Operational Response Team [DMORT]) to assist in the identification of fatalities and the notification of their families.
5. Provide crisis intervention, logistical support, and services to victims and their family members.
6. Provide daily briefings to families on the progress of recovery efforts, identification of victims, the investigation, and other areas of concern.
7. Arrange for a memorial service, if desired by families.
8. Provide for the return of personal effects.
9. Maintain contact with victims and their families to provide continuous updates regarding the progress of the investigation and other related matters, both at the accident location and once the families have returned home.

RESPONSIBILITIES

Seven Victim Support Tasks (VSTs) identify the response requirements assigned to participating organizations. The organizations responsible for each of the seven VSTs are as follows:

VST 1–NTSB

VST 2–Air Carrier

VST 3– American Red Cross (Family Care and Mental Health)

VST 4– DHHS/ASPR and DOD (Victim Identification Services)

VST 5–DOS (Assisting Families of Foreign Victims)

VST 6–DHS/FEMA (Communications)

VST 7–DOJ (Assisting Victims of Crime)

Because each aviation accident is unique, the following responsibilities may be employed fully, partially, or not at all.

VICTIM SUPPORT TASK 1–National Transportation Safety Board

1. Coordinate Federal assistance and serve as a liaison between the air carrier and family members.
2. Provide an NTSB toll-free number and e-mail address (www.assistance@ntsb.gov) to family members for obtaining information on the victim recovery and identification effort, accident investigation, and other concerns. This number will normally be provided to families during the final family briefing. The NTSB will coordinate with the air carrier to provide, through the air carrier's family representatives, this contact information to families who do not travel to the accident city.
3. Request a copy of the passenger manifest from the air carrier.
4. Review with the air carrier the logistical needs of the families, giving special consideration to security, quality of hotel rooms and facilities, and privacy for family members.
5. Integrate local and Federal government officials and air carrier staff to form a JFSOC to coordinate services and activities for families.
6. Coordinate assistance efforts with local and State authorities, including the medical examiner, local/county/State law enforcement, emergency management agency, hospitals, and other emergency support personnel.
7. Maintain communications with the air carrier to receive updates regarding the notification status of victims' families.
8. Conduct daily coordination meetings with the air carrier and local and Federal government representatives to review daily activities, resolve problems, and synchronize future family support operations and activities. See appendix D for an example of information required for the daily coordination meeting.
9. Provide and coordinate family briefings both with families at the accident city and with families who remain at home.
10. Discuss with the medical examiner the capabilities of his or her staff to conduct victim identification. Examine the capabilities of local/State mass fatality teams and procedures to use the team in the identification process. Discuss strategies for collecting antemortem information and other factors influencing victim identification. Discuss the use of DMORT and standard procedures DMORT uses that support NTSB efforts.
11. Discuss with the medical examiner the subject of victim identification, in particular the use of DNA analysis. Explain that the NTSB typically coordinates with the Armed Forces DNA Identification Laboratory for DNA identification.

12. At the discretion of the NTSB Investigator in Charge (IIC), coordinate a visit to the accident site for family members. Planning for such a visit will begin only after the IIC agrees that such a visit will not impede the investigation and is believed to be safe for family members.
13. Provide information releases to the media, in coordination with the NTSB Office of Public Affairs, pertaining to the types of Federal support available to assist family members.
14. Maintain contact with family members to keep them informed about the victim recovery and identification effort, accident investigation, and other accident-related concerns.
 - a. Approximately 6 to 8 months after the date of the accident, factual reports written by the NTSB investigators are made available in a public docket. Families should be informed prior to the factual report being made public that they may request a copy of the report from the NTSB. The report will be provided to them at no cost.
 - b. If the NTSB decides a public hearing is necessary for the purpose of the investigation, families will be notified of the date, time, and location. Such a hearing is designed to gather additional facts from individuals selected to testify. Travel and lodging for the hearing is at the family's expense. Families will be provided seating and copies of official exhibits discussed at the hearing. NTSB public hearings are broadcast via the Internet through the NTSB website at www.nts.gov.

Vision 100 states the following:

An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the air carrier's flight if that city is located in the United States. [49 USC 41113 (b) (18)]

Based on the facts of the accident, location requirements will be reviewed on a case-by-case basis.

- c. Families will be informed of the date, time, and location of any Board meeting to be held at the NTSB, Washington, D.C., headquarters (travel will be at the families' expense). At the meeting, the NTSB investigative staff will present to the Board a draft accident report for member discussion and approval. This report will document the NTSB's findings, determination of the probable cause of the accident and recommendations to prevent future aviation disasters. Board meetings are broadcast via the Internet through the NTSB website (www.nts.gov). See VST 2 "Air Carrier", number 30, and to the Vision 100 legislation [49 USC 41113 (b) (18)] for additional information.

15. If the accident is determined to be the result of a criminal act, the NTSB TDA staff may assist the FBI Office for Victim Assistance (OVA) in family assistance support.
16. Consolidate and review After Action Reports (AARs) to resolve problem areas and update operating plans and procedures.

VICTIM SUPPORT TASK 2–Air Carrier

1. In addition to accident notification required by Title 49 *Code of Federal Regulations* (CFR) 830.5, notify the NTSB communications center immediately upon knowledge of an accident. The following information must be provided:
 - Place (or general vicinity) of accident, number of passengers and crew (based on preliminary departure information), and number of injuries and fatalities (if known).
 - Flight number, origination, connection points, final destination, demographics of passengers (if known), and whether the flight was domestic or international.
 - Name and telephone number of the person/persons in charge of the air carrier's humanitarian response, passenger manifest reconciliation, and family notification process.
 - Name, telephone number, and location of the facility designated as the Family Assistance Center (FAC) and JFSOC.
2. Provide the NTSB, upon request, the most current reconciled copy of the passenger manifest. Each copy should be numbered or annotated indicating the date and time so that it is distinguishable from previous copies.
3. Provide a reliable publicized toll-free telephone number with sufficient capacity to handle the anticipated call volume. Although not required, consider providing teletypewriter (TTY) capability.
4. When disseminating the toll-free number, ask the media to request that the toll-free number be used only by those who have reason to believe a family member or friend was a passenger on the accident flight.
5. Emphasize in the media notice that, upon initial contact with the air carrier, family members will receive basic accident flight and point-of-contact information as the first steps of air carrier humanitarian support.
6. Ask the media to reemphasize the name of the carrier(s) involved, the accident flight number, airport of origination, connection, and final destination.
7. Provide the media with continuous updates on the progress of the notification process, such as providing the number of victims' families notified as of a certain time and the number

remaining to be notified. This process will continue until all victims' families have been notified.

8. Modify your carrier's normal "on-hold" messages during an accident to eliminate music, sales information, and similar non-accident related messages.
9. Provide timely notification to family members of passengers. As required by AIR 21, at a family member's request, inform the family if the passenger's name appears on a preliminary manifest for the accident flight. Updated information on passengers will be provided to family members as it becomes available. (AIR 21 states the following: "...upon request of the family of a passenger, the air carrier will inform the family of whether the passenger's name appeared on a preliminary passenger manifest for the flight involved in the accident.")
10. Provide notification to family members prior to releasing passenger names to the public. Give family members adequate time to notify other family members and friends prior to public release of the victim's name. Although it may be necessary for some families to have more than one contact point with the air carrier, your carrier may request that families designate one primary contact point for purposes of sharing information. This will allow your carrier to use its personnel in a more efficient manner. The carrier is under no obligation to release the victim's name if family members request otherwise.
11. Inform family members at the time of notification or soon thereafter of American Red Cross family care and crisis assistance available at the FAC and after families return home. Relay requests for crisis assistance to the American Red Cross representative, who will coordinate on-scene or home area contacts for family members. For family members who do not travel to the accident location, the American Red Cross personnel on-scene can coordinate personnel at the family member's location to provide assistance.
12. Secure facilities at departure, arrival, and connecting airports for family members and friends who may be gathering. This facility is designed to allow family members to grieve in private, shielding them from the media and solicitors; it serves as a secure location where families can receive continuous updates regarding the reconciliation of the passenger manifest and other accident information. Be prepared to provide the necessary assistance to special needs populations per the American with Disabilities Act (ADA). Arrange for one of your carrier's employees or agents who has been trained in crisis response to meet privately with family members once they have arrived at the facility secured. Employees or agents should be prepared to inform family members that their loved ones were aboard a plane that crashed.
13. Secure a facility to be used as the FAC. Factors to consider in selecting a facility are quality of rooms and size of facility, privacy for family members, ability to secure the facility, and proximity to the accident site and medical treatment facilities. See appendix B.
14. Make provisions for a JFSOC to include space, communication, and logistical support for the local and Federal staff. Details of the JFSOC are provided in appendix C.

15. Provide logistical support to family members who desire to travel to the accident city (or to a hospital location) that includes, but is not limited to, transportation, lodging, meals, security, communications, and incidental expenditures.
16. Assist family members as they travel to and from the city by informing flight crews and airport personnel about family members aboard particular flights. At departure, connecting, and arrival airports, family members should have air carrier personnel meet and assist them while on airport grounds. If necessary, seek assistance from other carriers with a larger presence at the airport. Assist family members as they depart the accident city and provide a contact person who will continue to be the air carrier's interface with family members following their return to their residence.
17. Provide a contact person to meet family members as they arrive and accompany them at the accident city. This person will be responsible for assisting the family while in the accident city and should continue to be the air carrier interface with the family until the family returns to their residence. At that time the air carrier may decide to designate a single contact person for all family members. This point of contact should be available through a toll-free phone number.
18. Maintain daily contact with family members who do not travel to the accident city by providing a contact person from the air carrier until the on-site investigation has concluded.
19. Designate an individual who will be the air carrier's representative to the Director of NTSB TDA. This individual will travel to various locations, such as the accident site, morgue, JFSOC, and FAC with the Director of NTSB TDA. The designated individual should have the authority, or ready access to those who have sufficient authority, to make decisions on behalf of the air carrier.
20. Establish an exclusive badge system to identify family members. In unique cases, the NTSB, in coordination with the air carrier, will decide on the specifications of the badging system.
21. Participate and provide operational updates during daily coordination meetings to review daily activities, resolve problems, and synchronize future family support operations and activities at the FAC. This information is helpful in planning logistical support (such as meals, lodging, and transportation) and allows for an update of current and future support operations. The type of information typically discussed during the daily coordination meetings is located in appendix D.
22. Make provisions for private areas within the hotel for medical examiner personnel and the DMORT FAC Team to collect antemortem information and DNA reference samples from families. Provide quiet space and communications for DMORT and medical examiner personnel to telephonically collect antemortem information from family members who are not at the FAC. Secure a sufficient number of rooms for DMORT/crisis counseling use. Based on NTSB experience, the number of rooms required ranges from 4 to 12, depending on the number of fatalities.

23. Be aware that crisis counseling and DMORT facilities are also used as venues to inform families when positive identification has been made. By having the medical examiner or DMORT team representative located within the FAC, transportation of victim's remains and other logistical considerations can be better coordinated. Support requirements for planning purposes are in appendix C.
24. Provide DOS representatives the necessary information regarding foreign passengers to facilitate interaction with appropriate foreign government embassies.
25. Establish a liaison with the American Red Cross at each medical treatment facility to monitor the status of injured victims and to provide assistance to their families.
26. Develop procedures for the handling of personal effects released by the NTSB or the FBI if the aviation disaster is declared a criminal act. Consider utilizing a third party that has experience in the return of personal effects associated with aviation disasters. As required by law, provisions will be made for unclaimed possessions to be retained for at least 18 months from the date of the accident. NTSB has developed guidelines for the on-scene search for personal effects.
27. Consult with family members about any air carrier-sponsored monument, including any inscriptions.
28. As required by the Aviation Disaster Family Assistance Act of 1996, provide reasonable reimbursement to the American Red Cross for the services provided to the family, air carrier, and supporting personnel.
29. Provide the same support and treatment to families of non-revenue passengers or any other victim of the accident (for instance, ground fatalities) as is provided for revenue passengers.
30. If the NTSB conducts a public hearing or comparable proceeding at a location more than 80 miles from the accident site, ensure that a simultaneous transmission of the proceeding is available to family members at a location open to the public at both the origin city and destination city of the accident flight.
31. In the event of an accident outside the United States, AIR 21 legislation requires "...in the event that the air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, the air carrier will consult with the Board and the Department of State on the provision of the assistance."
32. In the event the investigation determines the accident is the result of a criminal act, coordinate with the FBI OVA in arranging meetings with family members to explain their rights as victims of a Federal crime.

VICTIM SUPPORT TASK 3–American Red Cross–Family Care and Mental Health

1. An American Red Cross Critical Response Team (CRT) is deployed from the American Red Cross National Headquarters Disaster Operations Center (DOC) and serves as the functional leadership of family care and crisis intervention during the aviation accident. The CRT will support the local American Red Cross response and manage any spontaneous volunteers.
2. Assign a representative to the JFSOC to coordinate and address American Red Cross–related issues and family requests for assistance.
3. Coordinate and manage the numerous organizations and personnel offering counseling, religious and other support services to the operation. Create a staff processing center, operated away from the FAC, to screen, monitor, and manage personnel (employee and volunteer staff). The staff processing center will also be responsible for developing an exclusive badge system for personnel, matching staff skills with organizational needs, assigning work schedules, briefing and debriefing of support staff, and planning for future activities.
 - a. Qualified local resources should be integrated with American Red Cross personnel for crisis and grief counseling, food services, administrative assistance, and other support services to family members and support organizations.
 - b. Crisis and grief counseling for family members who travel to the accident city should be coordinated with air carrier personnel.
4. Employ an accounting system to accurately record cost data in specific cost categories for reimbursement by the air carrier.
5. Assess the needs and available resources of other crisis support agencies, coordinate with them to ensure ongoing emotional support for workers during the operation, and provide exit interviews before departure.
6. Establish a liaison with the air carrier at each supporting medical treatment facility to monitor the status of injured victims and to provide assistance to their families.
7. Coordinate with the air carrier to establish areas in the FAC for families to grieve privately.
8. If deemed necessary, deploy a Critical Response Childcare Team (CRC) to coordinate on-site childcare services for families who arrive with young children. Ensure the CRC Team is equipped with the necessary supplies to operate a childcare center along with specially trained staff qualified to attend to children in the aftermath of a traumatic disaster.
9. If deemed necessary, deploy a Spiritual Care Response Team (SRT) to coordinate on-site spiritual care. The SRT is trained to provide spiritual care to an array of faiths and will manage spiritual care for the victims and their families. If desired by the families, the SRT will coordinate the planning for a suitable interfaith memorial service within the first few days following the accident. The SRT deploys an events manager to begin planning the

memorial service upon a request from the family members. The American Red Cross Events Manager will work closely with the NTSB, the air carrier, and local, county, and State governments to plan a suitable memorial site. The American Red Cross will also deploy a Life Safety and Asset Protection manager to the JFSOC to manage safety and security concerns related to the memorial.

10. If deemed necessary, arrange a memorial service for any future burial of unidentified remains.
11. Provide families, at their request, with referrals to mental health professionals and support groups in the family member's local area.
12. Provide additional support to affected special needs or other demographically or culturally diverse populations as deemed necessary.

VICTIM SUPPORT TASK 4—Department of Health and Human Services, Assistant Secretary for Preparedness and Response—Victim Identification Services

1. At the time of an accident and following notification by the NTSB, activate the National Disaster Medical System (NDMS) and the appropriate DMORT team personnel, supplies, and equipment to assist in the management of victim identification.
2. Assign a representative to the JFSOC to address DMORT-related issues.
3. Assign the necessary DMORT team members to assist the medical examiner with victim identification and mortuary services. The configuration of team and skills required will be determined by the details of the accident and the capabilities of the local medical examiner.
4. Follow the “DMORT Standard Operating Procedures for National Transportation Safety Board Activations.”
5. Provide, if necessary, a morgue facility, a DMORT Portable Morgue Unit (DPMU), and the necessary equipment and supplies to augment the local medical examiner's capabilities.
6. Monitor the status of all incoming antemortem records to include dental, medical, and DNA data to ensure that all records have been received. If not, take steps to obtain the records and radiographs.
7. Employ a standard antemortem questionnaire and disposition of remains form that can be adapted to meet local medical examiner and State requirements. The disposition of remains form will be used to obtain directions from the lawfully authorized next of kin (NOK) regarding what he or she desires the medical examiner to do with remains that may later be identified as those of his or her family member. Information collected from family members is strictly confidential and is ultimately under the control of the medical examiner.

8. Using a specially trained FAC team, interview family members who are both on and off site for information regarding antemortem identification and disposition of remains.
9. Coordinate with the medical examiner to integrate qualified personnel who are providing assistance to the medical examiner's office into the morgue operation.
10. If necessary, assist the medical examiner in notifying family members of positive identification, including an explanation of how identification was determined.
11. Ensure the accuracy of the chain of custody by performing a check of documentation and remains prior to their release to the designated funeral director.
12. Assist the medical examiner with the reassociation of remains following the identification process. This may occur weeks or months after the accident.
13. Using information gathered from the antemortem interview, provide the NTSB with contact information for the NOK (addresses, telephone numbers, e-mail addresses) and the NOK's relationship to the victim.

Support of VST 4–Department of Defense–Victim Identification Services (As required)

1. Provide the use of a military installation, such as the Charles C. Carson Center for Mortuary Affairs located at the Dover Air Force Base, to support mortuary operations.
2. Provide resources from the Office of the Armed Forces Medical Examiner (OAFME) and Armed Forces DNA Identification Laboratory (AFDIL) to assist in the identification effort and to conduct appropriate DNA comparison testing on specimens submitted by the medical examiner. OAFME and AFDIL personnel may be asked to travel to the accident site to assist with victim identification.
3. Provide available medical and dental records and DNA reference samples of fatally injured passengers who may have antemortem records based on prior or current military service.

VICTIM SUPPORT TASK 5–Department of State–Assisting Families of Foreign Victims (As required)

1. Assign a representative to the JFSOC to coordinate DOS-related issues with other members of the operations center staff. Assist in obtaining dental and medical records and DNA reference samples from foreign families. Respond to family member requests for information and assistance as appropriate. Provide additional personnel as needed for

accidents involving significant numbers of foreign passengers, particularly those involving international flights.

2. Provide official notification to foreign governments of citizens involved in the accident. Such notifications will take place after obtaining necessary information on foreign passengers from the air carrier.
3. Assist the air carrier in notifying US citizens who may reside or are traveling outside the United States that a member of their family has been involved in an aviation accident.
4. Provide interpretation/translation services (via DOS staff or a contracted provider) to facilitate communications with the victim's family and all interested parties. For family briefings held at the FAC or similar location or activity, provide simultaneous interpretation/translation services in multiple languages as needed.
5. Provide logistical and communications support to the extent practicable, in establishing contact with foreign authorities and individuals abroad to aid the air carrier and Federal support staff in fulfilling their duties under the laws referenced above.
6. Assist foreign air carrier employees and families of foreign victims with entry into the United States and with the extension or granting of visas to eligible applicants.
7. Facilitate necessary consulate and customs services for the return of remains and personal effects to the country of destination.
8. Assist the medical examiner in acquiring the necessary information to facilitate the identification of foreign victims and to complete death certificates.

VICTIM SUPPORT TASK 6–Department of Homeland Security/ Federal Emergency Management Agency–Communications (As required)

1. Assign a representative to the JFSOC to coordinate with local and State officials concerning emergency management–related issues.
2. Provide voice and data communication assets to facilitate communication from the accident site to the NTSB Communications Center.
3. Upon the request of the NTSB Office of Public Affairs, provide personnel to assist in public information dissemination, to include assistance in establishing and staffing external media support centers at the accident site, wreckage hangar, FAC, airport, and other areas that may attract media interest.

VICTIM SUPPORT TASK 7–Department of Justice–Assisting Victims of Crime (As required)

1. Provide to the NTSB, upon request, an FBI Disaster Squad with sufficient personnel to obtain fingerprint identification of accident fatalities. This team will work with the medical examiner and the DMORT personnel at the morgue location.
2. Provide to the NTSB, upon request, an FBI Evidence Response Team (ERT) and other FBI Laboratory assets to assist with victim recovery operations under the direction of the medical examiner.
3. Provide to the NTSB, upon request, FBI Office for Victim Assistance Rapid Deployment Team (VARDT) members to assist the NTSB TDA in unique circumstances, such as simultaneous accident responses.
4. Perform the following responsibilities only if the air carrier disaster is officially declared a criminal act:
 - a. Coordinate Federal assistance and serve as the liaison between the air carrier and family members.
 - b. Provide an FBI toll-free number for family members to obtain information on the victim recovery and identification effort, investigation, and other concerns. This number will normally be provided to families on site during the initial family briefing and repeated in subsequent briefings. Coordinate with the air carrier to have air carrier family representatives provide the toll-free number to the families who do not travel to the accident city.
 - c. Establish a special web page for the victims' families for the purpose of sharing updated information and maintaining ongoing communication with victims and families throughout the duration of the investigation.
 - d. Review with the air carrier logistical family support with special consideration toward security, quality of rooms and facilities, and privacy for family members.
 - e. Oversee the establishment and management of the JFSOC and the FAC. Information on FAC operations can be found in appendix B.
 - f. Integrate local and Federal government officials and air carrier staff to form a JFSOC to facilitate close coordination of services and activities.
 - g. Assist the air carrier, if requested, with finding NOK that have not been notified of their family member's involvement.
 - h. Conduct daily coordination meetings with the air carrier and local and Federal government representatives to review daily activities, resolve problem areas, and

to synchronize future family support operations and activities. Examples of information needed at the daily coordination meeting are in appendix D.

- i. Provide and coordinate family briefings for family members at the accident city and for those who remain at home. Conduct in-person family briefings at the FAC. Conduct briefings for off-site families via telephone conference bridges.
- j. Provide information to victims and families regarding their rights and available services related to their status as victims of a Federal crime.
- k. Maintain contact with family members to keep them informed about the progress of the investigation and to continue to meet their future needs.

COORDINATING INSTRUCTIONS

1. The point of contact for this plan is the Director, Transportation Disaster Assistance, NTSB. The telephone number is (202) 314-6185. The office fax number is (202) 314-6638. The backup fax number is 202-314-6293. The e-mail address is assistance@ntsb.gov.
2. Upon implementation and until NTSB TDA staff is present at the JFSOC, calls should be directed to the NTSB communications center. The Communications center will pass any information or messages to the appropriate NTSB TDA staff member.
3. Supporting agencies should appoint the same individual or individuals to the JFSOC for each aviation accident. The focused efforts of a group of experienced personnel who understand the complex issues of an aviation disaster response will lead to improved delivery of services to victims and their families. Agencies are not precluded from designating and training alternate personnel as long as inexperienced personnel are partnered with experienced personnel during the response.
4. It is recommended that all Federal personnel involved at the accident site wear clothing (e.g. hats, shirts, and/or jackets) identifying their agency or group. This is helpful for families and those involved in supporting the operation.
5. Agencies providing support to victims and their family members under this plan are requested to submit an AAR to the Director, NTSB TDA, within 60 days of completion of their tasks. The report is critical for capturing lessons learned, taking corrective actions, and updating plans. A sample format is provided in appendix E.
6. Other than media releases by the air carrier regarding the progress of family notification and the release of passengers' names as described in VST 2, item 9, all media inquiries and releases pertaining to the NTSB TDA operation will be referred to the NTSB Office of Public Affairs. The NTSB will advise and assist the local medical examiner regarding any media affairs related to his or her area of responsibility. Support organizations may provide press releases or briefings on their specific mission/actions during the accident response. There are no restrictions on victims or family members meeting with the media if they so desire.
7. Due to differences among air carriers and air carrier underwriter policies, as well as differences among aviation accidents, consideration for reimbursement of costs associated with an agency's participation in an aviation disaster response will be made after discussions with the air carrier and its insurance underwriter.

LIST OF APPENDICES

Appendix A–Aviation Disaster Family Assistance Act of 1996, Foreign Air Carrier Family Support Act of 1997, AIR 21, and Vision 100

Appendix B–Family Assistance Center Operations

Appendix C–Joint Family Support Operations Center

Appendix D–Joint Family Support Operations Center Daily Status Report Information

Appendix E–Sample After Action Report Format

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APPENDIX A

Aviation Disaster Family Assistance Act of 1996

SEC. 701. SHORT TITLE.

This title may be cited as the “Aviation Disaster Family Assistance Act of 1996.”

SEC. 702. ASSISTANCE BY NATIONAL TRANSPORTATION SAFETY BOARD TO FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.

(a) Authority To Provide Assistance.--

(1) In general.--Subchapter III of chapter 11 is amended by adding at the end the following:

“Sec. 1136. Assistance to families of passengers involved in aircraft accidents

“(a) In General.--As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall--

“(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

“(2) designate an independent nonprofit organization, with experience in disasters and post trauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

“(b) Responsibilities of the Board.--The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).

“(c) Responsibilities of Designated Organization.--The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

“(1) To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.

“(2) To take such actions as may be necessary to provide an

environment in which the families may grieve in private.

“(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

“(4) To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.

“(5) To arrange a suitable memorial service, in consultation with the families.

“(d) Passenger Lists.--

“(1) Requests for passenger lists.--

“(A) Requests by director of family support services.--It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

“(B) Requests by designated organization.--The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

“(2) Use of information.--The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

“(e) Continuing Responsibilities of the Board.--In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident--

“(1) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

“(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

“(f) Use of Air Carrier Resources.--To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization’s responsibilities under this section.

“(g) Prohibited Actions.--

“(1) Actions to impede the board.--No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

“(2) Unsolicited communications.--In the event of an accident involving an air carrier providing interstate or foreign air transportation, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 30th day following the date of the accident.

“(h) Definitions.--In this section, the following definitions apply:

“(1) Aircraft accident.--The term ‘aircraft accident’ means any aviation disaster regardless of its cause or suspected cause.

“(2) Passenger.--The term ‘passenger’ includes an employee of an air carrier aboard an aircraft..”

(2) Conforming amendment.--The table of sections for such chapter is amended by inserting after the item relating to section 1135 the following:

“1136. Assistance to families of passengers involved in aircraft accidents.”

(b) Penalties.--Section 1155(a)(1) of such title is amended--

(1) by striking “or 1134(b) or (f)(1)” and inserting “, section 1134(b), section 1134(f)(1), or section 1136(g)”; and

(2) by striking “either of” and inserting “any of.”

SEC. 703. AIR CARRIER PLANS TO ADDRESS NEEDS OF FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.

(a) In General.--Chapter 411 is amended by adding at the end the following:

“Sec. 41113. Plans to address needs of families of passengers involved in aircraft accidents

“(a) Submission of Plans.--Not later than 6 months after the date of the enactment of this section, each air carrier holding a certificate of public convenience and necessity under section 41102 of this title shall submit to the Secretary and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any aircraft accident involving an aircraft of the air carrier and resulting in a major loss of life.

“(b) Contents of Plans.--A plan to be submitted by an air carrier under subsection (a) shall include, at a minimum, the following:

“(1) A plan for publicizing a reliable, toll-free telephone number, and for providing staff, to handle calls from the families of the passengers.

“(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1136(a)(2) of this title or the services of other suitably trained individuals.

“(3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.

“(4) An assurance that the air carrier will provide to the director of family support services designated for the accident under section 1136(a)(1) of this title, and to the organization designated for the accident under section 1136(a)(2) of this title, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.

“(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the air carrier.

“(6) An assurance that if requested by the family of a

passenger, any possession of the passenger within the control of the air carrier (regardless of its condition) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

“(7) An assurance that any unclaimed possession of a passenger within the control of the air carrier will be retained by the air carrier for at least 18 months.

“(8) An assurance that the family of each passenger will be consulted about construction by the air carrier of any monument to the passengers, including any inscription on the monument.

“(9) An assurance that the treatment of the families of nonrevenue passengers (and any other victim of the accident) will be the same as the treatment of the families of revenue passengers.

“(10) An assurance that the air carrier will work with any organization designated under section 1136(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

“(11) An assurance that the air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) of this title for services provided by the organization.

“(12) An assurance that the air carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

“(13) An assurance that the air carrier will commit sufficient resources to carry out the plan.

“(c) Certificate Requirement.--After the date that is 6 months after the date of the enactment of this section, the Secretary may not approve an application for a certificate of public convenience and necessity under section 41102 of this title unless the applicant has included as part of such application a plan that meets the requirements of subsection (b).

“(d) Limitation on Liability.--An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the air carrier in preparing or providing a passenger list pursuant to a plan submitted by the air carrier under subsection (b), unless such liability was caused by conduct of the air carrier which was grossly negligent or which constituted intentional misconduct.

“(e) Aircraft Accident and Passenger Defined.--In this section, the terms ‘aircraft accident’ and ‘passenger’ have the meanings such terms

have in section 1136 of this title..”

(b) Conforming Amendment.--The table of sections for such chapter is amended by adding at the end the following:

“41113. Plans to address needs of families of passengers involved in aircraft accidents.”

SEC. 704. ESTABLISHMENT OF TASK FORCE.

(a) Establishment.--The Secretary of Transportation, in cooperation with the National Transportation Safety Board, the Federal Emergency Management Agency, the American Red Cross, air carriers, and families which have been involved in aircraft accidents shall establish a task force consisting of representatives of such entities and families, representatives of air carrier employees, and representatives of such other entities as the Secretary considers appropriate.

(b) Guidelines and Recommendations.--The task force established pursuant to subsection (a) shall develop--

(1) guidelines to assist air carriers in responding to aircraft accidents;

(2) recommendations on methods to ensure that attorneys and representatives of media organizations do not intrude on the privacy of families of passengers involved in an aircraft accident;

(3) recommendations on methods to ensure that the families of passengers involved in an aircraft accident who are not citizens of the United States receive appropriate assistance;

(4) recommendations on methods to ensure that State mental health licensing laws do not act to prevent out-of-state mental health workers from working at the site of an aircraft accident or other related sites;

(5) recommendations on the extent to which military experts and facilities can be used to aid in the identification of the remains of passengers involved in an aircraft accident; and

(6) recommendations on methods to improve the timeliness of the notification provided by air carriers to the families of passengers involved in an aircraft accident, including--

(A) an analysis of the steps that air carriers would have to take to ensure that an accurate list of passengers on board the aircraft would be available within 1 hour of the accident and an analysis of such steps to ensure that such list would be available within 3 hours of the accident;

(B) an analysis of the added costs to air carriers and travel agents that would result if air carriers were required to take the steps described in subparagraph

(A);

(C) an analysis of any inconvenience to passengers, including flight delays, that would result if air carriers were required to take the steps described in subparagraph (A); and

(D) an analysis of the implications for personal privacy that would result if air carriers were required to take the steps described in subparagraph (A).

(c) Report.--Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report containing the model plan and recommendations developed by the task force under subsection (b).

Foreign Air Carrier Family Support Act of 1997

Public Law 105-148, 105th Congress

To amend title 49, United States Code, to require the National Transportation Safety Board and individual foreign air carriers to address the needs of families of passengers involved in aircraft accidents involving foreign air carriers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PLANS TO ADDRESS NEEDS OF FAMILIES OF PASSENGERS INVOLVED IN FOREIGN AIR CARRIER ACCIDENTS.

(a) In General.--Chapter 413 of title 49, United States Code, is amended by adding at the end the following:

“Sec. 41313. Plans to address needs of families of passengers involved in foreign air carrier accidents

“(a) Definitions.--In this section, the following definitions apply:

“(1) Aircraft accident.--The term ‘aircraft accident’ means any aviation disaster, regardless of its cause or suspected cause, that occurs within the United States; and

“(2) Passenger.--The term ‘passenger’ includes an employee of a foreign air carrier or air carrier aboard an aircraft.

“(b) Submission of Plans.--A foreign air carrier providing foreign air transportation under this chapter shall transmit to the Secretary of

Transportation and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life.

“(c) Contents of Plans.--To the extent permitted by foreign law which was in effect on the date of the enactment of this section, a plan submitted by a foreign air carrier under subsection (b) shall include the following:

“(1) Telephone number.--A plan for publicizing a reliable, toll-free telephone number and staff to take calls to such number from families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life.

“(2) Notification of families.--A process for notifying, in person to the extent practicable, the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life before providing any public notice of the names of such passengers. Such notice shall be provided by using the services of--

“(A) the organization designated for the accident under section 1136(a)(2); or

“(B) other suitably trained individuals.

“(3) Notice provided as soon as possible.--An assurance that the notice required by paragraph (2) shall be provided as soon as practicable after the foreign air carrier has verified the identity of a passenger on the foreign aircraft, whether or not the names of all of the passengers have been verified.

“(4) List of passengers.--An assurance that the foreign air carrier shall provide, immediately upon request, and update a list (based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), to--

“(A) the director of family support services designated for the accident under section 1136(a)(1); and

“(B) the organization designated for the accident under section 1136(a)(2).

“(5) Consultation regarding disposition of remains and effects.--An assurance that the family of each passenger will be consulted about the disposition of any remains and personal effects of the passenger that are within the control of the foreign air carrier.

“(6) Return of possessions.--An assurance that, if requested by the family of a passenger, any possession

(regardless of its condition) of that passenger that is within the control of the foreign air carrier will be returned to the family unless the possession is needed for the accident investigation or a criminal investigation.

“(7) Unclaimed possessions retained.--An assurance that any unclaimed possession of a passenger within the control of the foreign air carrier will be retained by the foreign air carrier for not less than 18 months after the date of the accident.

“(8) Monuments.--An assurance that the family of each passenger will be consulted about construction by the foreign air carrier of any monument to the passengers built in the United States, including any inscription on the monument.

“(9) Equal treatment of passengers.--An assurance that the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

“(10) Service and assistance to families of passengers.--An assurance that the foreign air carrier will work with any organization designated under section 1136(a)(2) on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following an accident.

“(11) Compensation to service organizations.--An assurance that the foreign air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) for services and assistance provided by the organization.

“(12) Travel and care expenses.--An assurance that the foreign air carrier will assist the family of any passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

“(13) Resources for plan.--An assurance that the foreign air carrier will commit sufficient resources to carry out the plan.

“(14) Substitute measures.--If a foreign air carrier does not wish to comply with paragraph (10), (11), or (12), a description of proposed adequate substitute measures for the requirements of each paragraph with which the foreign air carrier does not wish to comply.

“(d) Permit and Exemption Requirement.--The Secretary shall not approve an application for a permit under section 41302 unless the applicant has included as part of the application or request for exemption a plan that meets the requirements of subsection (c).

“(e) Limitation on Liability.--A foreign air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the foreign air carrier in preparing or providing a passenger list pursuant to a plan submitted by the foreign air carrier under subsection (c), unless the liability was caused by conduct of the foreign air carrier which was grossly negligent or which constituted intentional misconduct.”

(b) Conforming Amendment.--The table of sections for such chapter is amended by adding at the end the following:

“41313. Plans to address needs of families of passengers involved in foreign air carrier accidents.”

(c) Effective Date.--The amendments made by this section shall take effect on the 180th day following the date of the enactment of this Act.

“AIR 21”

Public Law 106-181, 106th Congress

To amend title 49, United States Code, to reauthorize programs of the Federal Aviation Administration, and for other purposes.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short note. Title.--This Act may be cited as the “Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.”

TITLE IV--FAMILY ASSISTANCE

SEC. 401. RESPONSIBILITIES OF NATIONAL TRANSPORTATION SAFETY BOARD.

(a) Prohibition on Unsolicited Communications.--

(1) In general.--Section 1136(g)(2) is amended--

(A) by striking “transportation,” and inserting “transportation and in the event of an accident involving a foreign air carrier that occurs within the United States,”;

(B) by inserting after “attorney” the following: “(including any associate, agent, employee, or other representative of an attorney)”; and

(C) by striking “30th day” and inserting “45th

day.”

(2) Enforcement.--Section 1151 is amended by inserting “1136(g)(2),” before “or 1155(a)” each place it appears.

(b) Prohibition on Actions To Prevent Mental Health and Counseling Services.--Section 1136(g) is amended by adding at the end the following:

“(3) Prohibition on actions to prevent mental health and counseling services.--No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.”

(c) Inclusion of Nonrevenue Passengers in Family Assistance Coverage.--Section 1136(h)(2) is amended to read as follows:

“(2) Passenger.--The term ‘passenger’ includes--

“(A) an employee of an air carrier or foreign air carrier aboard an aircraft; and

“(B) any other person aboard the aircraft without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the flight.”

(d) Statutory Construction.--Section 1136 is amended by adding at the end the following:

“(i) Statutory Construction.--Nothing in this section may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.”

SEC. 402. AIR CARRIER PLANS.

(a) Contents of Plans.--

(1) Flight reservation information.--Section 41113(b) is amended by adding at the end the following:

“(14) An assurance that, upon request of the family of a passenger, the air carrier will inform the family of whether the passenger’s name appeared on a preliminary passenger manifest for the flight involved in the accident.”

(2) Training of employees and agents.--Section 41113(b) is further amended by adding at the end the following:

“(15) An assurance that the air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.”

(3) Consultation on carrier response not covered by plan.--Section 41113(b) is further amended by adding at the end the following:

“(16) An assurance that the air carrier, in the event that the air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, the air carrier will consult with the Board and the Department of State on the provision of the assistance.”

(4) Submission <<NOTE: 49 USC 41113 note.>> of updated plans.--The amendments made by paragraphs (1), (2), and (3) shall take effect on the 180th day following the date of the enactment of this Act. On or before such 180th day, each air carrier holding a certificate of public convenience and necessity under section 41102 of title 49, United States Code, shall submit to the Secretary and the Chairman of the National Transportation Safety Board an updated plan under section 41113 of such title that meets the requirements of the amendments made by paragraphs (1), (2), and (3).

(5) Conforming amendments.--Section 41113 is amended--

(A) in subsection (a) by striking “Not later than 6 months after the date of the enactment of this section, each air carrier” and inserting “Each air carrier”; and

(B) in subsection (c) by striking “After the date that is 6 months after the date of the enactment of this section, the Secretary” and inserting “The Secretary.”

(b) Limitation on Liability.--Section 41113(d) is amended by inserting “, or in providing information concerning a preliminary passenger manifest,” before “pursuant to a plan.”

(c) Statutory Construction.--Section 41113 is amended by adding at the end the following:

“(f) Statutory Construction.--Nothing in this section may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.”

SEC. 403. FOREIGN AIR CARRIER PLANS.

(a) Inclusion of Nonrevenue Passengers in Family Assistance Coverage.--Section 41313(a)(2) is amended to read as follows:

“(2) Passenger.--The term ‘passenger’ has the meaning given such term by section 1136.”

(b) Accidents for Which Plan Is Required.--Section 41313(b) is amended by striking “significant” and inserting “major.”

(c) Contents of Plans.--

(1) In general.--Section 41313(c) is amended by adding at the end the following:

“(15) Training of employees and agents.--An assurance that the foreign air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

“(16) Consultation on carrier response not covered by plan.--An assurance that the foreign air carrier, in the event that the foreign air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, the foreign air carrier will consult with the Board and the Department of State on the provision of the assistance.”

(2) Submission <<NOTE: 49 USC 41313 note.>> of updated plans.--The amendment made by paragraph (1) shall take effect on the 180th day following the date of the enactment of this Act. On or before such 180th day, each foreign air carrier providing foreign air transportation under chapter 413 of title 49, United States Code, shall submit to the Secretary and the Chairman of the National Transportation Safety Board an updated plan under section 41313 of such title that meets the requirements of the amendment made by paragraph (1).

SEC. 404. DEATH ON THE HIGH SEAS.

(a) Right of Action in Commercial Aviation Accidents.--The first section of the Act of March 30, 1920 (46 U.S.C. App. 761; popularly known as the “Death on the High Seas Act”) is amended--

(1) by inserting “(a) subject to subsection (b),” before “whenever”; and

(2) by adding at the end the following:

“(b) In the case of a commercial aviation accident, whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas 12 nautical miles or closer to the shore of any State, or the District of Columbia, or the Territories or

dependencies of the United States, this Act shall not apply and the rules applicable under Federal, State, and other appropriate law shall apply..”

(b) Compensation in Commercial Aviation Accidents.--
Section 2 of such Act (46 U.S.C. App. 762) is amended--

- (1) by inserting “(a)” before “the recovery”; and
- (2) by adding at the end the following:

“(b)(1) If the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, additional compensation for nonpecuniary damages for wrongful death of a decedent is recoverable. Punitive damages are not recoverable.

“(2) In this subsection, the term ‘nonpecuniary damages’ means damages for loss of care, comfort, and companionship..”

(c) Effective <<NOTE: 46 USC app. 761 note.>> Date.--The amendments made by subsections (a) and (b) shall apply to any death occurring after July 16, 1996.

“Vision 100”

SEC. 809. AVAILABILITY OF AIRCRAFT ACCIDENT SITE INFORMATION.

(a) DOMESTIC AIR TRANSPORTATION.—Section 41113(b) is amended—

(1) in paragraph (16) by striking “the air carrier” the third place it appears; and

(2) by adding at the end the following:

“(17)(A) An assurance that, in the case of an accident that results in significant damage to a manmade structure or other property on the ground that is not government-owned, the air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.

“(B) At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by air carrier representatives about compensation by the air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.

“(18) An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the air carrier’s flight if that city is located in the United States..”

(b) FOREIGN AIR TRANSPORTATION.—Section 41313(c) is amended by adding at the end the following:

“(17) NOTICE CONCERNING LIABILITY FOR MANMADE STRUCTURES.—

“(A) IN GENERAL.—An assurance that, in the case of an accident that results in significant damage to a manmade structure or other property on the ground that is not government-owned, the foreign air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.

“(B) MINIMUM CONTENTS.—At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by foreign air carrier representatives about compensation by the foreign air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.

“(18) SIMULTANEOUS ELECTRONIC TRANSMISSION OF NTSB HEARING.—An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the foreign air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the foreign air carrier’s flight if that city is located in the United States..”

(c) UPDATE PLANS.—Air carriers and foreign air carriers shall update their plans under sections 41113 and 41313 of title 49, United States Code, respectively, to reflect the amendments made by subsections (a) and (b) of this section not later than 90 days after the date of enactment of this Act.

APPENDIX B

Family Assistance Center Operations

The Family Assistance Center (FAC) is the focus of services for family members when they travel to the accident location. FACs are designed to meet the immediate and short-term needs of family members: safety, security, physiological needs (food, sleep), information (about the victim recovery and identification process, and the investigation), and crisis/grief counseling. In addition, family members may be interviewed to gather antemortem information about the victims and to submit DNA samples to facilitate victim identification. The air carrier is required to provide the FAC location. Most FACs are established at hotels or similar facilities. Consideration should be given to a facility that has multiple meeting rooms, a large ballroom, up-to-date information technology infrastructure, and food services. Arrangements are coordinated by the air carrier and the NTSB.

The NTSB TDA Director manages FAC operations or assigns a designee in her/his absence.

Staff present at the FAC should include the following:

1. Air carrier support team personnel and their associated management team
2. NTSB TDA staff
3. Local law enforcement
4. American Red Cross personnel, including approved child care providers, spiritual care staff, health professionals and crisis counselors
5. Medical examiner staff
6. Personnel designated by the medical examiner to conduct antemortem interviews
7. Personal effects management contractors working for the air carrier
8. Local support agency personnel

A number of critical functions will take place at the FAC and must be closely coordinated; they include the following:

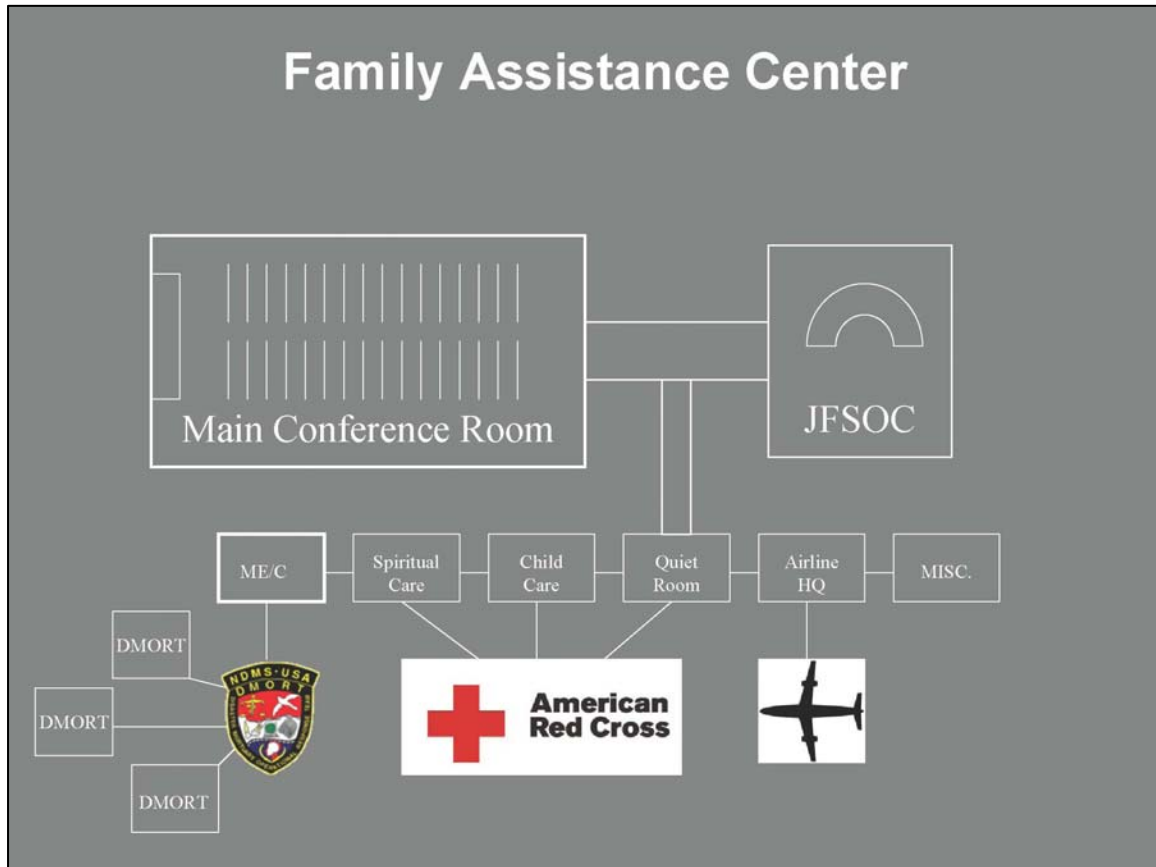
1. Safety and security, including badging of staff and family members
2. NTSB daily briefings, typically held twice daily
3. Antemortem interviews conducted by the medical examiner personnel or their designee
4. Childcare, spiritual care, and crisis counseling (conducted by the American Red Cross)
5. Death notifications by the medical examiner

Typically, the FAC will remain operational until the decedents have been identified, or until families are notified that the identification process will continue for an extended period of time. If this should occur, families will be contacted at home regarding positive identifications.

It is essential that each agency in the FAC understand its role in the support of families.

Not all family members will travel to the FAC. If there are family members already residing in the accident city, they will most likely visit the FAC to receive updates at the briefings and then return home. Other family members will participate in the briefings via a telephone conference bridge.

Schematic of a Family Assistance Center



APPENDIX C

Joint Family Support Operations Center

The Joint Family Support Operations Center (JFSOC) is an important element in the control and coordination of the responses and resources of supporting organizations involved in an aviation accident.

The JFSOC is a central location where participating organizations are brought together to monitor, plan, coordinate, and execute a response operation maximizing the utilization of all available resources. Communication and sharing of information continue to be challenges to a successful emergency response. The JFSOC is designed to address these challenges.

Organizations normally involved in the JFSOC are the following: NTSB, air carrier, the American Red Cross, local government and law enforcement, and supporting Federal agencies. Depending on the extent of the disaster, other organizations may also be involved in the JFSOC.

The JFSOC and one or more of the organizations involved (listed above) provide the following:

1. Serve as the central point for coordination and sharing of information among participating organizations.
2. Monitor ongoing family support activities and tracks mission activities of each organization, such as the status of the available resources.
3. Maintain a current list of locations and key telephone numbers of participating organizations and personnel.
4. Manage and coordinate requests for services.
5. Maintain a daily journal of organizational activities and responses.

Agency representatives assigned to the JFSOC are responsible for the following tasks:

1. Maintain current status of family support activities.
2. Prepare information for the NTSB family website.
3. Provide information for the daily family briefing/conference bridge.
4. Brief participating agencies daily about activities concerning family support.
5. Coordinate and share information among all organizational representatives.

6. Maintain locations and telephone numbers of organizational entities along with key personnel (for instance, FAC, medical examiner, staff processing center, NTSB investigators, air carrier, accident site, supporting organizations, local law enforcement, and local government).
7. Maintain and update daily plans, incident action plans, and plans for future operations.
8. Maintain the status and location of injured victims.
9. Maintain the status of victim identification effort, utilizing information provided by medical examiner personnel or their designee.
10. Update information on numbers of families at the accident city and projected departures/arrivals (24/48 hours).
11. Track the progress of antemortem interviews and antemortem data collection.

An aviation accident may take place anywhere. Therefore, it is necessary to remain flexible in planning the location of the JFSOC, taking into consideration the location and the severity of the accident. The location of the JFSOC will be determined on the basis of available space, in such places as hotels, local government buildings, or mobile command posts.

The air carrier is responsible for securing space to accommodate family members, the FAC, and the JFSOC. The involved air carrier should plan on securing a hotel area that can accommodate the people, equipment, and activities in the JFSOC. Although hotel space for family members and the FAC will be at a premium, the JFSOC should be located in the same hotel. A small ballroom or large conference room is appropriate. Should the air carrier have difficulty securing space, the NTSB will contact local authorities to determine the availability of suitable space.

The following is a general description of the duties and responsibilities of agency representatives assigned to the JFSOC:

1. **Coordinator:** The JFSOC Coordinator represents the NTSB and is charged with managing the day-to-day activities of the JFSOC. The coordinator may do any of the following tasks: assign responsibilities to JFSOC members, facilitate the exchange of information among the JFSOC participants, ensure that critical information is kept current, inform other participants of significant developments, collect information that may be used for family briefings, ensure that individual logs are kept current, coordinate with NTSB headquarters regarding information to be placed on the Board's special family website, and perform other duties relating to the specific requirements of the accident response.

2. **Deputy Coordinator:** A Deputy Coordinator may be designated to assist the Coordinator. The Deputy Coordinator may be from the air carrier or from the local emergency management agency.

3. **Administrative Officer:** An Administrative Officer will assist the Coordinator with administrative functions, such as preparing drafts of documents, collecting and posting logs, assembling clips of media coverage of the accident, providing supplies, and performing other duties relating to the specific requirements of the accident response.

4. **Air carrier representative:** The air carrier representative serves primarily in a coordinating role for the carrier. Responsibilities include passing along information to the carrier's command center regarding positively identified passengers (after families have been notified); addressing questions related to current and future support provided to families by the air carrier; providing updates regarding other agencies' current and future plans and developments; scheduling meetings and related agendas; maintaining a daily log; monitoring status of injured victims and numbers of family members on and off site; providing information for daily briefings to family members; and updating other JFSOC participants on the carrier's activities and developments.

5. **Local government representative:** The local government representative is the coordinating point for JFSOC participants on issues of security of the morgue, FAC, hotels for family members, and other designated sensitive areas. The representative is also responsible for keeping his or her organization informed of family affairs activities and meetings, updating other JFSOC participants on the local government's activities and developments, maintaining a daily log, providing information for daily briefings to family members, identifying local assets and resources that can be utilized to support the operation, and assisting other participants in their understanding of the local community and their leaders.

6. **Medical examiner representative:** The medical examiner representative serves as a liaison between the victim identification activities at the morgue, the antemortem interview process at the FAC, and the DMORT FAC team. They may also provide information on the victim identification process at the family briefings.

7. **American Red Cross representative:** The American Red Cross representative assigned to the JFSOC coordinates the American Red Cross' operations in the FAC and the staff processing center. Responsibilities include responding to questions that relate to current and future support provided to families and support workers, answering questions related to persons and organizations who want to volunteer services or support, informing the American Red Cross of scheduled meetings, maintaining a daily log, monitoring status of support personnel in the FAC and other sites, answering or redirecting calls from family members who may be off site, providing information for daily briefings to family members, and updating other JFSOC participants regarding operational activities and developments.

8. **DOS representative (if required):** The DOS representative serves in a coordinating role between the JFSOC and the DOS. The representative will coordinate issues involving foreign passengers and the support they will need from DOS, the victim's embassy/consulate, and other participants of the JFSOC. Other tasks include maintaining a daily log, monitoring status of foreign victims and their families, providing advice on cultural issues, answering or redirecting calls from foreign government officials, providing information for daily briefings to family members, and updating other JFSOC participants on the organization's activities and

developments. If foreign consulate officials participate in the activities of the JFSOC, the DOS representative will serve as their sponsor.

9. DOJ/FBI OVA representative (if required): DOJ/FBI OVA will only be involved in the JFSOC when the cause of the disaster is suspected to be of criminal intent. The representative serves primarily in a coordinating and informational role for DOJ/FBI.

10. FEMA representative (if required): The FEMA representative is not normally involved in the JFSOC, unless the disaster requires substantial Federal government assistance. For example, a disaster that occurs in a highly populated area causing severe structural damage and a substantial number of ground casualties will require a FEMA representative at the JFSOC. The representative will be primarily responsible for coordinating the local and State emergency management agency efforts with the family support operation.

APPENDIX D

Joint Family Support Operations Center Daily Status Report Information

| | |
|--|---------------------------|
| 1. Number of families notified /number pending notification | Air Carrier |
| 2. Number of families on site /number of families at home | Air Carrier |
| 3. Number of total family members at the hotel | Air Carrier |
| 4. Number of families expected to arrive within the next 24 hours | Air Carrier |
| 5. Number of families expected to depart within the next 24 hours | Air Carrier |
| 6. Number of families at home who were contacted by their air carrier representative within the last 24 hours | Air Carrier |
| 7. Status of injured personnel and location of family members | Air Carrier |
| 8. Number of families on site who have requested American Red Cross assistance and have been assisted by American Red Cross personnel within the last 24 hours | American Red Cross |
| 9. Number of families at home who have requested American Red Cross assistance and have been contacted by their American Red Cross representative within the last 24 hours | American Red Cross |
| 10. Number of workers who have received American Red Cross assistance in the last 24 hours | American Red Cross |
| 11. Number of injured emergency response personnel who have received American Red Cross assistance | American Red Cross |
| 12. Status of antemortem data collection and DNA reference samples | Medical Examiner |
| 13. Status of antemortem and disposition of remains interviews | Medical Examiner |
| 14. Status of identification efforts | Medical Examiner |
| 15. Status of families notified of positive identification | Medical Examiner |
| 16. Status of the release of remains | Medical Examiner |
| 17. Update on assistance provided to foreign families | DOS |
| 18. Update on assistance provided to victims and families | DOJ |
| 19. Number of Federal support personnel, to include DMORT and American Red Cross personnel on site and their locations | All |
| 20. Remarks on daily activities | All |
| 21. Remarks on activities scheduled for the next 24 hours | All |

APPENDIX E
Sample Format for an After Action Report

National Transportation Safety Board
Director, Office of Transportation Disaster Assistance
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20594-2000

Attn: Transportation Disaster Assistance

SUBJECT: (AVIATION ACCIDENT) AFTER-ACTION REPORT

Describe such items as how the organization was organized, relationships to other organizations, what the organization's mission was, how many of the organization's personnel were involved, what other resources were provided, transportation and equipment requirements, date arrived/departed, daily activities, and any other information the organization feels important to add to this document. This outline is not intended to limit the content of the report. Attach as separate enclosures discussion of specific aspects of the operation that were either successful or problematic.

The following format is provided:

Topic:

Discussion:

Recommendations:

Enclose any programs, associated ceremonial material, or video documentation.

APPENDIX F

Victim Identification Information

The local medical examiner or coroner has the legal responsibility to identify the victims of an aviation disaster. In addition, he or she is legally responsible for determining cause and manner of death and completing death certification. Medical examiner and coroner offices vary greatly in terms of staff and facility size. Some offices may be able to handle an aviation disaster with existing staff and facilities, while other offices, particularly those in rural areas, may require assistance. The medical examiner or coroner should have a written mass fatality plan that will give a basic framework for a response and whether assistance will be required.

The Aviation Disaster Family Assistance Act of 1996 designates the NTSB to coordinate Federal assistance in response to aviation accidents. The responsibilities of the NTSB transfer to the FBI if the cause of the disaster is officially declared a criminal act.

The NTSB or the FBI can, at the request of the medical examiner or coroner, request the services of the DMORT to assist with fatality management and identification of victims. The NTSB or FBI can also request the delivery of the DMORT portable morgue. In addition, the Office of the Armed Forces Medical Examiner (OAFME) can provide assistance to the FBI for medicolegal investigation issues.

The process of victim identification in a transportation disaster is thorough, deliberate, and based on proven scientific methods. As a rule, personal effects removed from the remains are considered to be a presumptive method of identification used to suggest who the deceased may be. Positive victim identification requires comparison of antemortem (before death) records and samples, such as dental and medical radiographs, with similar information collected from the remains. Exact matches of unique biological characteristics found in both the antemortem and postmortem records leads to a positive identification. Such methods include comparison of dental records and radiographs, comparison of fingerprints, comparison of bone structure in radiographs, comparison of healed fractures in radiographs, unique medical features (such as implants/prosthetics), and comparison of DNA.

In aviation disasters involving fragmented remains, identification is followed by the process of reassociating remains. Reassociation takes more time and is more complex than identification. Although a victim may be identified quickly using a single tooth, the ability to bring together the disassociated remains of victims relies primarily on DNA. DNA identification involves comparing DNA samples of the deceased to antemortem samples from relatives or a sample of DNA from the deceased obtained from clothing, a hairbrush, or a similar item containing skin or hair cells.

Once a positive identification has been made, the medical examiner office or a designee will notify the victim's legal NOK. At this point, the NOK decides on how and when the remains will be returned for burial/final disposition. Crisis support care and other support mechanisms will be available to the family during this process.

APPENDIX G

Victim Support Tasks–Checklists

| Victim Support Tasks |
|--|
| National Transportation Safety Board Tasks |
| <input type="checkbox"/> Coordinate Federal assistance and serve as a liaison between the air carrier and family members. |
| <input type="checkbox"/> Provide an NTSB toll-free number and e-mail address (www.assistance@ntsb.gov) to family members for obtaining information on the victim recovery and identification effort, accident investigation, and other concerns. |
| <input type="checkbox"/> Request a copy of the passenger manifest from the air carrier. |
| <input type="checkbox"/> Review with the air carrier the logistical needs of families, giving special consideration to security, quality of hotel rooms and facilities, and privacy for family members. |
| <input type="checkbox"/> Integrate local and Federal government officials and air carrier staff to form a JFSOC to coordinate services and activities for families. |
| <input type="checkbox"/> Coordinate assistance efforts with local and State authorities, including the medical examiner, local/county/State law enforcement, emergency management agency, hospitals, and other emergency support personnel. |
| <input type="checkbox"/> Maintain communications with the air carrier to receive updates regarding the notification status of the victims' families. |
| <input type="checkbox"/> Conduct daily coordination meetings with the air carrier and local and Federal government representatives to review daily activities, resolve problems, and synchronize future family support operations and activities. |
| <input type="checkbox"/> Provide and coordinate family briefings both with families at the accident city and with families who remain at home. |
| <input type="checkbox"/> Discuss with the medical examiner the subject of victim identification, in particular the use of DNA analysis. Explain that the NTSB typically uses the Armed Forces DNA Identification Laboratory for DNA identification. |
| <input type="checkbox"/> Discuss with the medical examiner the capabilities of his or her office staff to conduct victim identification. Discuss the use of DMORT and the standard procedures used by DMORT in its work in support of NTSB responses. |
| <input type="checkbox"/> At the discretion of the NTSB IIC, coordinate a visit to the accident site for family members. |
| <input type="checkbox"/> Provide information releases to the media, in coordination with NTSB Office of Public Affairs, pertaining to the types of Federal support available to assist family members. |
| <input type="checkbox"/> Maintain contact with family members to keep them informed about the victim recovery and identification effort, accident investigation, and other accident-related concerns. <ul style="list-style-type: none"> ○ Inform family members of the release dates for preliminary, factual, and probable cause statements. ○ Inform family members of the date, time, and location of the public hearing, if applicable. ○ Inform family members of the date, time, and location of the Board meeting, if applicable. |
| <input type="checkbox"/> If the accident is determined to be the result of a criminal act, the NTSB TDA staff may assist the FBI OVA in family assistance support. |
| <input type="checkbox"/> Consolidate and review the AAR to resolve problem areas and to update operating plans and procedures. |

| Victim Support Tasks | |
|-----------------------------|---|
| Air Carrier Tasks | |
| <input type="checkbox"/> | Complete required accident notification as detailed in 49 CFR 830.5 |
| <input type="checkbox"/> | Notify the NTSB Communications Center of the accident and provide the following: <ul style="list-style-type: none"> ○ Location or general vicinity of the accident ○ Number of passengers on board ○ Number of crew on board ○ Number of injuries and fatalities (if known) ○ Flight number ○ Flight origination ○ Flight connection points ○ Flight's final destination ○ Demographics of passengers (if known) ○ Flight's designation as domestic or international ○ Name and telephone number of the carrier's representative in charge of— <ul style="list-style-type: none"> ▪ Carrier's humanitarian response ▪ Passenger manifest reconciliation ▪ Family notification process ○ Name, telephone number and location of the facility designated for use as the FAC and JFSOC |
| <input type="checkbox"/> | Provide a reliable publicized toll free telephone number with sufficient capacity to handle the anticipated call volume from victims' families and friends. |
| <input type="checkbox"/> | Coordinate public notification of the toll-free number with various media (television, radio, Internet) emphasizing the following: <ul style="list-style-type: none"> ○ The number should only be used by people who have a reason to believe a family member or friend was a passenger on the accident flight. ○ Initial calls to the air carrier will provide basic accident information and establish point of contact information for affected family members and friends in order to initiate humanitarian support. ○ When referring to the toll-free telephone number, the following information should always be provided: <ul style="list-style-type: none"> ▪ Name of the carrier(s) involved ▪ The accident flight number(s) ▪ The flight's airport of origination ▪ The flight's connection point(s) ▪ The flight's final destination |
| <input type="checkbox"/> | Modify normal "on-hold" messages. Eliminate music, sales information and similar non-accident-related messages. |
| <input type="checkbox"/> | Provide timely notification to family members and friends prior to releasing passenger names to the public. Refer to AIR 21. <ul style="list-style-type: none"> ○ Request family members to designate one primary point of contact for information sharing. ○ Remember that the air carrier is under no obligation to release the names of victims if family members request otherwise. |
| <input type="checkbox"/> | Ensure notification of family members and friends of American Red Cross family care and |

| Victim Support Tasks | |
|-----------------------------|---|
| Air Carrier Tasks | |
| | crisis assistance available at the FAC. |
| <input type="checkbox"/> | Ensure notification of family members and friends of American Red Cross family care and crisis assistance available after their return home (if applicable). |
| <input type="checkbox"/> | Ensure that requests for crisis assistance are forwarded to the American Red Cross representative at the FAC. |
| <input type="checkbox"/> | Provide media representatives with continuous updates regarding the following: <ul style="list-style-type: none"> Progress of the notification process <ul style="list-style-type: none"> The number of victims' family members notified as of a certain time The number of families remaining to be notified This process continues until all victims' families have been notified |
| <input type="checkbox"/> | Provide the NTSB, upon request, with the most current reconciled copy of the passenger manifest. <ul style="list-style-type: none"> Each copy of the manifest should be numbered or annotated indicating the date and time so that it is distinguishable from previous copies |
| <input type="checkbox"/> | Secure facilities at departure, arrival, and connecting airports for family members and/or friends who may be gathering. <ul style="list-style-type: none"> This facility is designed to allow family members to grieve in private, shielding them from the media and solicitors; it serves as a secure location where families can receive continuous updates regarding the reconciliation of the passenger manifest and other accident information. |
| <input type="checkbox"/> | Ensure all facilities chosen for use as the Friends and Relatives Reception Center, FAC, and JFSOC are ADA accessible. |
| <input type="checkbox"/> | Secure a venue for use as the FAC (see appendix B) <ul style="list-style-type: none"> Consider the quality of the rooms, size of the facility, privacy for the family members and/or friends, ability to secure the facility, proximity to the accident site, and proximity to medical treatment facilities. |
| <input type="checkbox"/> | Secure a venue for the JFSOC. |
| <input type="checkbox"/> | Make provisions for the JFSOC including, but not limited to, the following: <ul style="list-style-type: none"> Space Communications Logistical support Details of the set-up of the JFSOC are provided in appendix C. |
| <input type="checkbox"/> | Provide logistical support to family members who desire to travel to the accident city (or to a hospital location) that includes, but is not limited to, transportation, lodging, meals, security, communications and incidental expenditures. |
| <input type="checkbox"/> | Assist family members as they travel to and from the accident city by informing flight crews and airport personnel about family members aboard particular flights. <ul style="list-style-type: none"> At departure, connecting, and arrival airports, family members should have air carrier personnel meet and assist them while on airport grounds. If necessary, seek assistance from other carriers with a larger presence at the airport. Assist family members as they depart the accident city and provide a contact person who will continue to be the air carrier's interface with them after they return home. |
| <input type="checkbox"/> | Provide a contact person to meet family members as they arrive and accompany them at the accident city. |

| Victim Support Tasks | |
|---|--|
| Air Carrier Tasks | |
| <ul style="list-style-type: none"> ○ This person will be responsible for assisting the family while at the accident city and should continue to be the air carrier interface with them until they return home. ○ Once the family returns home, the air carrier may decide to designate a single contact person for all family members. <ul style="list-style-type: none"> □ This point of contact should be available via a toll-free phone number. | <ul style="list-style-type: none"> □ Maintain daily contact with family members who do not travel to the accident city by providing a contact person from the air carrier until the on-site investigation has concluded. |
| | <ul style="list-style-type: none"> □ Designate an individual who will be the air carrier's representative to the Director of the NTSB TDA. <ul style="list-style-type: none"> ○ This individual will travel to various locations, such as the accident site, morgue, JFSOC and FAC with the Director of the NTSB TDA. ○ The designated individual should have the authority or ready access to those who have sufficient authority to make decisions on behalf of the air carrier. |
| | <ul style="list-style-type: none"> □ Establish an exclusive badge system to appropriately identify family members. |
| | <ul style="list-style-type: none"> □ Participate in daily coordination meetings to review daily activities, resolve problems, and synchronize future family support operations and activities at the FAC. <ul style="list-style-type: none"> ○ This information is helpful in planning logistical support (such as meals, lodging, and transportation) and allows for an update of current and future support operations. ○ The type of information typically discussed during the daily coordination meetings is located in appendix D. |
| | <ul style="list-style-type: none"> □ Make provisions for private areas within the hotel for medical examiner personnel and the DMORT FAC Team to collect antemortem information and DNA reference samples from family members. <ul style="list-style-type: none"> ○ Provide quiet space and communications for DMORT and medical examiner personnel to telephonically collect antemortem information from family members who are not at the FAC. ○ Plan and provide for a sufficient number of rooms for DMORT/crisis counseling use. Based on NTSB experience the number of rooms required ranges from 4 to 12, depending on the number of fatalities. ○ Be aware that crisis counseling and DMORT facilities are also used as venues to inform families when positive identification has been made. By having the medical examiner or DMORT team representative located within the FAC, transportation of victims' remains and other logistical considerations can be better coordinated. Support requirements for planning purposes are in appendix C. |
| | <ul style="list-style-type: none"> □ Provide DOS representatives the necessary information regarding foreign passengers to facilitate interaction with appropriate foreign government embassies. |
| | <ul style="list-style-type: none"> □ Establish a liaison with the American Red Cross at each medical treatment facility to monitor the status of injured victims and to provide assistance to their families. |
| | <ul style="list-style-type: none"> □ Develop procedures for the handling of personal effects released by the NTSB or the FBI if the aviation disaster is declared a criminal act. <ul style="list-style-type: none"> ○ Consider utilizing a third party that has experience in the return of personal effects associated with aviation disasters. ○ The proper handling and management of personal effects cannot be discounted. ○ As required by law, provisions will be made for unclaimed possessions to be retained |

| Victim Support Tasks | |
|-----------------------------|---|
| Air Carrier Tasks | |
| | for at least 18 months from the date of the accident. |
| | <ul style="list-style-type: none"> ○ The NTSB has developed guidelines for the on-scene search for personal effects. |
| <input type="checkbox"/> | Consult with family members about any air carrier-sponsored monument, including any inscriptions. |
| <input type="checkbox"/> | Provide reasonable reimbursement to the American Red Cross for the services provided to the family, air carrier, and supporting personnel. |
| <input type="checkbox"/> | Provide the same support and treatment to families of non-revenue passengers or any other victim of the accident (for instance, ground fatality) as is provided for revenue passengers. |
| <input type="checkbox"/> | If the NTSB conducts a public hearing or comparable proceeding at a location more than 80 miles from the accident site, ensure that a simultaneous transmission of the proceeding is available to family members at a location open to the public at both the origin city and destination city of the accident flight. |
| <input type="checkbox"/> | In the event of an accident outside of the United States, AIR 21 legislation requires “An assurance that the air carrier, in the event that the air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside of the United States involving major loss of life, the air carrier will consult with the Board and the Department of State on the provision of the assistance.” |
| <input type="checkbox"/> | In the event the investigation determines the accident is the result of a criminal act, coordinate with FBI OVA in arranging meetings with family members to explain their rights as victims of a Federal crime. |

| Victim Support Tasks | |
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| American Red Cross | |
| <input type="checkbox"/> | Deploy an American Red Cross CRT to serve as the functional leadership of family care and crisis intervention during the aviation accident. The CRT will support the local American Red Cross response and manage any spontaneous volunteers. |
| <input type="checkbox"/> | Assign a representative to the JFSOC to coordinate American Red Cross related issues and family requests for assistance. |
| <input type="checkbox"/> | <p>Coordinate and manage the numerous organizations and personnel offering counseling, religious, and other support services to the operation. A staff processing center, operated away from the FAC, should be created to screen, monitor, and manage personnel (employee and volunteer staff). The staff processing center will also be responsible for developing an exclusive badge system for personnel, matching volunteer skills with organizational needs, assigning work schedules, briefing and debriefing of support staff, and planning for future activities.</p> <ul style="list-style-type: none"> ○ Qualified local resources should be integrated with American Red Cross personnel for crisis and grief counseling, food services, administrative assistance, and other support services to family members and support organizations. ○ Crisis and grief counseling for family members who do not travel to the accident city should be coordinated with air carrier personnel. |
| <input type="checkbox"/> | Employ an accounting system to accurately record cost data in specific cost categories for reimbursement by the air carrier. |
| <input type="checkbox"/> | Assess the needs and available resources of other crisis support agencies, coordinate with them to ensure ongoing emotional support for workers during the operation, and provide debriefings before departure. |
| <input type="checkbox"/> | Establish a liaison with the air carrier at each supporting medical treatment facility to monitor the status of injured victims and to provide assistance to their families. |
| <input type="checkbox"/> | Coordinate with the air carrier to establish areas in the FAC for families to grieve privately. |
| <input type="checkbox"/> | If deemed necessary, deploy a CRC to coordinate on-site childcare services for families who arrive with young children. |
| <input type="checkbox"/> | If deemed necessary, deploy a SRT to coordinate on-site spiritual care. |
| <input type="checkbox"/> | If desired by the families, coordinate the planning for a suitable interfaith memorial service within the first few days following the accident. |
| <input type="checkbox"/> | If deemed necessary, arrange a memorial service for any future burial of unidentified remains. |
| <input type="checkbox"/> | Provide families, at their request, with referrals to mental health professionals and support groups in their local area. |
| <input type="checkbox"/> | Provide additional support to affected special needs or demographically/culturally diverse populations as deemed necessary. |

| Victim Support Tasks – Victim Identification Services | |
|--|--|
| Department of Health and Human Services | |
| Assistant Secretary for Preparedness and Response | |
| <input type="checkbox"/> | At the time of an accident and following notification by the NTSB, activate the appropriate DMORT team personnel, supplies, and equipment to assist in the management of victim identification. |
| <input type="checkbox"/> | Assign a representative to the JFSOC to address DMORT-related issues. |
| <input type="checkbox"/> | Assign necessary DMORT team members to assist the medical examiner with victim identification and mortuary services. The configuration of the team and skills required will be determined by the details of the accident and the capabilities of the local medical examiner. |
| <input type="checkbox"/> | Follow the “DMORT Standard Operating Procedures for National Transportation Safety Board Activations.” |
| <input type="checkbox"/> | Provide, if necessary, a morgue facility, a DMORT Portable Morgue Unit (DPMU), and the necessary equipment and supplies to augment the local medical examiner’s capabilities. |
| <input type="checkbox"/> | Monitor the status of all incoming antemortem records to include dental, medical, and DNA data to ensure that all records have been received. If not, take steps to obtain the records and radiographs. |
| <input type="checkbox"/> | Employ a standard antemortem questionnaire and disposition of remains form that can be adapted to meet local medical examiner and State requirements. The disposition of remains form will be used to obtain directions from the lawfully authorized NOK regarding what he/she desires the medical examiner to do with remains that may later be identified as those of their family member. Information collected from family members is strictly confidential and is ultimately under the control of the medical examiner. |
| <input type="checkbox"/> | Using a specially trained FAC team, interview family members who are both on site and off site for information regarding antemortem identification and disposition of remains. |
| <input type="checkbox"/> | Coordinate with the medical examiner to integrate qualified non-DMORT personnel who are providing assistance to the medical examiner’s office into the morgue operation. |
| <input type="checkbox"/> | If necessary, assist the medical examiner in notifying family members of positive identification, including an explanation of how identification was determined. |
| <input type="checkbox"/> | Ensure the accuracy of the chain of custody by performing a check of documentation and remains prior to the release of remains to the designated funeral director. |
| <input type="checkbox"/> | Assist the medical examiner with reassociation of remains following the identification process. This may occur weeks or months after the accident. |
| <input type="checkbox"/> | Through the FAC team, provide the NTSB with contact information for the NOK (addresses, telephone numbers, e-mail addresses) and the NOK’s relationship to the victim. |

| Victim Support Tasks (If Required) | |
|---|---|
| Department of Defense (if required) | |
| <input type="checkbox"/> | Provide the use of a military installation, such as The Charles C. Carson Center for Mortuary Affairs, located at the Dover Air Force Base, in support of mortuary operations. |
| <input type="checkbox"/> | Provide personnel from the Office of the OAFME and AFDIL to assist in the identification effort and to conduct appropriate DNA comparison testing on specimens submitted by the medical examiner. OAFME and AFDIL personnel may be asked to travel to the accident site to assist with victim identification. |
| <input type="checkbox"/> | Provide available medical and dental records and DNA reference samples of fatally injured passengers who may have antemortem records based on prior or current military service. |

| Victim Support Tasks – Assisting Families of Foreign Victims (If Required) | |
|---|---|
| Department of State | |
| <input type="checkbox"/> | Assign a representative to the JFSOC to coordinate DOS-related issues with other members of the operations center staff. Assist in obtaining dental and medical records and DNA reference samples from foreign families. Respond to family member requests for information and assistance as appropriate. Additional personnel may be needed for accidents involving significant numbers of foreign passengers, particularly those involving international flights. |
| <input type="checkbox"/> | Provide official notification to foreign governments of citizens involved in the accident. Such notifications will take place after obtaining necessary information about foreign passengers from the air carrier. |
| <input type="checkbox"/> | Assist the air carrier in notifying U.S. citizens who may reside or are traveling outside the United States that a member of their family has been involved in an aviation accident. |
| <input type="checkbox"/> | Provide interpretation/translation services (via DOS staff or a contracted provider) to facilitate communications with the victim's family and all interested parties. For family briefings held at the FAC or similar location or activity, simultaneous interpretation/translation in multiple languages may be required. |
| <input type="checkbox"/> | Assist the air carrier, the Federal support staff, and other pertinent parties in maintaining contact with foreign families not traveling to the United States. |
| <input type="checkbox"/> | Assist foreign air carrier employees and families of foreign victims with entry into the United States and with the extension or granting of visas to eligible applicants. |
| <input type="checkbox"/> | Facilitate necessary consulate and customs services for the return of remains and personal effects to the country of destination. |
| <input type="checkbox"/> | Assist the medical examiner in acquiring the necessary information to facilitate the identification of foreign victims and to complete death certificates. |

| Victim Support Tasks – Communications (If Required) | |
|--|---|
| Department of Homeland Security / Federal Emergency Management Agency | |
| <input type="checkbox"/> | Assign a representative to the JFSOC to coordinate with other members of the operations center staff and local and State officials concerning emergency management–related issues. |
| <input type="checkbox"/> | Provide voice and data communication assets to facilitate communication from the accident site to the NTSB communications center. |
| <input type="checkbox"/> | Upon the request of the NTSB Office of Public Affairs, provide personnel to assist in public information dissemination, to include assistance in establishing and staffing external media support centers at the accident site, wreckage hangar, FAC, airport, and other areas that may attract media interest. |

| Victim Support Tasks – Assisting Victims of Crime (If Required) | |
|--|--|
| Department of Justice | |
| <input type="checkbox"/> | Provide to the NTSB, upon request, an FBI Disaster Squad with sufficient personnel to obtain fingerprint identification of accident fatalities. This team will work with the medical examiner and the DMORT personnel at the morgue location. |
| <input type="checkbox"/> | Provide to the NTSB, upon request, an FBI ERT and other FBI Laboratory assets to assist with victim recovery operations under the direction of the medical examiner. |
| <input type="checkbox"/> | Provide to the NTSB, upon request, FBI Office for Victim Assistance VARDT members to assist in unique circumstances, such as simultaneous accident responses. |
| <input type="checkbox"/> | <p>The following responsibilities will be implemented only if the air carrier disaster is officially declared a criminal act:</p> <ul style="list-style-type: none"> ○ Coordinate Federal assistance and serve as the liaison between the air carrier and family members. ○ Provide an FBI toll-free number for family members to obtain information on the victim recovery and identification effort, investigation, and other concerns. This number will normally be provided to families on site during the initial family briefing and repeated in subsequent briefings. The FBI will coordinate with the air carrier to have air carrier family representatives provide the toll-free number to the families who do not travel to the accident city. ○ Establish a special web page for victims' families for the purpose of sharing updated information and maintaining ongoing communication with victims and families throughout the duration of the investigation. ○ Review with the air carrier logistical family support with special consideration toward security, quality of rooms and facilities, and privacy for family members. ○ Oversee the establishment and management of the JFSOC and the FAC. Information on FAC operations can be found in appendix B. ○ Integrate local and Federal government officials and air carrier staff to form a JFSOC to facilitate close coordination of services and activities. ○ Assist the air carrier, if requested, with finding NOK to be notified. ○ Conduct daily coordination meetings with the air carrier and local and Federal government representatives to review daily activities, resolve problem areas, and to synchronize future family support operations and activities. Examples of information needed for the daily coordination meeting is in appendix D. ○ Provide and coordinate family briefings for family members at the accident city and for those who remain at home. Conduct in-person family briefings at the FAC. Conduct briefings for off-site families via telephone conference bridges. Information regarding family briefings can be found in appendix C. ○ Provide information to victims and families regarding their rights and available services as victims of a Federal crime. ○ Maintain contact with family members to keep them informed about the progress of the investigation and to continue to meet their future needs. |

APPENDIX H

Frequently Asked Questions

Manifest Inquiries

Who can request a copy of the manifest?

Legally, the NTSB is the only Federal agency to which an air carrier is required to provide a copy of the manifest. If the disaster involves a flight segment for which the last point of departure or the first point of arrival is in the United States, the air carrier must also transmit a copy of the manifest to the Department of State within 3 hours of the accident.

When must I provide a copy of the manifest?

A copy of the manifest is given, upon request, to the NTSB. Please ensure each updated version of the manifest is marked in a manner that it can be easily differentiated from other versions. Markings such as “Version # 1,” “Version # 2,” “Final” or other qualifiers (for instance, date and time stamp) are important to avoid confusion.

What if the TSA or an airport police officer wants the manifest?

Since the events of 9/11/2001, the NTSB and air carriers have agreed that air carriers may give a copy of the manifest to the FBI’s Airport Liaison Agent (ALA) at any airport in the United States. The agent will then distribute the manifest, as necessary, to other agencies. If you do not know your ALA, please contact your local FBI office or your airport police department.

Does my airport fire department need a copy of the manifest?

The airport fire department is required to know the number of passengers and crew on the aircraft and to be given the cargo manifest. The air carrier is not required by law to give the passenger manifest to the fire department.

Does the NTSB release the manifest to the press?

The NTSB never releases the manifest to the press.

If a U.S. air carrier crashes overseas, am I required to give a copy of the manifest to the NTSB?

In such an event, a U.S. air carrier is required by law to provide a copy of the manifest to the Department of State within 3 hours of the accident. The NTSB may also ask for a copy.

I am having problems with agencies that believe they have a right to a copy of the manifest. Can the NTSB help me?

Please call the NTSB Office of Transportation Disaster Assistance at (202) 314-6185 and a specialist will be assigned to help you.

Air Carriers

Who constitutes a family member? Is there a specific definition?

U.S. Federal and State laws define who constitutes a family member for legal purposes. These legal definitions vary from State to State. Traditionally, family members included spouse, children, mother, father, brother, and sister. Terms such as stepparents, stepsiblings and life partners have become more common in recent years in defining some family environments. In order to provide support and assistance to victims and their families, air carriers should be prepared to work with various family situations.

During the initial hours of an aviation disaster, the air carrier must verify a significant amount of information regarding the passengers. If a family member calls during the verification process, what information should he or she be given?

Air carriers must establish contact with the family of a victim as soon as possible following an accident. Be aware that, in some cases, a family member may establish contact with the air carrier before the air carrier has been able to contact that family. The air carrier must, upon the request of the family of a passenger, inform the family of whether the passenger's name appears on a preliminary manifest for the accident flight (as stipulated in AIR 21; see appendix A).

Should the air carrier contact any other family members?

If the initial family member contacted is unable to understand the information the air carrier is providing, it may be necessary to notify another family member. Another family member may also assist in other situations, such as non-English speaking families.

Is there a requirement by an air carrier to release the names of the passengers and crew to the media?

There is no legal requirement for the air carrier to release the names of passengers and crew to the media. The media should be informed about the number of families that have been notified during the initial notification process. However, as the air carrier completes the notification process to passenger and crew family members, the air carrier is encouraged to obtain an estimate on how much time will be needed for the family to contact other family members. There should be consideration in delaying the release of any names until these family members have been contacted.

How often should air carriers update family members on the progress of initial events?

Family members should be contacted regularly, even if there is no updated information. If the air carrier tells a family member that the carrier will call back by a specific time, that call must be made as promised. Once the NTSB and the families arrive at the FAC, regular briefings will be scheduled by the NTSB.

Are there any steps an air carrier can take to limit the number of inquiry calls that follow a disaster?

When providing the media with a toll-free number, the air carrier must stress that the number is *only* for those family members and friends who have reason to believe their loved one was on board the accident flight. The air carrier should ask the media to continually emphasize the name of the carrier; flight number and/or code share flight number; and airport origination,

connection, and final destination to prevent confusion and misinformation, and ultimately to reduce call volume.

For air carrier personnel, the air carrier should also rely upon an internal “call home” system. After an accident, flight crews and other employees should be advised of the accident through the company’s internal communications network. They should be asked to call home and check in with their family members.

Are there any special considerations for family members traveling to the accident city?

By law, air carriers must ensure that family members are provided with transportation to the accident city and other immediate needs, such as lodging. The air carrier should be sensitive to requests for more than one family member or for a non-family member to travel to the accident city. If at all possible, a family member should not travel alone to the accident city.

Some family members may request to travel to the accident city via an alternate air carrier, an aircraft type other than the accident aircraft, or an alternate mode of travel (for instance, rental car, bus, or train). The air carrier should attempt to honor such requests.

What types of training can help teach air carrier employees how to assist families following an accident?

Air carriers will train employees and agents who are responsible for assisting survivors and family members following an accident. Employees should be sensitized in a number of areas, including the range of physical and emotional reaction to trauma, family member and victims’ needs for accurate and timely information, the varying needs of different populations, and the importance of providing compassionate and non-judgmental support during this difficult and complex time.

Because employees may encounter physical and psychological stress reactions during an accident response, training should include methods for taking care of themselves during and after the response. The training should also include how to support co-workers who may be having difficulties and how to effectively exit the response assignment and return to their normal duties. Recurrent annual training maintains skills and a level of readiness.

In addition, NTSB TDA holds courses at the NTSB Training Center on a variety of family assistance topics. More information about the NTSB Training Center and course offerings can be found at the following website: www.ntsbtg.gov/TC.

Does an air carrier need to file a family assistance plan?

All carriers are required to file their assurance with both the NTSB and the U.S. Department of Transportation. Send assurances to: National Transportation Safety Board, Office of Transportation Disaster Assistance, Attention: Erik Groszof, 490 L’Enfant Plaza East, S.W., Washington, D.C., 20594. Fax Number: (202) 314-6638. Phone: (202) 314-6185. E-mail: erik.groszof@ntsbtg.gov.

What issues should an air carrier consider in managing personal effects?

Due to the physical dangers and psychological impact that the recovery and management of personal effects can have on air carrier employees, it is strongly suggested that a professional third party be employed. Air carriers need to allow family members the opportunity to view unassociated personal effects. This can be done via a catalog or a CD containing photographs of these items. Family members should be notified before the catalog or CD is sent to them for their review. A claim for specific personal effects can be placed with the air carrier or the third party vendor.

Air carriers are required to maintain possession of all unassociated personal effects for a minimum of 18 months following the accident. It is recommended that family members be notified prior to the destruction of any personal effects in the air carrier's possession, allowing them one final opportunity to claim previously unclaimed personal effects.

NTSB and FBI ERT have developed "best practice" guidance for surveying and searching for personal effects at accident sites. A copy can be obtained from the NTSB TDA office.

How should an air carrier plan to demobilize its family assistance response efforts?

In accordance with common disaster management procedures, air carrier family assistance managers should plan their demobilization during the beginning of the response. Demobilization planning allows managers and staff to focus their activities with an understanding of when the work will end. Since the response will eventually end, knowing the process of how to close down the response is essential to an effective overall response.

What changes did AIR 21 and VISION 100 make to the Aviation Disaster Family Assistance Act?

Pursuant to AIR 21:

- The restrictions on solicitation by attorneys and their agents is increased from 30 to 45 days following the accident.
- Local authorities cannot block the use of mental health and counseling services for 30 days following the date of the accident. The NTSB can extend that period for another 30 days if necessary.
- An assurance that "upon request" of the family, the air carrier will inform the family of whether the passenger's name appeared on a preliminary passenger manifest of the accident flight.
- An assurance that the air carrier provides adequate family assistance training to employees and agents of the carrier.
- If an air carrier volunteers to assist U.S. citizens within the United States with respect to an aircraft accident outside of the United States involving major loss of life, an assurance that the air carrier will consult with the NTSB and the Department of State.

Pursuant to VISION 100:

- Requirements and procedures for air carriers when dealing with non-government owned property damaged or destroyed during an aviation accident.
- Establishes clear lines of communication between the land/property owner and the air carrier underwriter.

- If the NTSB conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the air carrier must ensure the proceeding is simultaneously broadcast at locations open to the public at both the origin and destination cities of the accident flight (if the city is located in the United States).

American Red Cross

Why was the American Red Cross selected?

The NTSB designated the American Red Cross because it meets the legislated requirement for an independent non-profit organization with experience in disaster response and post-trauma communications with families.

What is the Critical Response Team (CRT)?

At the accident city, the local American Red Cross chapter initiates the American Red Cross response in accordance with local planning. These activities may be supported as needed by other American Red Cross chapters from the surrounding area. The CRT is composed of trained and experienced American Red Cross disaster management specialists, who are mobilized within 4 hours, travel to the accident city, and augment the local American Red Cross response.

Is there any requirement for an air carrier to meet with the American Red Cross before a disaster occurs?

There are no mandates for an air carrier to meet with the American Red Cross before a disaster. However, it is important that local air carrier station management and American Red Cross chapters coordinate their local planning activities where appropriate to ensure each group's awareness of the other's plans. This will enhance the coordination of the immediate response. An annual meeting can eliminate any misunderstandings or confusion over the provision of services.

What other services can the American Red Cross provide to an air carrier, family members, or the community where the disaster occurred?

The American Red Cross can provide crisis support for local agencies, air carrier personnel, and family members. If needed, they will assist with family member referrals for additional mental health services.

The CRT also comprises two specialized teams: the CRC and the SRT. The CRC deploys trained experienced disaster childcare professionals to deliver specialized childcare, typically in the FAC. The SRT deploys trained experienced spiritual care professionals to coordinate, establish, and maintain spiritual care services.

How do other service providers interact with the American Red Cross?

The American Red Cross is responsible for establishing a staff-processing center to ensure the best use of all resources. Providers can contact the American Red Cross through the processing center or their local American Red Cross chapter in advance if interested in assisting.

The American Red Cross can also assist in managing “spontaneous volunteers” who frequently present themselves following an accident.

U.S. State Department

What is the role of the U.S. State Department during an aviation disaster (domestic or foreign air carrier) in the United States or its territories?

The U.S. Department of State is responsible for providing official notification to foreign governments whose citizens were involved in the accident. Notifications take place after necessary information about foreign passengers is obtained from the air carrier. The State Department can also assist the air carrier in notifying U.S. citizens who may reside or are traveling outside the United States that a member of their family has been involved in an aviation accident.

For foreign carriers, the State Department can assist by alerting the U.S. Citizenship and Immigration Services (USCIS) that a corporate “Go Team” is en route to the accident city. They can assist with obtaining required visas or other documents needed to gain entry into the United States. Assistance can also be given to family members en route to the accident city. The State Department will work with USCIS to ensure that entry into the United States by these families is done in a timely, compassionate, and professional manner.

Additional information on State Department roles and responsibilities can be found at <http://www.state.gov/documents/organization/86830.pdf>.

Family Assistance Center

What is the difference between the Friends and Relatives Reception Center and the FAC?

Friends and Relatives Reception Centers are located at the arriving and departing airports and are temporary locations for family members to gather until an FAC is established. The FAC is established at a hotel or similar facility in the accident city and is the focus for the assistance and information family members will receive during the initial phases of the accident response.

Who is responsible for the FAC?

The air carrier is responsible for securing a facility and all reasonable operational expenses to accommodate family members traveling to the accident city. Agencies providing support and services to families will work together to ensure families are assisted. The NTSB has the overall responsibility for the effective operation of the FAC, but it relies upon the cooperation and support of all contributing organizations.

How will professionals and other service agencies in the local community be incorporated into the family assistance response?

The American Red Cross is the designated non-profit organization responsible for family care and crisis intervention. In this capacity, it manages the recruitment, training, and support of all volunteers, including those in the local community, through a Staff Processing Center. It is the

intent of the American Red Cross and the NTSB to integrate local professionals and organizations affiliated with a disaster response agency/organization.

Who is considered a family member for access to the FAC?

“Family member” is defined in broad terms for the purpose of FAC access. Many individuals consider themselves to be the “family” of the victim, even though the law does not formally recognize the relationship. Keep in mind that the goal of the FAC is to support and provide assistance to those associated with the victim(s) impacted by the aviation disaster.

How do families not traveling to the accident city obtain information and support?

There are several ways for families who do not travel to the accident city to obtain information and support. Air carriers should maintain contact with non-traveling families and provide them the same types of support as received by families at the FAC. The American Red Cross can also provide support through their chapters in the local community. A toll-free conference call bridge is used during most family member briefings. The NTSB establishes an accident-specific website for family members along with the existing assistance@ntsb.gov email address.

How will the air carriers, local emergency responders, American Red Cross, and other Federal agencies coordinate the services delivered to family members?

The JFSOC coordinates all family member activities and resolves family assistance concerns and challenges during the on-scene phase of the response. Facilitated by NTSB TDA, the JFSOC includes representatives from each organization providing assistance to ensure efficient use of resources, sharing of information, and the provision of appropriate and professional services to families.

How do the family members find answers to their individual questions?

It is recommended that family members first ask their air carrier escort/representative for answers to their questions. If he or she cannot provide an answer, the question can be channeled to the JFSOC via the representative’s supervisor. Families are encouraged to ask questions at the regularly scheduled family briefings.

NTSB TDA is responsible for maintaining contact (including answering individual questions) with victims and family members following the on-scene phase of the investigation. All necessary contact information will be provided during the final family briefing.

Airports, Emergency Personnel and First Responders

What areas of consideration should airports have in planning to assist families during the first few hours of an aviation disaster?

Although not currently required, airports should have plans to assist victims and their families during the initial hours following an aviation accident. Airport emergency planning is especially critical for smaller air carriers or charter operations that have a limited presence at the airport.

Consider providing family members a private and secure area to gather (Friends and Relatives Reception Area) while awaiting information from the air carrier. Air carrier clubs, conference rooms, or restaurants can serve this purpose. If located within the sterile area, entry procedures must be established with the Transportation Security Administration (TSA) and Federal Security Director prior to an accident. Police officers should be used to secure the room and the

immediate area from the general public. Local Red Cross chapters should be included in planning sessions as they can provide disaster mental health and medical services personnel, as well as other needed local resources, to assist air carrier staff with families at this location.

When selecting the location, consideration should be given to the following:

- Proximity to restrooms and other amenities
- Privacy from the general public
- Privacy from the media
- Availability of television access to family members, if desired
- A location that does not overlook the accident site (if at all possible)

What areas of consideration should be given when airports are reviewing their airport emergency plans?

If an airport's plan calls for sealing off access to the airport or terminals during an emergency, local air carrier management should provide a list of employees required to have access to the airport or terminal(s) during such a period. Airport Operations Access (AOA) badges for these individuals should be issued with a unique indicator. Some airports have used the following indicators: "COMMAND POST," "EMERGENCY ACCESS," "INCIDENT RESPONSE," "DISASTER RESPONSE," or a large letter "E." Once chosen, the format is relayed to law enforcement agencies securing the airport, thus allowing air carrier/airport personnel wearing a badge to gain access even when roadways are closed.

To reduce confusion by responding mutual aid agencies, airports should consider placing large signs at their predetermined staging and emergency access areas and gates. These signs should be reflective, preferable white wording on a red background, using simple text; for example, **ARFF STAGING AREA "A"** or **MUTUAL AID ACCESS GATE #5**. Airports should review and contact emergency service agencies within a 5-mile radius of the airport to receive aircraft emergency ingress/egress familiarization and training. Airport fire services can coordinate with air carriers to arrange familiarization tours of various air carrier aircraft types.

Pre-accident meetings with local emergency planners; hospitals; the American Red Cross; city, county, and State police and fire services; and clergy help to familiarize response groups with one another.

Are there any special considerations about moving wreckage after life-safety efforts have been completed?

Once the emergency response moves from rescue to recovery, the area should be sealed off until an NTSB representative arrives on the scene. If at all possible, pieces of wreckage should not be moved. If the wreckage must be moved, it is critical to document the process in writing. Additionally photographs of the wreckage should be taken before and after disturbing the items.

In some accidents, the NTSB will request the assistance of the FBI Evidence Response Team (ERT) to document the scene and conduct the recovery operation. The FBI ERT is available nationwide and offers a standard level of documentation and recovery to the NTSB.

For more information, a brochure, titled “Responding to an Aircraft Accident: A Guide for Police and Public Safety Personnel,” is available from the NTSB TDA website, www.nts.gov/family.

If the accident is caused by a criminal act, who will be in charge?

For aviation accidents caused by intentional criminal acts, the FBI is the lead investigative Federal agency. The NTSB may support the FBI with technical expertise. Because of the importance of evidence preservation and documentation, local authorities must ensure that all wreckage is preserved and not moved unless necessary for life-safety activities.

Medical Examiners, Coroners, and Forensic Responders

What is the process for the notification of identification and release of victims’ remains?

Once the identification process is complete, the NOK is notified by the medical examiner or the DMORT Family Assistance Team. The notifying agency will make arrangements for the release of remains to the funeral home selected by the NOK. Victims’ remains will be transported from the morgue by a funeral home vendor contracted by the air carrier to the funeral home selected by the NOK. Contact information for the funeral home selected by the NOK is obtained during the antemortem interview or during the notification of identification process.

Generally, victims’ remains are released on an individual basis, as they are identified; however, in some circumstance, remains are released at the end of the identification process, once all identifications have been made. This decision is made by the presiding medical examiner, and the NOK is informed of this process.

What is the process of identifying victims using DNA evidence?

Victim identification based on DNA evidence requires a comparison of DNA data obtained from a victim’s remains to data obtained from a reference sample. Personal items or prior medical specimens from the victim can be submitted as a direct reference sample. If submitted, it is imperative to verify that the DNA from the personal item belongs to the victim. If direct reference samples are not available, family reference samples obtained from close biological relatives are utilized. When obtaining a family reference sample, it is important to understand and document the biological relationship between the victim and the individual providing the reference sample (for instance, biological mother, father, children, brothers, or sisters). DNA identifications cannot be accomplished without the reference sample. For more information, see appendix I , which lists several resources regarding victim identification using DNA evidence.

Why does the victim identification process take so long? What factors influence the process?

Victim identification requires comparing information collected from the remains of the victim (postmortem data) to information available from the victim when he or she was alive (antemortem data). Scientific methods, such as comparing dental radiographs taken while the victim was alive with radiographs taken from the deceased victim, are the preferred methods for victim identification. Other scientific methods include fingerprint examinations, comparison of radiographs, and DNA analysis. In general, five factors influence the victim identification process.

1. **The number of fatalities.** As the number of fatalities increases, the amount of time and resources required to identify victims also increases, due to the investigative effort needed to obtain antemortem information and to conduct postmortem analysis.
2. **An open or closed victim population.** A disaster comprises a closed victim population if the number of victims and their names are known (for example, a manifested air carrier accident). Conversely, an open population is one in which neither the number of victims nor their names are known (for example, an explosion in a public building). Disasters involving open victim populations require more time and resources to resolve because authorities must distinguish those *actually* missing from those *initially reported* missing. The antemortem data collection process only begins once a victim is known to be missing.
3. **The availability of antemortem information.** Not all fatal victims have easily accessible or available antemortem information. For example, a victim who has never visited a dentist will not have dental records. Authorities must know where to look for antemortem records; this information is usually provided by family members. The absence of useful antemortem data, or the presence of incorrect data, will slow the victim identification process.
4. **The condition of remains (for instance, thermal damage, fragmentation, and commingling).** Complete bodies are more easily recovered and identified than remains impacted by fire, decomposition, fragmentation, and commingling. For fragmented remains, the reliance on DNA methods increases, requiring additional time and resources. Additionally, given an open population with fragmented remains, the standard of care is to identify all remains, since the number and names of the dead are not known. With a closed-population investigation, the goal is to account for all potentially identifiable remains for each victim. Often this approach does not require analysis of all remains, just those that have the potential to be identified.
5. **Challenges in search and recovery operations.** Remote terrestrial or underwater recovery operations require specialized support and more time, thus delaying the collection of postmortem data.

What are some of the concerns during the search and recovery process?

The physical location of the accident site determines the resources required and the procedures employed for search and recovery operations. The personnel and equipment needed for scene documentation and recovery operations vary significantly depending on whether the accident occurred on land or over water. The NTSB has authority for the aircraft wreckage, the medical examiner/coroner has authority for the human remains and associated personal effects, and the air carrier has responsibility for unassociated personal effects. Accident scene activities are

coordinated with the NTSB Major Investigations Division (AS-10). The NTSB coordinates with other agencies as necessary.

Who pays for victim recovery and identification costs?

The costs related to victim recovery and identification can be high and are directly related to the number of victims, the condition of remains, and the medical examiner's policies regarding identification of remains. Typically, the air carrier underwriter will pay reasonable costs for victim recovery and identification. However, the underwriter is not required to pay for such costs. As with any emergency response, the costs of the response are often shared among the local, State, and Federal agencies, in addition to the underwriter.

What methods are used to identify aviation accident victims? Does the NTSB require that certain methods be used?

Under their legal responsibilities, the medical examiner conducts victim identification and determines the cause and manner of death. Although there are no enforceable national standards in the forensic field for victim identification, the expectation by family members and society is that all reasonable methods will be used to complete identifications in a timely and professional manner. Biologically based methods (such as fingerprints, dental records, DNA, medical implants with unique serial numbers) are considered by courts of law as primary methods of positive identification. Other methods may result in a presumptive identification, and this information may lead to a positive identification.

How is antemortem information obtained from family members?

The medical examiner is responsible for obtaining medical record information from family members. However, in the event that the local jurisdiction does not have enough staff to interview family members, trained DMORT members can be used to assist the local jurisdiction in interviewing family members. DMORT and other agencies can also be used to collect antemortem DNA reference samples from family members. If reasonable, family members may be asked to bring the contact information of the decedent's dentist and/or doctor when they travel to the FAC.

Is the NTSB responsible for making positive identification of disaster victims?

The medical examiner is responsible for making positive identification of victims. The NTSB can provide additional resources to assist the medical examiner. These resources include the DMORT team, the FBI Evidence Response Team, other FBI Laboratory assets and pertinent Department of Defense laboratories and personnel.

How are personal effects (PE) managed?

In general, PE are collected at the accident scene, catalogued, and cleaned to make them safe. If requested by the NOK, the item can be restored to its original condition. The goal of the PE process is to return all items to the family members in the condition they choose.

There are three classes of PE:

1. **Associated PE** are items recovered at the accident scene that are in physical contact with the victim's remains (for instance, a wedding ring on a hand). The medical examiner has authority over the collection, chain of custody, and final disposition of these items.

Medical examiner staff or designated personnel (for instance, FBI ERT) document and collect associated PE during the recovery of human remains. Once collected, the medical examiner can transfer custody of the associated PE to a third party contracted by the air carrier to manage the overall PE process. The NOK decides when and whether associated PE is returned and provides instructions for the restoration of the items, if desired.

2. **Unassociated PE** are not associated with remains and have no identifying information. Such items may include clothing, books, and toiletries. The air carrier has responsibility for the collection, processing, and return of unassociated PE to the NOK. Air carriers typically designate a contractor to take care of these responsibilities. The contractor also catalogues the items, and coordinates the restoration and return with the NOK.
3. **Unassociated PE containing identifying information** (e.g. luggage with an identification tag) also fall under the responsibility of the air carrier and are processed accordingly.

Are there additional resources available for a medical examiner responsible for managing the identification of decedents?

Under the Federal Family Assistance Plan for Aviation Disasters, the NTSB coordinates and integrates the resources of the Federal Government to support the efforts of the local and State government. The National Disaster Medical System (NDMS—a division of the Department of Health and Human Services, Assistant Secretary for Preparedness and Response) is the primary Federal agency to support local jurisdictions responsible for victim identification. Other Federal agencies able to support victim identification are FBI Laboratory assets and the Department of Defense DNA Registry/Armed Forces DNA Identification Laboratory.

Within the NDMS, the DMORT can conduct victim identification and associated mortuary activities. DMORT also has mobile morgues with specialized personnel to organize a morgue operation. The DMORT Family Assistance Center Team is available to interview family members to obtain antemortem information.

Certain State and local jurisdictions also have disaster victim identification teams. Such teams are considered important in the victim identification process.

The medical examiner should contact the NTSB TDA office through the NTSB Communications Center. TDA staff will inquire about the number of fatalities, the condition of the remains, the capabilities of the local jurisdiction to conduct victim recovery and identification and other pertinent information. Based on this discussion, the NTSB will request assistance from the Federal agencies with appropriate resources.

What is the Portable Morgue Unit?

The DMORT Portable Morgue Unit (DPMU) supports the processing and identification of accident fatalities. The DPMU contains prepackaged morgue supplies and equipment that can be set up in an existing facility. Transportable by truck or air, the DPMU is accompanied by a team that unpacks, organizes, restocks, and repacks the supplies and equipment.

What is the FBI ERT?

The FBI Evidence Response Team (ERT) is a group of trained and equipped FBI personnel specializing in organizing and conducting major evidence recovery operations. They manage the identification, collection, and preservation of evidence at crime scenes. In the case of aviation accidents, the ERTs are available to the NTSB to provide a standard level of scene documentation, mapping, photography, videography, and evidence/wreckage recovery. Each of the FBI's fifty-six Field Offices has an ERT, consisting of 8 to 50 members. These teams train to develop and maintain their organizational and forensic skills; most have aviation disaster experience.

What is the FBI Disaster Squad?

The FBI Disaster Squad is a team of trained experts in the area of fingerprint identification who can be activated to support the local medical examiner in the victim identification process. The FBI Disaster Squad has access to the FBI fingerprint database and is able to collect latent prints to assist in identification.

APPENDIX I

Internet Resources for Mass Fatality Response

NTSB Office of Transportation Disaster Assistance

<http://www.nts.gov/Family/family.htm>

Responding to an Aircraft Accident—How to Support the NTSB (Police & Public Safety Personnel)

http://www.nts.gov/Family/LEO_brochure.pdf

Disaster Mortuary Operational Response Team

www.dmort.org

Capstone Document: Mass Fatality Management for Incidents Involving Weapons of Mass Destruction

http://www.ecbc.army.mil/hld/dl/MFM_Capstone_August_2005.pdf

Office of the Armed Forces Medical Examiner

<http://www.afip.org/consultation/AFMES/>

Armed Forces DNA Identification Laboratory

<http://www.afip.org/consultation/AFMES/AFDIL/index.html>

Mass Fatality Incidents: A Guide for Human Identification

<http://www.ojp.usdoj.gov/nij/pubs-sum/199758.htm>

Lessons Learned from 9/11: DNA Identification in Mass Fatality Incidents

<http://massfatality.dna.gov/>

Identifying Victims Using DNA: A Guide for Families

<http://www.ncjrs.org/pdffiles1/nij/209493.pdf>

FBI Office for Victim Assistance (OVA)

<http://www.fbi.gov/hq/cid/victimassist/home.htm>

Providing Relief to Families After a Mass Fatality: Roles of the Medical Examiner's Office and the Family Assistance Center

http://www.ojp.usdoj.gov/ovc/publications/bulletins/prfmf_11_2001/welcome.html

Department of State Foreign Affairs Manual Volume 7 (1830): Aviation and Other Transportation Disasters

<http://www.state.gov/documents/organization/86830.pdf>

APPENDIX J

References

1. Presidential Executive Memorandum, Subject: Assistance to Families Affected by Aviation and Other Transportation Disasters, September 9, 1996.
2. Public Law 104-264, Title VII, Aviation Disaster Family Assistance Act of 1996, October 9, 1996.
3. Public Law 105-148, Foreign Air Carrier Family Support Act, December 16, 1997.
4. Public Law 106-181, Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Title VI, Sections 401-405, April 5, 2000.
5. Public Law 108-176, Vision 100—Century Of Aviation Reauthorization Act, Section 809, December 12, 2003.
6. Department of Transportation and National Transportation Safety Board, *Final Report, Task Force on Assistance to Families of Aviation Disasters*, October 29, 1997.
7. Interagency Agreement between Department of Health and Human Services, Assistant Secretary for Preparedness and Response, and National Transportation Safety Board, March 29, 2007.
8. Memorandum of Understanding between Department of State and National Transportation Safety Board, June 18, 1997.
9. Memorandum of Understanding between Federal Emergency Management Agency and National Transportation Safety Board, October 24, 1998.
10. Memorandum of Understanding between American Red Cross and National Transportation Safety Board, January 24, 2007.
11. Memorandum of Understanding between Department of Transportation and National Transportation Safety Board, June 19, 1997.

APPENDIX K

List of Acronyms

| | |
|--------|---|
| AAR | After Action Report |
| ADA | American with Disabilities Act |
| AFDIL | Armed Forces DNA Identification Laboratory (DOD/AFIP/AFMES) |
| AFIP | Armed Forces Institute of Pathology (DOD) |
| AFMES | Armed Forces Medical Examiner System (DOD/AFOP) |
| AIR 21 | Wendell H. Ford Aviation Investment and Reform Act for the 21 st Century |
| ALA | Airport Liaison Agent (DOJ/FBI) |
| AOA | Airport Operations Access |
| ARFF | Aircraft Rescue Firefighting |
| AS-10 | Office of Aviation Safety–Major Investigations (NTSB) |
| ASPR | Assistant Secretary for Preparedness and Response (DHHS) |
| CFR | Code of Federal Regulations |
| CRC | Critical Response Childcare Team (American Red Cross) |
| CRT | Critical Response Team (American Red Cross) |
| DHS | Department of Homeland Security |
| DHHS | Department of Health and Human Services |
| DMORT | Disaster Mortuary Operational Response Team (DHHS/ASPR/NDMS) |
| DNA | Deoxyribonucleic acid |
| DOC | Disaster Operations Center (American Red Cross) |
| DOD | Department of Defense |
| DOJ | Department of Justice |
| DOS | Department of State |
| DPMU | DMORT Portable Morgue Unit |
| ERT | Evidence Response Team (DOD/FBI) |
| FAC | Family Assistance Center |
| FBI | Federal Bureau of Investigation (DOJ) |
| FEMA | Federal Emergency Management Agency (DHS) |
| IIC | Investigator in Charge (NTSB) |
| JFSOC | Joint Family Support Operations Center |
| NDMS | National Disaster Medical System (DHHS/ASPR) |
| NOK | Next of Kin |
| NTSB | National Transportation Safety Board |
| OAFME | Office of Armed Forces Medical Examiner (AFIP) |
| OVA | Office for Victim Assistance (DOJ/FBI) |
| PE | Personal effects |
| SIOC | Strategic Information and Operations Center (DOJ/FBI) |
| SRT | Spiritual Care Response Team (American Red Cross) |
| TDA | Office of Transportation Disaster Assistance (NTSB) |
| TSA | Transportation Security Administration (DHS) |
| TTY | Teletypewriter |
| USCIS | United States Citizenship and Immigration Services (DHS) |
| VARDT | Victim Assistance Rapid Deployment Team (DOJ/FBI) |

VST

Victim Support Task

INSURANCE & BENEFIT COVERAGE LEVELS & ACTIONS

- **Aircraft Hull – Review policy for**
 - Eligible benefit recipients
 - Personal effects - \$ amount of coverage for:
 - Computer
 - Family heirlooms
 - Jewelry
 - Watches
 - Clothes
 - Etc.
 - Medical expenses and/or funeral, as appropriate
 - Transportation of remains
- **Crisis Response – Review to see if this coverage is secondary to any other applicable coverage for the event**
 - \$ amount aggregate/accident
 - Executive transportation to the scene
 - Funeral expenses
 - Psychological counseling
 - Any pre-approved expense
- **Workers' Compensation – Need to review for applicable state(s)**
 - Review for offsets
 - \$ amount of benefit
 - Disposition of spouse benefit upon remarriage
 - Length of dependent child benefit
 - Transportation of remains - \$ amount maximum
 - Burial expense - \$ amount maximum
- **Social Security**
 - Lump sum death benefit
 - Monthly income benefit for spouse, if applicable, until remarriage
 - Monthly income benefit for dependents, if applicable
- **Business Travel Accident**
 - Lump sum or periodic payment of death benefit to beneficiary
 - \$ amount of coverage
 - Minimum
 - Maximum
 - Determine any other benefit provisions
- **Basic Life Insurance**
 - \$ amount
 - Maximum \$ amount
 - Determine how proceeds are paid (i.e., to draft account, check, etc.)
- **Supplemental Life Insurance**
 - \$ amount
 - Maximum \$ amount
 - Premium waiver may apply, if disabled
 - Determine how proceeds are paid
 - Determine if spouse and dependent coverage end as a result of the employee's death

- **Accidental Death and Dismemberment Insurance**
 - \$ amount
 - Maximum \$ amount
 - Additional situational benefits may apply (i.e., seat belt usage)
 - Determine if benefit includes a pro-rated schedule
 - Some plans offer education and child care benefit for surviving spouse and children
- **Disability (in the event of disability)**
 - Short-Term Disability
 - Long-Term Disability
- **Medical**
 - COBRA coverage begins the first of the month following employee's death
 - Company may pay COBRA for XX months following the employee's death for dependents at the time of the death
- **Dental**
 - COBRA coverage begins the first of the month following employee's death
 - Company may pay COBRA for XX months following the employee's death for dependents at the time of the death
- **Vision**
 - COBRA coverage begins the first of the month following employee's death
 - Company may pay COBRA for XX months following the employee's death for dependents at the time of the death
- **401(k)**
 - Contributions cease immediately, as pay is not going to an eligible employee
 - Account transfers to beneficiary(ies)
- **Pension Plan**
 - Determine the effective date of benefit payout based on plan rules
- **Stock Incentive Plan**
 - Determine payout based on plan rules
- **Employee Discount or other privileges**
 - Determine date of discontinuation
- **Company Car**
 - Determine the process for return of the vehicle
- **Car Allowance**
 - Determine whether the car allowance will be continued

RESPONSE TEAM WELLNESS MANAGEMENT PERSONAL WELL-BEING – QUICK REFERENCE

What is Well-Being and Why is it Important?

Well-being is a combination of mind, body and spirit that, when healthy and in balance, allows us to live our lives as we choose. It is how we manage our feelings and behaviors, how we make decisions, and how we interact with others.

Well-being is important because it is impacted during times of great stress, such as responding to an airline disaster. The hours you will work and what you do will be different from your normal routine. It will be easy to get “out of balance,” which could negatively impact you, your relationships, and your health.

Having an awareness of the causes and signs of stress, knowing coping strategies, and understanding where to get help during a disaster can help keep you “in-balance.” It won’t make the response easy or stress-free, but it will allow you to cope in a positive and healthy manner.

Why is this important? Statistics show that 60 to 70 percent of people involved in an airline accident that do not get help to deal with the stress leave their aviation career within two years of the event.

What should I do? Use the Coping Strategies Self-Assessment (in the following pages), understand stress and how it can affect you, manage your well-being during an investigation, and continue to monitor your well-being after the investigation is complete.

Common Signs of Stress

- Emotional/behavioral signs include:
 - Depression, fear
 - Changes in life routines such as sleeping, eating and exercise
 - Increased use of alcohol, cigarettes or drugs
- Physical signs include:
 - Grinding your teeth
 - Headaches, neck aches
 - Stomach disorders
 - Muscle tension
 - Twitching

What You Can Do About It

- Develop positive coping strategies NOW
 - Fill out a Coping Strategies Self-Assessment and set a goal to raise your score
 - Maintain a supportive group of friends to socialize with regularly
 - Pursue a hobby or a sport you enjoy
 - Laugh frequently
 - Limit alcohol, sugar, caffeine tobacco
- During and following a catastrophic response
 - Call home
 - Continue your regular exercise program
 - Try to keep your regular sleep schedule
 - Use Employee Assistance Program, or critical incident response volunteers
 - Do not make big life changes or major decisions during the investigation or for some time after a major event
 - Designate a friend or family member to assist your family when needed
 - If troubling thoughts about the event continue unabated after 30 to 45 days, seek help

COPING STRATEGIES SELF-ASSESSMENT

Directions: There are many ways to cope with the stress in your life. Some techniques are more effective than others are. The purpose of this checklist is to help you assess how effectively you are currently coping. Upon completing this checklist, you will have identified many of the ways you choose to cope, and, by adding up the numbers, you will see if your method is helping you or hurting you.

Scores are all or nothing (ex. 0 or 10 points). When you have completed and scored all 16 items, tally your final score.

- _____ Give yourself 10 points if you feel you have a supportive family.
- _____ Give yourself 10 points if you actively pursue a hobby.
- _____ Give yourself 10 points if you belong to a group, outside of work, that meets at least once a month (other than your family).
- _____ Give yourself 15 points if you are within five pounds of your "ideal" bodyweight, considering your height and bone structure.
- _____ Give yourself 15 points if you practice some form of "deep relaxation" at least three times a week. Deep relaxation includes meditation, imagery, yoga, etc.
- _____ Give yourself 5 points for each time you exercise 30 minutes or longer during the course of an average week.
- _____ Give yourself 5 points for each nutritionally balanced and wholesome meal you consume during the course of an average day.
- _____ Give yourself 10 points if you, on average, have no more than one caffeinated drink a day.
- _____ Give yourself 10 points if you have some place in your home that you can go to in order to relax and be by yourself.
- _____ Give yourself 10 points if you practice time management techniques in your daily life.
- _____ Subtract 10 points for each pack of cigarettes you smoke during the course of an average day.
- _____ Subtract 10 points for each day during the course of an average week you watch three hours or more of television or spend three or more hours surfing the Internet.
- _____ Subtract 10 points for each day during the course of an average week you consume any form of medication or chemical substance (including alcohol) to reduce your anxiety or calm yourself down.
- _____ Subtract 10 points for each day during the course of an average week you take any form of medication or Chemical substance (including alcohol) to help you sleep.
- _____ Subtract 10 points for each evening during the course of an average week you bring work home; work that was meant to be done at your place of employment.
- _____ TOTAL SCORE

Scores:

| | |
|-----------------|--|
| 100+ | Excellent skills for whatever life throws at you |
| 75-100 | Strong enough to handle severe stress (personal loss, financial issues, etc.) |
| 50-74 | Adequate to handle common stress (rush hour, deadlines, etc.) |
| Below 50 | Danger Zone |

12. Employee Work-Related Death Response

EMPLOYEE WORK-RELATED DEATH RESPONSE

Immediate Company Actions

Note: The steps on this first page should be completed within minutes. Families should be contacted before the news breaks, if at all possible.

- Identify victims
- Identify contacts for support functions
 - HR
 - Payroll
 - Benefits
 - Communications
 - Employee Assistance Program (EAP) – Get name for direct contact by victims' families
- Identify immediate family members of employees from personnel files or database
 - With dependents:
 - Names
 - Address(es)
 - Phone number(s)
 - Social Security number(s)
 - Life insurance beneficiary(ies) – if other than spouse
 - Emergency contact information – if other than spouse
 - Without dependents:
 - Emergency contact information
 - Beneficiary(ies)
 - Name(s)
 - Address(es)
 - Phone number(s)
 - Social Security number(s)
 - Find out if individual had pets and/or rented an apartment
 - If individual rented, find out if he/she had a roommate
- Company representative should notify families in person, if possible. If not, by phone
 - Explain the situation
 - Arrange for visits to employees' homes
 - Determine and communicate the company's immediate response for pay and key benefits, such as:
 - Pay continuation for X days
 - Continued medical plan costs
- Contact Benefits Department to identify all benefits applicable to each victim
- Company representative should notify roommate and/or landlord by phone
- Confirm that victims with no one residing with them had no pets needing care
- If they had pets, ask surviving family members or friends about adoption or contact the local humane society to assist with adoption

An HR representative and/or other company representative should meet at the family's home as soon as possible. The following should be communicated and provided to the family in writing or obtained as applicable. (Note: Family will not be able to, and should not be expected to, absorb any of the information provided during this visit.)

- Provide name and number of direct contact at EAP
- Provide name and number of company contact and/or vendor contact for
 - Benefits questions
 - Workers' Compensation
 - Social Security Administration
 - Medical carrier
 - Dental carrier
 - Prescription carrier
 - Disability carrier (if applicable)
 - Life insurance carrier
- Inform who will contact them to review benefits available and that they will be assisted in pursuing all benefits available. (Note: Do not try to review benefits at this time unless they have been double-checked and confirmed.)
- After determining what the company will provide, inform the family of company's decision to pay for other assistance. Examples include:
 - Funeral expenses
 - Transportation of remains, if necessary
 - Transportation of immediate family members, if necessary (e.g., bring parents to be with surviving spouse and children)
 - If necessary, transportation of family member(s) to site of accident
- After determining what the Company will provide for surviving families with children, inform the families. Examples may include:
 - Dependent care will be provided, as necessary, up to X days
 - Housekeeping and yard care will be provided up to X days
 - Need for relocation – if employee had been relocated to current location, will provide relocation
 - back to original location for:
 - Household goods
 - Lease break
 - Sale of house
 - Purchase of new house
- Determine if direct deposit should be stopped for employee. (This would apply if the family did not have a joint checking account or if there are no surviving family members).
- If direct deposit is to be stopped, determine to whom paychecks should be made payable.
- Contact payroll administrator to stop deductions and/or make appropriate changes to pay and benefits.
- Arrange overnight delivery of paycheck(s), if applicable.
- If family members do not have spare keys for victims' cars, contact car dealership to obtain key blank.
- If victim has no surviving family members, determine where car should be deposited and contact car dealership for key blank.
- Contact EAP to arrange work-site briefings as needed and get direct contact names at the EAP for victims' families.
- At work place:
 - Secure employees' work area
 - Allow nothing to be moved until wishes of survivors are determined

- Notify co-workers of situation
 - Assess need for on-site debriefings
 - Schedule debriefings, as needed
 - Debrief supervisors and/or other workers on monitoring co-workers
 - Observe co-workers for difficulty coping
- Arrange for memory books for co-workers to sign and/or post pictures, poems, thoughts, etc. (give these to the survivors after 90 days).
- At accident site if family members wish to visit:
 - Flowers for family members (be cognizant of individuals' religious traditions)
 - Car service
 - Hotel, if necessary
 - Meals charged to hotel bill
 - \$X spending money/family for meals and miscellaneous expenses
 - Request no receipts or refund of unspent cash
- Contact local Social Security office to assist families in initiating claims
- Review insurance policies, benefits and company policies that may be applicable:
 - Aircraft Hull
 - Crisis Response
 - General Liability
 - Workers' Compensation
 - Social Security
 - Business Travel Accident
 - Basic Life
 - Supplemental Life
 - Accidental Death and Dismemberment
 - Disability (if applicable)
 - Medical
 - Dental
 - 401(k)
 - Pension Plan
 - Employee Stock Purchase Plan
 - Stock Incentives
 - Employee Discount Programs and other privileges
 - Company Car
 - Car Allowance
 - Financial Planning Assistance
- Provide a summary sheet for each family within a week after the accident. Review in detail after two weeks.
- Find out how remains will be returned and to where.
- Determine what support will be needed when remains are returned (i.e., counselors, family members, etc.).
- Determine need for and offer to provide independent financial planning for survivors, either through EAP or other service.
- Determine appropriateness of prepaid college fund for surviving children and company's willingness to provide.
- Continue weekly contact with families for a period of time, post-incident.
- Set up contact schedule for families for set periods (e.g., three, six and 12 months out as well as birthdays, anniversaries, Christmas and other times important to each specific family).
- Consider extending employee discount or other privileges to family members during specific time frames.

- As soon as personal effects are released, engage an independent third party to clean up the items and determine what belongs to whom, if possible. Items that cannot be tied to an individual should be catalogued for families to identify.
- Additional suggested services/activities for consideration:
 - Set up worksheets of all benefits available for each family. Track progress of benefit payments to ensure timeliness and accuracy.
 - Consider establishing memorial funds
 - Consider establishing distribution formula for contributions to victim memorials that are not specific to an individual
 - Physical memorials
 - Flowers provided for funerals/memorial services
 - Hold memorial service at workplace
 - Consider sending small gifts to those who helped, along with thank you notes
 - Thank you notes to those who assisted — all should be sent to specific individuals within the organization, if possible
 - EAP
 - Car dealership
 - Employees who assisted
 - Rescue Squad
 - Fire Department
 - Red Cross
 - Airlines
 - Hotel
 - Police
 - NTSB contact
 - Landowner
 - BMG – Personal Effects Contractor
 - Contributors to memorial funds
- Additional company follow-up action to consider:
 - Memorial service on anniversary of event to provide closure to period of mourning
 - Company participation in events with proceeds going to memorial funds (e.g., 10k runs, having friends get sponsors)

**TITLE 49 – TRANSPORTATION
SUBTITLE II - OTHER GOVERNMENT AGENCIES
CHAPTER 11 - NATIONAL TRANSPORTATION SAFETY BOARD
SUBCHAPTER III – AUTHORITY**

Sec. 1136. Assistance to families of passengers involved in aircraft accidents

- (a) In General. As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall -
 - (1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and
 - (2) designate an independent nonprofit organization, with experience in disasters and post trauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.
- (b) Responsibilities of the Board. The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).
- (c) Responsibilities of Designated Organization. – The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:
 - (1) To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.
 - (2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.
 - (3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.
 - (4) To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.
 - (5) To arrange a suitable memorial service, in consultation with the families.
- (d) Passenger Lists.
 - (1) Requests for passenger lists.
 - (A) Requests by director of family support services. – It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.
 - (B) Requests by designated organization. - The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).
 - (2) Use of information. - The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list

about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

- (e) Continuing Responsibilities of the Board. - In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident –
 - (1) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and
 - (2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.
- (f) Use of Air Carrier Resources. - To the extent practicable, the organization designated for an accident under subsection(a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization's responsibilities under this section.
- (g) Prohibited Actions. -
 - (1) Actions to impede the board. - No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.
 - (2) Unsolicited communications. - In the event of an accident involving an air carrier providing interstate or foreign air transportation and in the event of an accident involving a foreign air carrier that occurs within the United States, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.
 - (3) Prohibition on actions to prevent mental health and counseling services. - No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.
- (h) Definitions. - In this section, the following definitions apply:
 - (1) Aircraft accident. - The term "aircraft accident" means any aviation disaster regardless of its cause or suspected cause.
 - (2) Passenger. - The term "passenger" includes –
 - (A) an employee of an air carrier or foreign air carrier aboard an aircraft; and
 - (B) any other person aboard the aircraft without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the flight.
- (i) Statutory Construction. - Nothing in this section may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.
- (j) Relinquishment of Investigative Priority. -

- (1) General rule. - This section (other than subsection (g)) shall not apply to an aircraft accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.
- (2) Board assistance. - If this section does not apply to an aircraft accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.

(Added Pub. L. 104-264, title VII, Sec. 702(a)(1), Oct. 9, 1996, 110 Stat. 3265; amended Pub. L. 106-181, title IV, Sec. 401(a)(1), (b)-(d), Apr. 5, 2000, 114 Stat. 129; Pub. L. 108-168, Sec. 3(a), Dec. 6, 2003, 117 Stat. 2033.)

AMENDMENTS

2003 - Subsec. (j). Pub. L. 108-168 added subsec. (j).

2000 - Subsec. (g)(2). Pub. L. 106-181, Sec. 401(a)(1), substituted "transportation and in the event of an accident involving a foreign air carrier that occurs within the United States," for "transportation," inserted "(including any associate, agent, employee, or other representative of an attorney)" after "attorney", and substituted "45th day" for "30th day".

Subsec. (g)(3). Pub. L. 106-181, Sec. 401(b), added par. (3).

Subsec. (h)(2). Pub. L. 106-181, Sec. 401(c), amended heading and text generally. Prior to amendment, text read as follows: "The term 'passenger' includes an employee of an air carrier aboard an aircraft."

Subsec. (i). Pub. L. 106-181, Sec. 401(d), added subsec. (i).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

EFFECTIVE DATE

Except as otherwise specifically provided, section applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

**TITLE 49 – TRANSPORTATION
SUBTITLE VII - AVIATION PROGRAMS
PART A - AIR COMMERCE AND SAFETY
Subpart ii - Economic Regulation
CHAPTER 411 - AIR CARRIER CERTIFICATES**

Sec. 41113. Plans to address needs of families of passengers involved in aircraft accidents

- (a) Submission of Plans. - Each air carrier holding a certificate of public convenience and necessity under section 41102 of this title shall submit to the Secretary and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any aircraft accident involving an aircraft of the air carrier and resulting in a major loss of life.
- (b) Contents of Plans. - A plan to be submitted by an air carrier under subsection (a) shall include, at a minimum, the following:
 - (1) A plan for publicizing a reliable, toll-free telephone number, and for providing staff, to handle calls from the families of the passengers.
 - (2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1136(a)(2) of this title or the services of other suitably trained individuals.
 - (3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.
 - (4) An assurance that the air carrier will provide to the director of family support services designated for the accident under section 1136(a)(1) of this title, and to the organization designated for the accident under section 1136(a)(2) of this title, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.
 - (5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the air carrier.
 - (6) An assurance that if requested by the family of a passenger, any possession of the passenger within the control of the air carrier (regardless of its condition) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.
 - (7) An assurance that any unclaimed possession of a passenger within the control of the air carrier will be retained by the air carrier for at least 18 months.
 - (8) An assurance that the family of each passenger will be consulted about construction by the air carrier of any monument to the passengers, including any inscription on the monument.
 - (9) An assurance that the treatment of the families of nonrevenue passengers (and any other victim of the accident) will be the same as the treatment of the families of revenue passengers.
 - (10) An assurance that the air carrier will work with any organization designated under section 1136(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.
 - (11) An assurance that the air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) of this title for services provided by the organization.
 - (12) An assurance that the air carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

- (13) An assurance that the air carrier will commit sufficient resources to carry out the plan.
- (14) An assurance that, upon request of the family of a passenger, the air carrier will inform the family of whether the passenger's name appeared on a preliminary passenger manifest for the flight involved in the accident.
- (15) An assurance that the air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.
- (16) An assurance that the air carrier, in the event that the air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, will consult with the Board and the Department of State on the provision of the assistance.
- (17) (A) An assurance that, in the case of an accident that results in significant damage to a manmade structure or other property on the ground that is not government-owned, the air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.
- (B) At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by air carrier representatives about compensation by the air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.
- (18) An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the air carrier's flight if that city is located in the United States.
- (c) Certificate Requirement. - The Secretary may not approve an application for a certificate of public convenience and under section 41102 of this title unless the applicant has included as part of such application a plan that meets the requirements of subsection (b).
- (d) Limitation on Liability. - An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the air carrier in preparing or providing a passenger list, or in providing information concerning a preliminary passenger manifest, pursuant to a plan submitted by the air carrier under subsection (b), unless such liability was caused by conduct of the air carrier which was grossly negligent or which constituted intentional misconduct.
- (e) Aircraft Accident and Passenger Defined. - In this section, the terms "aircraft accident" and "passenger" have the meanings such terms have in section 1136 of this title.
- (f) Statutory Construction. - Nothing in this section may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.

(Added Pub. L. 104-264, title VII, Sec. 703(a), Oct. 9, 1996, 110 Stat. 3267; amended Pub. L. 106-181, title IV, Sec. 402(a)(1)-(3), (5)-(c), Apr. 5, 2000, 114 Stat. 129, 130; Pub. L. 108-176, title VIII, Sec. 809(a), Dec. 12, 2003, 117 Stat. 2588.)

AMENDMENTS

2003 - Subsec. (b)(16). Pub. L. 108-176, Sec. 809(a)(1), struck out "the air carrier" after "major loss of life,". Subsec. (b)(17), (18). Pub. L. 108-176, Sec. 809(a)(2), added pars. (17) and (18).

2000 - Subsec. (a). Pub. L. 106-181, Sec. 402(a)(5)(A), substituted "Each air carrier" for "Not later than 6 months after the date of the enactment of this section, each air carrier". Subsec. (b)(14) to (16). Pub. L. 106-181, Sec. 402(a)(1)-(3), added pars. (14) to (16). Subsec. (c). Pub. L. 106-181, Sec. 402(a)(5)(B), substituted "The Secretary" for "After the date that is 6 months after the date of the enactment of this section, the Secretary".

Subsec. (d). Pub. L. 106-181, Sec. 402(b), inserted ", or in providing information concerning a preliminary passenger manifest," before "pursuant to a plan". Subsec. (f). Pub. L. 106-181,

Sec. 402(c), added subsec. (f).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 402(a)(5)(B) to (c) of Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title. Pub. L. 106-181, title IV, Sec. 402(a)(4), Apr. 5, 2000, 114 Stat. 130, provided that: "The amendments made by paragraphs (1), (2), and (3) [amending this section] shall take effect on the 180th day following the date of the enactment of this Act [Apr. 5, 2000]. On or before such 180th day, each air carrier holding a certificate of public convenience and necessity under section 41102 of title 49, United States Code, shall submit to the Secretary [of Transportation] and the Chairman of the National Transportation Safety Board an updated plan under section 41113 of such title that meets the requirements of the amendments made by paragraphs (1), (2), and (3)."

EFFECTIVE DATE

Except as otherwise specifically provided, section applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

UPDATE PLANS

Pub. L. 108-176, title VIII, Sec. 809(c), Dec. 12, 2003, 117 Stat. 2589, provided that: "Air carriers and foreign air carriers shall update their plans under sections 41113 and 41313 of title 49, United States Code, respectively, to reflect the amendments made by subsections (a) and (b) of this section [amending this section and section 41313 of this title] not later than 90 days after the date of enactment of this Act [Dec. 12, 2003]."

ESTABLISHMENT OF TASK FORCE -- Section 704 of Pub. L. 104-264 provided that: "(a) Establishment. -- The Secretary of Transportation, in cooperation with the National Transportation Safety Board, the Federal Emergency Management Agency, the American Red Cross, air carriers, and families which have been involved in aircraft accidents shall establish a task force consisting of representatives of such entities and families, representatives of air carrier employees, and representatives of such other entities as the Secretary considers appropriate. "(b) Guidelines and Recommendations. - The task force established pursuant to subsection (a) shall develop - "(1) guidelines to assist air carriers in responding to aircraft accidents; "(2) recommendations on methods to ensure that attorneys and representatives of media organizations do not intrude on the privacy of families of passengers involved in an aircraft accident; "(3) recommendations on methods to ensure that the families of passengers involved in an aircraft accident who are not citizens of the United States receive appropriate assistance; "(4) recommendations on methods to ensure that State mental health licensing laws do not act to prevent out-of-state mental health workers from working at the site of an aircraft accident or other related sites; "(5) recommendations on the extent to which military experts and facilities can be used to aid in the identification of the remains of passengers involved in an aircraft accident; and "(6) recommendations on methods to improve the timeliness of the notification provided by air carriers to the families of passengers involved in an aircraft accident, including - "(A) an analysis of the steps that air carriers would have to take to ensure that an accurate list of passengers on board the aircraft would be available within 1 hour of the accident and an analysis of such steps to ensure that such list would be available within 3 hours of the accident; "(B) an analysis of the added costs to air carriers and travel agents that would result if air carriers were required to take the steps described in subparagraph (A); "(C) an analysis of any inconvenience to passengers, including flight delays, that would result if air carriers were required to take the steps described in subparagraph (A); and "(D) an analysis of the implications for

personal privacy that would result if air carriers were required to take the steps described in subparagraph (A). "(c) Report. - Not later than 1 year after the date of the enactment of this Act [Oct. 9, 1996], the Secretary shall transmit to Congress a report containing the model plan and recommendations developed by the task force under subsection (b)."

LIMITATION ON STATUTORY CONSTRUCTION -- Section 705 of title VII of Pub. L. 104-264 provided that: "Nothing in this title [enacting this section and section 1136 of this title, amending section 1155 of this title, and enacting provisions set out as notes under this section and section 40101 of this title] or any amendment made by this title may be construed as limiting the actions that an air carrier may take, or the obligations.

**15. 49 USC §41313: Plans To Address Needs of Families of Passengers Involved in Foreign Air Carrier
Accidents**

**TITLE 49 – TRANSPORTATION
SUBTITLE VII - AVIATION PROGRAMS
PART A - AIR COMMERCE AND SAFETY
Subpart ii - Economic Regulation
CHAPTER 413 - FOREIGN AIR TRANSPORTATION**

Sec. 41313. Plans to address needs of families of passengers involved in foreign air carrier accidents

(a) Definitions. – In this section, the following definitions apply:

(1) Aircraft accident. – The term "aircraft accident" means any aviation disaster, regardless of its cause or suspected cause, that occurs within the United States; and

(2) Passenger. – The term "passenger" has the meaning given such term by section 1136.

(b) Submission of Plans. – A foreign air carrier providing foreign air transportation under this chapter shall transmit to the Secretary of Transportation and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a major loss of life.

(c) Contents of Plans. – To the extent permitted by foreign law which was in effect on the date of the enactment of this section, a plan submitted by a foreign air carrier under subsection (b) shall include the following:

(1) Telephone number. – A plan for publicizing a reliable, toll-free telephone number and staff to take calls to such number from families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life.

(2) Notification of families. – A process for notifying, in person to the extent practicable, the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life before providing any public notice of the names of such passengers. Such notice shall be provided by using the services of –

(A) the organization designated for the accident under section 1136(a)(2); or

(B) other suitably trained individuals.

(3) Notice provided as soon as possible. – An assurance that the notice required by paragraph (2) shall be provided as soon as practicable after the foreign air carrier has verified the identity of a passenger on the foreign aircraft, whether or not the names of all of the passengers have been verified.

(4) List of passengers. – An assurance that the foreign air carrier shall provide, immediately upon request, and update a list (based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), to –

(A) the director of family support services designated for the accident under section 1136(a)(1); and

(B) the organization designated for the accident under section 1136(a)(2).

(5) Consultation regarding disposition of remains and effects. – An assurance that the family of each passenger will be consulted about the disposition of any remains and personal effects of the passenger that are within the control of the foreign air carrier.

(6) Return of possessions. – An assurance that, if requested by the family of a passenger, any possession (regardless of its condition) of that passenger that is within the control of the foreign air carrier will be returned to the family unless the possession is needed for the accident investigation or a criminal investigation.

- (7) Unclaimed possessions retained. – An assurance that any unclaimed possession of a passenger within the control of the foreign air carrier will be retained by the foreign air carrier for not less than 18 months after the date of the accident.
- (8) Monuments. – An assurance that the family of each passenger will be consulted about construction by the foreign air carrier of any monument to the passengers built in the United States, including any inscription on the monument.
- (9) Equal treatment of passengers. – An assurance that the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.
- (10) Service and assistance to families of passengers. – An assurance that the foreign air carrier will work with any organization designated under section 1136(a)(2) on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following an accident.
- (11) Compensation to service organizations. – An assurance that the foreign air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) for services and assistance provided by the organization.
- (12) Travel and care expenses. – An assurance that the foreign air carrier will assist the family of any passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.
- (13) Resources for plan. – An assurance that the foreign air carrier will commit sufficient resources to carry out the plan.
- (14) Substitute measures. – If a foreign air carrier does not wish to comply with paragraph (10), (11), or (12), a description of proposed adequate substitute measures for the requirements of each paragraph with which the foreign air carrier does not wish to comply.
- (15) Training of employees and agents. – An assurance that the foreign air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.
- (16) Consultation on carrier response not covered by plan. – An assurance that the foreign air carrier, in the event that the foreign air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, the foreign air carrier (11) will consult with the Board and the Department of State on the provision of the assistance.
- (17) Notice concerning liability for manmade structures. -
 - (A) In general. – An assurance that, in the case of an accident that results in significant damage to a manmade structure or other property on the ground that is not government-owned, the foreign air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.
 - (B) Minimum contents. – At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by foreign air carrier representatives about compensation by the foreign air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.
- (18) Simultaneous electronic transmission of NTSB hearing. – An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the foreign air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the

public at both the origin city and destination city of the foreign air carrier's flight if that city is located in the United States.

- (d) Permit and Exemption Requirement. – The Secretary shall not approve an application for a permit under section 41302 unless the applicant has included as part of the application or request for exemption a plan that meets the requirements of subsection (c).
- (e) Limitation on Liability. – A foreign air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the foreign air carrier in preparing or providing a passenger list pursuant to a plan submitted by the foreign air carrier under subsection (c), unless the liability was caused by conduct of the foreign air carrier which was grossly negligent or which constituted intentional misconduct.

(Added Pub. L. 105-148, Sec. 1(a), Dec. 16, 1997, 111 Stat. 2681; amended Pub. L. 106-181, title IV, Sec. 403(a)- (c)(1), Apr. 5, 2000, 114 Stat. 130; Pub. L. 108-176, title VIII, Sec. 809(b), Dec. 12, 2003, 117 Stat. 2589.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 105-148, which was approved Dec. 16, 1997.

AMENDMENTS

2003 - Subsec. (c)(17), (18). Pub. L. 108-176 added pars. (17) and (18). 2000 - Subsec. (a)(2). Pub. L. 106-181, Sec. 403(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The term 'passenger' includes an employee of a foreign air carrier or air carrier aboard an aircraft." Subsec. (b). Pub. L. 106- 181, Sec. 403(b), substituted "major" for "significant". Subsec. (c)(15), (16). Pub. L. 106-181, Sec. 403(c)(1), added pars. (15) and (16).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 403(a) and (b) of Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title. Pub. L. 106-181, title IV, Sec. 403(c)(2), Apr. 5, 2000, 114 Stat. 131, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the 180th day following the date of the enactment of this Act [Apr. 5, 2000]. On or before such 180th day, each foreign air carrier providing foreign air transportation under chapter 413 of title 49, United States Code, shall submit to the Secretary [of Transportation] and the Chairman of the National Transportation Safety Board an updated plan under section 41313 of such title that meets the requirements of the amendment made by paragraph (1)."

EFFECTIVE DATE

Pub. L. 105-148, Sec. 1(c), Dec. 16, 1997, 111 Stat. 2683, provided that: "The amendments made by this section [enacting this section] shall take effect on the 180th day following the date of the enactment of this Act [Dec. 16, 1997]."

NTSB Investigation

16. Your Participation in the NTSB Accident Investigation

YOUR PARTICIPATION IN THE NTSB ACCIDENT INVESTIGATION

I. GENERAL CONSIDERATIONS

- A. **Our foremost concern is safety and determining the cause of this accident.** We expect you to cooperate with the NTSB and assist them to the best of your abilities. We expect you to participate in all investigative activities conducted by your groups, including all teleconferences.
- B. We must also keep in mind, however, that other participants in this investigation may ultimately be our adversaries in litigation arising from this accident. Therefore, you should be very careful about what you say and do, as well as the implications of your comments and actions.
- C. **Be aware that there is no legal privilege or protection for communications you have with the NTSB, the FAA or other parties to this investigation. Everything you say to the NTSB, the FAA or any other party and everything your do in their presence may be the subject of testimony in a court of law.**
- D. Other parties to the investigation may have agendas that are motivated by litigation or business interests. You must be vigilant and challenge or call to the attention of your Party Coordinator anything that does not seem accurate or is peculiar in a way that suggests bias. That goes for draft reports, correspondence, notes, other documents and even comments made during meetings with participants in the investigation.

II. PROVIDING MATERIALS TO THE NTSB AND FAA

- A. **All requests from the NTSB or FAA for records and other materials should be reported immediately to the Legal Department or outside counsel and to your Party Coordinator.**
- B. **Only the Party Coordinator has authority to send records and other materials concerning this accident to the NTSB or the FAA.**
- C. No documents, data or other material should be given to anyone, including the NTSB and FAA, before that material is reviewed by counsel and the Party Coordinator.
- D. If you believe information that has been requested is proprietary or may reveal business secrets, you should label it as such and bring it to the attention of your Party Coordinator before it is produced. As a general principle, all company records are proprietary and should be stamped "CONFIDENTIAL" before being turned over to the NTSB or the FAA.
- E. Retain all original records in a safe, secure location as only copies of documents should be produced in the investigation. The NTSB and FAA are not entitled to our original records and we cannot risk losing them.
- F. Keep an accurate record of everything you provide for the NTSB and FAA. All materials produced should be accompanied by a cover letter signed by your Party Coordinator that lists specifically what is being provided.
- G. You should keep a separate file for materials relating to this accident investigation/litigation, with a separate folder containing copies of all materials and letters sent to the NTSB and FAA.

III. REVIEWING AND HANDLING NTSB DOCUMENTS AND MATERIALS

- A. **All materials received from the NTSB should be immediately forwarded to your Party Coordinator,** who will provide copies to counsel.
- B. All draft reports, field notes and other materials circulated by the NTSB for review or comment should be provided to and discussed with counsel and your Party Coordinator before any comments are made.
- C. **You should not sign any reports, documents, etc. without first discussing them with counsel.**

IV. CREATION OF DOCUMENTS RELATING TO THE ACCIDENT

- A. **In view of the anticipated litigation, all documents created from this point forward concerning the accident (including correspondence and internal memoranda) must be approved by the legal department or outside counsel before being finalized and signed or sent.**
- B. You should avoid writing unnecessary documents.
- C. If it is necessary to write a document, stick to factual observations and do not include your personal opinions or speculations.
- D. Be aware that all documents, including your scribbled notes, diary entries, phone messages, emails, letters, etc. will almost certainly be turned over to attorneys who are suing the company. Please take time to think about the implications of what you are writing and how it might be misconstrued in litigation.
- E. If it is necessary to prepare a document relating to the accident, especially those that deal with possible causes of the accident, responsibility, liability or recommended preventive measures, it must be reviewed by counsel in preliminary draft form. All such materials should be clearly marked "preliminary draft" and should follow the form provided in the attachment to this memorandum. **It is imperative that all personnel use the attached format when preparing documents that relate in any way to the accident.** Using this format is imperative to preserve privileges that protect the candid discussion of legal issues within the company and between the company and its attorneys. Failure to use this format may waive that privilege and result in confidential communications being disclosed to adversaries in litigation. You should prepare direct requests for such approval to your Party Coordinator unless you are dealing directly with the legal department or outside counsel.
- F. Documents that would otherwise be privileged, but pass through too many hands, may lose their privileged status even if they are only circulated within the company. You should therefore distribute documents only through your Party Coordinator.
- G. Again, keep a separate file for all documents created that relate to this investigation.

V. RETENTION OF RECORDS RELATING TO THE ACCIDENT

- A. **Do not destroy any documents that existed as of the date of the accident that you believe may refer to any matter relating to this accident.** We need to "freeze" two copies of all relevant manuals, and other relevant materials that are periodically updated, to preserve them as they existed on the day of the accident.
- B. You must also preserve documents created after the accident, if you believe they refer to any matter relating to this accident.

VI. RETURN OF AIRCRAFT COMPONENTS BY THE NTSB

- A. At some point, the NTSB may want to take possession of aircraft parts and then return them to the company. **Do not accept any parts of the accident aircraft without prior permission of counsel.**
- B. If aircraft parts are returned to the company, proper chain of custody documents must be prepared to show who had custody of the given part and to whom, when and where the part was given. Both the person giving the parts and the person accepting the parts must sign the chain of custody receipt.

**PLEASE DISTRIBUTE THIS MEMORANDUM
TO OTHER COMPANY PERSONNEL
WHO ARE WORKING WITH YOU ON THE INVESTIGATION**

Attachment

CONFIDENTIAL COMMUNICATION TO COUNSEL

To: Fox Rothschild LLP
Attn: _____

Legal Department
Attn: _____

From: [Employee Name]

Date:

Re: Preparation for Litigation, [**describe specific topic**]

* * * [body of proposed communication] * * *

cc: [**Only as directed by counsel**]

[On Company Letterhead]
[Date]

To: Distribution List

From: [Legal Department Contact]

Subject: NTSB Investigation of _____ and Related Litigation.

The National Transportation Safety Board (NTSB) is conducting an investigation into this accident. The Company is a party to that investigation and is cooperating fully with the NTSB to determine the cause of this accident. While the NTSB investigation is supposed to proceed without regard to the possible consequences for the participants in court, both the information uncovered in the NTSB investigation and the recommendations and conclusions reached by the NTSB may have a substantial impact on the outcome of litigation against the Company as well as our business interests. This fact is not lost on other parties to this investigation, so we must be mindful of it as well.

For these reasons, we have retained the law firm of Fox Rothschild LLP, to assist us during the NTSB investigation. They will work closely with us to protect our interests. Our primary contact is _____. His phone numbers are: office: _____, cell: _____. The Company Legal Department contacts are _____.

Any questions about this memorandum or the legal implications of any matter relating to this accident should be directed to these contacts. In addition, we have designated _____ as our Party Coordinator to the NTSB investigation. _____ will be our primary contact with the NTSB and should be aware of all actions you take in this investigation.

Following the instructions, guidelines and tips will assist you in participating effectively in the NTSB investigation while protecting the interests of the Company.

OVERVIEW OF NTSB ACCIDENT INVESTIGATION PROCESS

The NTSB has been granted statutory authority to investigate accidents occurring in a number of transportation modes, including aviation, highway, railroad, pipeline and marine accidents. The Safety Board's structure and authority to investigate aircraft accidents is found at 49 U.S.C. §§ 1111, 1131 et seq.

As part of any accident investigation, the NTSB may order a Public Hearing if it finds that such a hearing is in the public interest. There are normally three meetings associated with a major accident investigation: the prehearing conference, the Public Hearing and the so-called Sunshine meeting.

1. Prehearing Conference

The prehearing conference is an informal gathering for the purposes of: (a) outlining the procedures to be used at the formal hearing, (b) identifying issues to be investigated and exhibits to be referenced at the hearing, and (c) discussing any matters that the parties may wish to raise.

At the conference, the members of the Board of Inquiry and the Technical Panel will be introduced. The parties will be provided with a list of witnesses to be called at the formal hearing, the areas on which the witnesses will be examined, and the exhibits that will be offered into evidence. 49 CFR part 845, subpart A. It is the obligation of the parties to advise the Chairman of the Board of Inquiry, at the prehearing conference, of any additional witnesses or exhibits which they desire to offer. If they fail to do so, they risk preclusion of the offered witness(es) or exhibit(s). 49 CFR § 845.9 (c).

2. Hearing

The active participants at an NTSB hearing are basically divided into three categories: the members of the Board of Inquiry, the members of the Technical Panel, and the parties (with their representatives).

The Board of Inquiry is composed of high-ranking officials from the NTSB, at least one of whom is a member of the NTSB Board itself. The NTSB Board member presides over the hearing as the hearing Chairman. Although generally Board members have a fixed order of rotation in which they preside over hearings, the Chairman of the NTSB, should he/she so desire, may schedule the hearings of other accidents in such a manner that a particular hearing falls to him/her.

The other members of the Board of Inquiry, typically four to five in number, are usually Directors, Deputy Directors or Section Chiefs of the NTSB, each having expertise in a specialized field. By way of example, in the Pittsburgh hearing involving the crash of a Boeing 737, on September 8, 1994, Chairman James Hall served as a Board of Inquiry member, with the remaining members being the Deputy Director of the Office of Aviation Safety, the Chief of the Major Investigations Division and the Chief of the Office of Research and Engineering.

Members of the Technical Panel, typically five to 10 in number, are also employees of the NTSB and, while being recognized experts in particular specialties, are generally lower in rank than the members of the Board of Inquiry.

The type of expertise utilized on the Technical Panel is dictated by the circumstances of the crash. Again, by way of example, in the Pittsburgh crash, the panel was composed of investigators in the following areas: Operations, Air Traffic Control, Meteorology, Survival Factors, Structures, Power Plant, Systems, Flight Data Recorder, Maintenance Records, Cockpit Voice Recorder, Aircraft Performance, Human Performance and Airports/ARFF.

The parties themselves constitute the final category of active participants in the Board's inquiry. The Chairman of the Board of Inquiry is empowered to designate as parties to the hearing those persons, agencies, companies and

associations whose participation in the hearing “is deemed necessary in the public interest and whose special knowledge will contribute to the development of pertinent evidence.” 49 CFR § 845.6 (a). Parties must be represented by qualified technical employees, or other employees or spokespersons associated with the entity who do not occupy legal positions. No party may be associated with or represented by any person who also represents claimants or insurers. 49 CFR § 845.6 (b). Although no attorneys may represent the parties, counsel and other individuals of the parties’ choosing may sit at the party tables and advise the party spokesperson throughout the hearing.

The hearing is not conducted as a trial. Generally the questioning of a witness is started by a single member from the Technical Panel, followed by one or more rounds of questioning by the Board of Inquiry and the party spokespersons.

Although witnesses may have counsel present and may consult counsel (49 CFR § 845.10.), objections are not entertained as in the traditional courtroom setting. If an attorney for a witness feels that the questioning is going too far afield, he may let his concerns be known and the presiding Board Member will determine the effect of those concerns. 49 CFR § 845.11 (b). The testimony of the witness, however, may have a significant effect on the subsequent litigation. A verbatim record is made of all testimony at the hearing and copies of the transcript are made available to the public. 49 CFR § 845.14. These transcripts may be, and are, used at subsequent depositions and at trial.

The order of witnesses is roughly in accordance with the following outline: (a) the NTSB Investigator in charge of the accident will outline what has been learned and accomplished in the course of the litigation, (b) eyewitnesses to the accident, such as passengers on the aircraft, flight attendants, ground crew and “passers by” will then be called upon to recount what they witnessed, and finally (c) the remaining technical witnesses will be called upon to testify as to general practices adhered to by the company or entity and to discuss any specific facts relevant to the accident.

Once the hearing has been completed, each party to the investigation may make a submission to the NTSB setting forth proposed findings, a proposed probable cause, and proposed safety recommendations. 49 CFR § 845.13. It is always advisable to take this additional step to insure that a party’s point of view is understood.

3. Sunshine Meeting

This is the public meeting at which the members of the Board formally receive the draft accident report from the NTSB technical staff and vote on the findings, conclusions, probable cause and safety recommendations. It is called a “Sunshine” meeting because it is open to the public. However, only NTSB personnel may participate in the Sunshine hearing. The public, including the parties to the investigation, and accident victims and family members, may attend, but may not participate in any way. The participants are generally specialists from the NTSB technical staff, NTSB management and the entire NTSB Board.

SUMMARY OF APPLICABLE REGULATIONS, LAWS AND TREATIES

Accident Within the United States

Regulations and statutes play a role in every phase of accident notification and investigation. An accident scene is first a rescue and recovery scene. Although it is the responsibility of the carrier to control the site, the appropriate fire and rescue departments, the coroner/medical examiner and local law enforcement will likely be the first responders to an accident. The NTSB assumes control upon arrival at the scene.

NTSB Role and Regulations

The NTSB investigates air carrier accidents.¹ 49 CFR § 831.20. Although the NTSB has investigative authority over all other federal agencies, in 2000, the U.S. Code was amended to allow the transfer of investigative control to the FBI should the Attorney General and Director of the NTSB conclude the accident may have been caused by a criminal act. In this case, the NTSB will likely assume a role in support of the Department of Justice/FBI.²

Additionally, the NTSB will use the resources of other government agencies based on 49 U.S.C. § 1113(b)(1)(C)³. The following are the most applicable NTSB regulations governing the accident notification and investigation.

Accident Notification: NTSB Regulation 49 CFR part 830 defines aircraft accident and initial notification requirements.

- 830.1 Applicability
- 830.2 Definitions
- 830.5 Immediate Notification
- 830.6 Information to be given in notification
- 830.10 Preservation of aircraft wreckage, mail, cargo, and records
- 830.15 Reports and statements to be filed.

NTSB Regulation 49 CFR part 831 covers the accident investigation process and procedures:

Subpart A – General

- 831.1 Applicability of part.
- 831.2 Responsibility of Board.
- 831.3 Authority of Directors.
- 831.4 Nature of investigation.
- 831.5 Priority of Board investigations.
- 831.6 Request to withhold information.
- 831.7 Right to representation.
- 831.8 Investigator-in-charge.
- 831.9 Authority of Board representatives.
- 831.10 Autopsies.
- 831.11 Parties to the investigation.
- 831.12 Access to and release of wreckage, records, mail, and cargo.
- 831.13 Flow and dissemination of accident or incident information.
- 831.14 Proposed findings.

Subpart B – Aviation

- 831.20 Authority of NTSB in aviation investigations.
- 831.21 Other Government agencies and NTSB Aviation investigations.

Subpart C – Highway Investigations

- 831.30 Authority of NTSB in highway investigations.

Subpart D – Railroad, Pipeline, and Hazardous Materials Investigations

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

¹ 49 U.S.C. 1132(a)(1)(A) This enabling statute for the NTSB states: “The National Transportation Safety Board shall investigate each accident involving civil aircraft.”

² 49 U.S.C. 1131(a)(2)(B) “If the Attorney General, in consultation with the Chairman of the Board, determines and notifies the Board that circumstances reasonably indicate that the accident may have been caused by an intentional criminal act, the Board shall relinquish investigative priority to the Federal Bureau of Investigation. The relinquishment of investigative priority by the Board shall not otherwise affect the authority of the Board to continue its investigation under this section.”

³ For example, the NTSB has a Memorandum of Understanding with the Department of State to use that agency’s resources in furtherance of the Aviation Disaster Family Assistance Act of 1996.

Corporate Role in the NTSB Investigation

The following is reproduced from the NTSB Accident Investigators Manual – Major Team Investigations, App. F.

1. Role of Parties to the Investigation

The primary purpose of inviting organizations to participate in an accident investigation is to assist the Board in developing a complete and accurate factual record of the accident. It also helps responsible safety officials to have immediate access to facts regarding the accident/incident that may facilitate prompt preventive and/or corrective action. Participation as a party, however, is a privilege—not a right—and conveys no right to information or participation. You will participate initially in the field (on-scene) phase of the investigation as a Party Coordinator or as a representative of a party to the investigation. Later, your organization may be designated as a party to any public hearing on the accident the Board may hold, provided it meets the Board's requirements. Participation in the investigation does not automatically guarantee party status at a Safety Board public hearing. Conversely, participation in the investigation is not a prerequisite to participation in a public hearing.

All persons participating in the Safety Board's investigation must have qualifications that relate to specific factual information or skills that would not otherwise be available to the Board. Also, no participating organization will be permitted representation by a person who has interests beyond the safety objective of the investigation. The Board's rules specifically prohibit any party from being represented by a person who represents claimants or insurers. No persons occupying legal positions may participate as parties. Participants in the investigation shall be responsive to the direction of Safety Board personnel and may be expelled from the investigation if they do not perform their assigned duties or if they conduct themselves in a manner prejudicial to the investigation. If you are a party coordinator for your organization, you will also be required to sign a statement to ensure your complete understanding of 49 Code of Federal Regulations (CFR §831.11 related to parties to the field investigation. At all phases of the investigation, party coordinators are responsible for the behavior of their employees or representatives.

Drug and Alcohol Testing regulations

- Drug testing – post accident 14 CFR §120.109
- Testing required “if that employee’s performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident.” Testing should be done as soon as possible but not later than 32 hours after the accident.
- Alcohol Testing – post accident 14 CFR §120.217
- Alcohol testing standard same as drug testing. Testing should be accomplished within two hours. Should testing not be completed within eight hours, company must provide explanatory report to the FAA.
- The NTSB has authority to receive the results of these tests, 49 U.S.C. §1114(e).

Law Enforcement and Criminal Concerns

- Accidents resulting in death may result in criminal charges and liability for personnel, corporate officers, and the corporation.

Other Laws and Their Applicability

- Health Insurance Portability and Accountability Act of 1996 – HIPAA protects private medical information. Generally, a person must sign a waiver to disclose personal medical information. HIPAA includes certain exceptions to getting a waiver. A disaster with mass casualties is one such exception. Under this exception, a public health authority may seek and obtain private medical information without getting a personal waiver.
- The NTSB is considered a public health authority for this purpose under 45 CFR §164.512.
- The FAA has pursued public health authority status and will likely be entitled to receive such private health information without a signed waiver.
- Occupational Safety and Health Administration regulations also play a role in aviation accidents.⁴ The OSHA Act covers workplace related injuries and fatalities. 29 CFR part 1910. Pertinent concerns include:
 - OSHA training required for blood borne pathogen hazards
 - Immunizations for rescue workers
 - Protective equipment against blood borne pathogen hazards

⁴ 29 U.S.C. §654 (a)(1) “Each employer shall comply with occupational safety and health standards promulgated under this section.”

- Exposure control plan 29 CFR §1910.1030(c)(1)
- Aviation Disaster Family Assistance Act of 1996 Public Law 104-264 110 Statute 3214 Section 703.
- This plan details the actions and duties of the NTSB, other agencies, and the airlines during the crash investigation.
- Under a 1999 agreement between the NTSB and the Air Transport Association (now Airlines for America (AFA)), airlines have agreed to pay both logistical and transportation expenses for families wishing to travel to accident site and extraordinary expenses for crash victim recovery and identification and emergency response.
- Other government agency regulations may be pertinent depending on the aircraft manifest
- Postal Service notification required for loss of US mail
- Department of Defense notification required when military personnel are onboard
- Hazardous cargo may involve:
- Center for Disease Control
- U.S. Energy Research and Development Administration

Accident outside the United States

International Civil Aviation Organization (ICAO) Annex 13 sets the ground rules for investigations of aviation accidents involving more than one country. The NTSB will likely be a party to the investigation.

ICAO Annex 13 Filed Differences

The United States investigation protocol follows ICAO standards with the following filed differences to ICAO Annex 13 – Aircraft Accident and Incident Investigation.

- Section 5.12
 - The United States laws provide some protection against dissemination of some medical or private information.
 - US laws also prohibits disclosure of the cockpit voice recorder information not pertinent to the investigation.
- Section 5.25(h)
 - Deliberations related to analysis, probable causes and safety recommendations are limited to investigative authority and staff. Other participation is through written submissions.

- Section 5.26(b)
 - The standard used in the US for public access to information does not consider the consent of the state conducting the investigation.
- Section 6.2
 - The U.S. laws on public right to access of government-held information may not protect the dissemination of a draft report.

Treaties applicable to accidents and investigations:

Which treaty applies depends on accident location and origin country of parties involved.

- Warsaw Convention of 1929
 - The Warsaw Convention established liability limits for loss in an aviation accident. A fixed and undisputed payout was established unless willful misconduct on the part of the carrier could be proven.
- The Hague Protocol
 - This protocol increased the amount of compensation for each loss or injury under the Warsaw Convention.
- The Montreal Convention
 - This convention was held for the purpose of modernizing the Warsaw Convention and incorporating other related documents. The convention supercedes the previous international air carriage agreements – the Warsaw Convention and the Hague Protocol. It became effective after 30 nations adopted the convention in 2003.
 - This convention eliminates passenger liability limits of the Warsaw Convention/Hague Protocol, leaving a court to decide if there is liability.
 - Article 33 of this convention allows jurisdiction over suits to be brought in the domicile of a code share partner. This is generally considered a way of accessing U.S. courts for higher damage awards.

Local Laws

The local laws of the territory of the crash will also play an important role. Some countries consider an accident investigation a criminal matter. Should an accident occur outside the United States, consider seeking advice of the general counsel or outside counsel. The investigative organizations of territories surrounding the United States are:

- Aruba – Regulatory and investigative body is Director of Civil Aviation
- Bahamas – Regulatory and investigative body is Director of Civil Aviation
- Bermuda - Regulatory body is Bermuda Department of Civil Aviation, investigative agency is the Director of Civil Aviation
- Canada – Regulatory body is Transport Canada, investigative agency is Transportation Safety Board Canada (TSBC)
- Cayman Islands – Regulatory body is Civil Aviation Authority, investigative agency is Director of Civil Aviation
- Mexico – Regulatory and investigative authority is Dirección General de Aeronáutica Civil Evidence handling and protection

NTSB approval is required before moving any item from an accident scene. Some accidents may be investigated as a criminal matter by the FBI. These investigations may have established evidence handling protocols.

However, any accident investigation can lead to litigation. See the ASTM Standard Practice for Examining And Preparing Items That Are Or May Become Involved In Criminal or Civil Litigation (ASTM E860-07). Adherence to these guidelines is appropriate from the beginning of the accident investigation.

NTSB STATUTORY AUTHORITY AND RELATED SECTIONS 49 U.S.C. §1101 – 1155
§1101 Definitions

In this chapter, the term “accident” includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or otherwise.

§1112 Special Boards of Inquiry on air transportation safety

- (a) **Establishment.**— If an accident involves a substantial question about public safety in air transportation, the National Transportation Safety Board may establish a special board of inquiry composed of—
- (1) one member of the Board acting as chairman; and
 - (2) 2 members representing the public, appointed by the President on notification of the establishment of the special board of inquiry.
- (b) **Qualifications and Conflicts of Interest.**— The public members of a special board of inquiry must be qualified by training and experience to participate in the inquiry and may not have a pecuniary interest in an aviation enterprise involved in the accident to be investigated.
- (c) **Authority.**— A special board of inquiry has the same authority that the Board has under this chapter.

§1114 Disclosure, availability, and use of information

- (a) **General.**—
- (1) Except as provided in subsections (b), (c), (d), and (f) of this section, a copy of a record, information, or investigation submitted or received by the National Transportation Safety Board, or a member or employee of the Board, shall be made available to the public on identifiable request and at reasonable cost. This subsection does not require the release of information described by section 552 (b) of title 5 or protected from disclosure by another law of the United States.
 - (2) The Board shall deposit in the Treasury amounts received under paragraph (1) to be credited to the appropriation of the Board as offsetting collections.
- (b) **Trade Secrets.**—
- (1) The Board may disclose information related to a trade secret referred to in section 1905 of title 18 only—
 - (A) to another department, agency, or instrumentality of the United States Government when requested for official use;
 - (B) to a committee of Congress having jurisdiction over the subject matter to which the information is related, when requested by that committee;
 - (C) in a judicial proceeding under a court order that preserves the confidentiality of the information without impairing the proceeding; and
 - (D) to the public to protect health and safety after giving notice to any interested person to whom the information is related and an opportunity for that person to comment in writing, or orally in closed session, on the proposed disclosure, if the delay resulting from notice and opportunity for comment would not be detrimental to health and safety.
 - (2) Information disclosed under paragraph (1) of this subsection may be disclosed only in a way designed to preserve its confidentiality.
 - (3) **Protection of Voluntary Submission of Information.**— Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose voluntarily

provided safety-related information if that information is not related to the exercise of the Board's accident or incident investigation authority under this chapter and if the Board finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

(c) Cockpit Recordings and Transcripts.—

- (1) The 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. However, the Board shall make public any part of a transcript or any written depiction of visual information the Board decides is relevant to the accident or incident—
 - (A) if the Board holds a public hearing on the accident or incident, at the time of the hearing; or
 - (B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident or incident are placed in the public docket.
- (2) This subsection does not prevent the Board from referring at any time to cockpit voice or video recorder information in making safety recommendations.

(d) Surface Vehicle Recordings and Transcripts.— (omitted – applicable to non-aviation events)

(e) Drug Tests.—

- (1) Law 100–71, 101 Stat. 471), the Secretary of Transportation shall provide the following information to the Board when requested in writing by the Board:
 - (A) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, conducted on an officer or employee of the Department of Transportation under post-accident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when the officer or employee is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the Board.
 - (B) any laboratory record documenting that the test is confirmed positive.
- (2) Except as provided by paragraph (3) of this subsection, the Board shall maintain the confidentiality of, and exempt from disclosure under section 552 (b)(3) of title 5—
 - (A) a laboratory record provided the Board under paragraph (1) of this subsection that reveals medical use of a drug allowed under applicable regulations; and
 - (B) medical information provided by the tested officer or employee related to the test or a review of the test.
- (3) The Board may use a laboratory record made available under paragraph (1) of this subsection to develop an evidentiary record in an investigation of an accident or incident if—
 - (A) the fitness of the tested officer or employee is at issue in the investigation; and
 - (B) the use of that record is necessary to develop the evidentiary record.

(f) Foreign Investigations.—

- (1) In general.— Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose records or information relating to its participation in foreign aircraft accident investigations; except that—
 - (A) the Board shall release records pertaining to such an investigation when the country conducting the investigation issues its final report or 2 years following the date of the accident, whichever occurs first; and
 - (B) the Board may disclose records and information when authorized to do so by the country conducting the investigation.

- (2) Safety recommendations.— Nothing in this subsection shall restrict the Board at any time from referring to foreign accident investigation information in making safety recommendations.

§1131 General Authority

(a) General.—

- (1) The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of—
- (A) an aircraft accident the Board has authority to investigate under section 1132 of this title or an aircraft accident involving a public aircraft as defined by section 40102 (a)(37) of this title other than an aircraft operated by the Armed Forces or by an intelligence agency of the United States;
 - (B) a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State;
 - (C) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train;
 - (D) a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment;
 - (E) a major marine casualty (except a casualty involving only public vessels) occurring on the navigable waters or territorial sea of the United States, or involving a vessel of the United States, under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; and
 - (F) any other accident related to the transportation of individuals or property when the Board decides—
 - (i) the accident is catastrophic;
 - (ii) the accident involves problems of a recurring character; or
 - (iii) the investigation of the accident would carry out this chapter.
- (2)
- (A) Subject to the requirements of this paragraph, 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.
 - (B) If the Attorney General, in consultation with the Chairman of the Board, determines and notifies the Board that circumstances reasonably indicate that the accident may have been caused by an intentional criminal act, the Board shall relinquish investigative priority to the Federal Bureau of Investigation. The relinquishment of investigative priority by the Board shall not otherwise affect the authority of the Board to continue its investigation under this section.
 - (C) If a Federal law enforcement agency suspects and notifies the Board that an accident being investigated by the Board under subparagraph (A), (B), (C), or (D) of paragraph (1) may have been caused by an intentional criminal act, the Board, in consultation with the law enforcement agency, shall take necessary actions to ensure that evidence of the criminal act is preserved.

- (3) This section and sections 1113, 1116 (b), 1133, and 1134 (a) and (c)–(e) of this title do not affect the authority of another department, agency, or instrumentality of the Government to investigate an accident under applicable law or to obtain information directly from the parties and witnesses to, the accident. The Board and other departments, agencies, and instrumentalities shall ensure that appropriate information developed about the accident is exchanged in a timely manner.

(b) Accidents Involving Public Vessels.—

- (1) The Board or the head of the department in which the Coast Guard is operating shall investigate and establish the facts, circumstances, and cause or probable cause of a marine accident involving a public vessel and any other vessel. The results of the investigation shall be made available to the public.
- (2) Paragraph (1) of this subsection and subsection (a)(1)(E) of this section do not affect the responsibility, under another law of the United States, of the head of the department in which the Coast Guard is operating.

(c) Accidents Not Involving Government Misfeasance or Nonfeasance.—

- (1) When asked by the Board, the Secretary of Transportation may—
- (A) investigate an accident described under subsection (a) or (b) of this section in which misfeasance or nonfeasance by the Government has not been alleged; and
 - (B) report the facts and circumstances of the accident to the Board.
- (2) The Board shall use the report in establishing cause or probable cause of an accident described under subsection (a) or (b) of this section.

(d) Accidents Involving Public Aircraft.— The Board, in furtherance of its investigative duties with respect to public aircraft accidents under subsection (a)(1)(A) of this section, shall have the same duties and powers as are specified for civil aircraft accidents under sections 1132 (a), 1132 (b), and 1134 (a), (b), (d), and (f) of this title.

(e) Accident Reports.— The Board shall report on the facts and circumstances of each accident investigated by it under subsection (a) or (b) of this section. The Board shall make each report available to the public at reasonable cost.

§1132 Civil Aircraft Accident Investigations

(a) General Authority.—

- (1) The National Transportation Safety Board shall investigate—
- (A) each accident involving civil aircraft; and
 - (B) with the participation of appropriate military authorities, each accident involving both military and civil aircraft.
- (2) A person employed under section 1113 (b)(1) of this title that is conducting an investigation or hearing about an aircraft accident has the same authority to conduct the investigation or hearing as the Board.

(b) Notification and Reporting.— The Board shall prescribe regulations governing the notification and reporting of accidents involving civil aircraft.

(c) Participation of Secretary.— The Board shall provide for the participation of the Secretary of Transportation in the investigation of an aircraft accident under this chapter when participation is necessary to carry out the duties and powers of the Secretary. However, the Secretary may not participate in establishing probable cause.

(d) Accidents Involving Only Military Aircraft.— If an accident involves only military aircraft and a duty of the Secretary is or may be involved, the military authorities shall provide for the participation of the Secretary. In any other accident involving only military aircraft, the military authorities shall give the Board or Secretary information the military authorities decide would contribute to the promotion of air safety.

§1134 Inspections and Autopsies

- (a) Entry and Inspection.**— An officer or employee of the National Transportation Safety Board—
- (1) on display of appropriate credentials and written notice of inspection authority, may enter property where a transportation accident has occurred or wreckage from the accident is located and do anything necessary to conduct an investigation; and
 - (2) during reasonable hours, may inspect any record, process, control, or facility related to an accident investigation under this chapter.
- (b) Inspection, Testing, Preservation, and Moving of Aircraft and Parts.**—
- (1) In investigating an aircraft accident under this chapter, the Board may inspect and test, to the extent necessary, any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce.
 - (2) Any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce shall be preserved, and may be moved, only as provided by regulations of the Board.
- (c) Avoiding Unnecessary Interference and Preserving Evidence.**— In carrying out subsection (a)(1) of this section, an officer or employee may examine or test any vehicle, vessel, rolling stock, track, or pipeline component. The examination or test shall be conducted in a way that—
- (1) does not interfere unnecessarily with transportation services provided by the owner or operator of the vehicle, vessel, rolling stock, track, or pipeline component; and
 - (2) to the maximum extent feasible, preserves evidence related to the accident, consistent with the needs of the investigation and with the cooperation of that owner or operator.
- (d) Exclusive Authority of Board.**— Only the Board has the authority to decide on the way in which testing under this section 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. Those decisions are committed to the discretion of the Board. The Board shall make any of those decisions based on the needs of the investigation being conducted and, when applicable, subsections (a), (c), and (e) of this section.
- (e) Promptness of Tests and Availability of Results.**— An inspection, examination, or test under subsection (a) or (c) of this section shall be started and completed promptly, and the results shall be made available.
- (f) Autopsies.**—
- (1) The Board may order an autopsy to be performed and have other tests made when necessary to investigate an accident under this chapter. However, local law protecting religious beliefs related to autopsies shall be observed to the extent consistent with the needs of the accident investigation.
 - (2) With or without reimbursement, the Board may obtain a copy of an autopsy report performed by a State or local official on an individual who died because of a transportation accident investigated by the Board under this chapter.

§1136 Assistance to families of passengers involved in aircraft accidents

- (a) In General.**— As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—
- (1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

- (2) designate an independent nonprofit organization, with experience in disasters and post trauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.
- (b) Responsibilities of the Board.**— The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).
- (c) Responsibilities of Designated Organization.**— The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:
 - (1) To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.
 - (2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.
 - (3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.
 - (4) To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.
 - (5) To arrange a suitable memorial service, in consultation with the families.
- (d) Passenger Lists.**—
 - (1) Requests for passenger lists.**—
 - (A) Requests by director of family support services.**— It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.
 - (B) Requests by designated organization.**— The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).
 - (2) Use of information.**— The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.
- (e) Continuing Responsibilities of the Board.**— In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident—
 - (1) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and
 - (2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.
- (f) Use of Air Carrier Resources.**— To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization's responsibilities under this section.

(g) Prohibited Actions.—

- (1) **Actions to impede the board.**— No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.
- (2) **Unsolicited communications.**— In the event of an accident involving an air carrier providing interstate or foreign air transportation and in the event of an accident involving a foreign air carrier that occurs within the United States, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.
- (3) **Prohibition on actions to prevent mental health and counseling services.**— No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

(h) Definitions.— In this section, the following definitions apply:

- (1) **Aircraft accident.**— The term “aircraft accident” means any aviation disaster regardless of its cause or suspected cause.
- (2) **Passenger.**— The term “passenger” includes—
 - (A) an employee of an air carrier or foreign air carrier aboard an aircraft; and
 - (B) any other person aboard the aircraft without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the flight.
- (i) **Statutory Construction.**— Nothing in this section may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.
- (j) **Relinquishment of Investigative Priority –**
 - (1) **General Rule.** — This section (other than subsection (g)) shall not apply to an aircraft accident if the Board has relinquished investigative priority under section 1131(a)(2)(b) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.
 - (2) **Board assistance.** — If this section does not apply to an aircraft accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.

§1151 Aviation Enforcement

- (a) **Civil Actions by Board.**— The National Transportation Safety Board may bring a civil action in a district court of the United States against a person to enforce section 1132, 1134 (b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections. An action under this subsection may be brought in the judicial district in which the person does business or the violation occurred.

(b) Civil Actions by Attorney General.— On request of the Board, the Attorney General may bring a civil action in an appropriate court—

- (1) to enforce section 1132, 1134 (b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections; and
- (2) to prosecute a person violating those sections or a regulation prescribed or order issued under any of those sections.

(c) Participation of Board.— On request of the Attorney General, the Board may participate in a civil action to enforce section 1132, 1134 (b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title.

§1152 Joinder and intervention in aviation proceedings

A person interested in or affected by a matter under consideration in a proceeding or a civil action to enforce section 1132, 1134 (b) or (f)(1) (related to an aircraft accident), or 1155(a) of this title, or a regulation prescribed or order issued under any of those sections, may be joined as a party or permitted to intervene in the proceeding or civil action.

§1153 Judicial Review

(a) General.— The appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia Circuit may review a final order of the National Transportation Safety Board under this chapter. A person disclosing a substantial interest in the order may apply for review by filing a petition not later than 60 days after the order of the Board is issued.

(b) Persons Seeking Judicial Review of Aviation Matters.—

- (1) A person disclosing a substantial interest in an order related to an aviation matter issued by the Board under this chapter may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60 days only if there was a reasonable ground for not filing within that 60-day period.
- (2) When a petition is filed under paragraph (1) of this subsection, the clerk of the court immediately shall send a copy of the petition to the Board. The Board shall file with the court a record of the proceeding in which the order was issued.
- (3) When the petition is sent to the Board, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Board to conduct further proceedings. After reasonable notice to the Board, the court may grant interim relief by staying the order or taking other appropriate action when cause for its action exists. Findings of fact by the Board, if supported by substantial evidence, are conclusive.
- (4) In reviewing an order under this subsection, the court may consider an objection to an order of the Board only if the objection was made in the proceeding conducted by the Board or if there was a reasonable ground for not making the objection in the proceeding.
- (5) A decision by a court under this subsection may be reviewed only by the Supreme Court under section 1254 of title 28.

(c) Administrator Seeking Judicial Review of Aviation Matters.— When the Administrator of the Federal Aviation Administration decides that an order of the Board under section 44709 or 46301 (d)(5) of this title will have a significant adverse impact on carrying out this chapter related to an aviation matter, the Administrator may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

- (d) **Commandant Seeking Judicial Review of Maritime Matters.** — If the Commandant of the Coast Guard decides that an order of the Board issued pursuant to a review of a Coast Guard action under section 1133 of this title will have an adverse impact on maritime safety or security, the Commandant may obtain judicial review of the order under subsection (a). The Commandant, in the official capacity of the Commandant, shall be a party to the judicial review proceedings.

§1154 Discovery and use of cockpit and surface vehicle recordings and transcripts

(a) Transcripts and Recordings.—

- (1) Except as provided by this subsection, a party in a judicial proceeding may not use discovery to obtain—
 - (A) any part of a cockpit or surface vehicle recorder transcript that the National Transportation Safety Board has not made available to the public under section 1114 (c) or 1114 (d) of this title; and
 - (B) a cockpit or surface vehicle recorder recording.
- (2)
 - (A) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit or surface vehicle recorder transcript if, after an in camera review of the transcript, the court decides that—
 - (i) the part of the transcript made available to the public under section 1114 (c) or 1114 (d) of this title does not provide the party with sufficient information for the party to receive a fair trial; and
 - (ii) discovery of additional parts of the transcript is necessary to provide the party with sufficient information for the party to receive a fair trial.
 - (B) A court may allow discovery, or require production for an in camera review, of a cockpit or surface vehicle recorder transcript that the Board has not made available under section 1114 (c) or 1114 (d) of this title only if the cockpit or surface vehicle recorder recording is not available.
- (3) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit or surface vehicle recorder recording if, after an in camera review of the recording, the court decides that—
 - (A) the parts of the transcript made available to the public under section 1114 (c) or 1114 (d) of this title and to the party through discovery under paragraph (2) of this subsection do not provide the party with sufficient information for the party to receive a fair trial; and (B) discovery of the cockpit or surface vehicle recorder recording is necessary to provide the party with sufficient information for the party to receive a fair trial.
- (4)
 - (A) When a court allows discovery in a judicial proceeding of a part of a cockpit or surface vehicle recorder transcript not made available to the public under section 1114 (c) or 1114 (d) of this title or a cockpit or surface vehicle recorder recording, the court shall issue a protective order—
 - (i) to limit the use of the part of the transcript or the recording to the judicial proceeding; and
 - (ii) to prohibit dissemination of the part of the transcript or the recording to any person that does not need access to the part of the transcript or the recording for the proceeding.

- (B) A court may allow a part of a cockpit or surface vehicle recorder transcript not made available to the public under section 1114 (c) or 1114 (d) of this title or a cockpit or surface vehicle recorder recording to be admitted into evidence in a judicial proceeding, only if the court places the part of the transcript or the recording under seal to prevent the use of the part of the transcript or the recording for purposes other than for the proceeding.
- (5) This subsection does not prevent the Board from referring at any time to cockpit or surface vehicle recorder information in making safety recommendations.
- (6) In this subsection:
 - (A) **Recorder.**— The term “recorder” means a voice or video recorder.
 - (B) **Transcript.**— The term “transcript” includes any written depiction of visual information obtained from a video recorder.
- (b) **Reports.**— No part of a report of the Board, related to an accident or an investigation of an accident, may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.

§1155 Aviation penalties

(a) Civil Penalty.—

- (1) A person violating section 1132, section 1134(b), section 1134 (f)(1), or section 1136 (g) (related to an aircraft accident) of this title or a regulation prescribed or order issued under any of those sections is liable to the United States Government for a civil penalty of not more than \$1,000. A separate violation occurs for each day a violation continues.
 - (2) This subsection does not apply to a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of Military Justice when the member or employee is performing official duties. The appropriate military authorities are responsible for taking necessary disciplinary action and submitting to the National Transportation Safety Board a timely report on action taken.
 - (3) The Board may compromise the amount of a civil penalty imposed under this subsection.
 - (4) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.
 - (5) A civil penalty under this subsection may be collected by bringing a civil action against the person liable for the penalty. The action shall conform as nearly as practicable to a civil action in admiralty.
- (b) **Criminal Penalty.**— A person that knowingly and without authority removes, conceals, or withholds a part of a civil aircraft involved in an accident, or property on the aircraft at the time of the accident, shall be fined under title 18, imprisoned for not more than 10 years, or both.

**TITLE 49—TRANSPORTATION
CHAPTER VIII—NATIONAL TRANSPORTATION SAFETY BOARD
PART 831 Investigation Procedures**

Subpart A—GeneralSec.

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

Source: 82 FR 29685, June 29, 2017, unless otherwise noted.

Subpart A—General

§ 831.1 Applicability of this subpart.

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

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

§ 831.2 Responsibility of the NTSB.

The NTSB is required to investigate—

- (a) Aviation accidents as described in subpart B of this part;
- (b) Highway accidents as described in subpart C of this part;
- (c) Railroad, pipeline, and hazardous materials accidents as described in subpart D of this part; and
- (d) Any accident that occurs in connection with the transportation of people or property that, in the judgment of the NTSB, is catastrophic, involves problems of a recurring nature or would otherwise carry out the intent of its authorizing statutes. This authority includes selected events involving the transportation of hazardous materials, including their release

§ 831.3 Authority of Directors.

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

§ 831.4 Nature of investigation.

- (a) General. The NTSB conducts investigations, or has them conducted, to determine the facts, conditions, and circumstances relating to an accident. The NTSB uses these results to determine one or more probable causes of an accident, and to issue safety recommendations to prevent or mitigate the effects of a similar accident. The NTSB is required to report on the facts and circumstances of accidents it investigates. The NTSB begins an investigation by monitoring the situation and assessing available facts to determine the appropriate investigative response. Following an initial assessment, the NTSB notifies persons and organizations it anticipates will be affected as to the extent of its expected investigative response.
- (b) NTSB products. An investigation may result in a report or brief of the NTSB's conclusions or other products designed to improve transportation safety. Other products may include factual records, safety recommendations, and other safety information.
- (c) NTSB investigations are fact-finding proceedings with no adverse parties. The investigative proceedings are not subject to the Administrative Procedure Act (5 U.S.C. 551 et seq.), and are not conducted for the purpose of determining the rights, liabilities, or blame of any person or entity, as they are not adjudicatory proceedings.

§ 831.5 Priority of NTSB investigations.

- (a) *Relationships with other agencies.*
 - (1) Except as provided in 49 U.S.C. 1131(a)(2)(B) and (C) regarding suspected criminal actions, an investigation conducted under the authority of the NTSB has priority over any investigation conducted by another Federal agency.
 - (2) The NTSB will provide for appropriate participation by other Federal agencies in any NTSB investigation. Such agencies may not participate in the NTSB's probable cause determination.
 - (3) The NTSB has first right to access wreckage, information, and resources, and to interview witnesses the NTSB deems pertinent to its investigation.
 - (4) As indicated in § 831.9(c) of this part, the NTSB has exclusive authority to decide when and how the testing and examination of evidence will occur.

- (5) The NTSB and other Federal agencies will exchange information obtained or developed about the accident in the course of their investigations in a timely manner. Nothing in this section prohibits the NTSB from sharing factual information with other agencies.
- (6) *Incident command system.* The NTSB recognizes the role of incident command systems to address emergencies. The NTSB does not assume the role of a first responder agency.
 - (i) The NTSB IIC or his designee will participate in the incident command system to identify and coordinate investigative needs related to the preservation and collection of information and evidence.
 - (ii) The NTSB may collect information and evidence from the incident command in a timely and reasonable manner so as not to interfere with its operations.

(b) Investigations by other Federal agencies.

- (1) Nothing in this section limits the authority of any Federal agency to conduct an investigation of an accident or incident under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, a transportation accident. Other agencies are expected to coordinate with the NTSB IIC to avoid interference with, and duplication of, the NTSB's investigative efforts. These agencies will not participate in the NTSB's probable cause determination.
- (2) The NTSB recognizes that state and local agencies may conduct activities related to an accident under investigation by the NTSB. These agencies will not participate in the NTSB's probable cause determination.
- (3) Except as described in § 831.30 of this part regarding highway investigations, the NTSB may request that a Federal agency provide to the NTSB the results of that agency's investigation of an accident when such investigation is intended to result in safety improvements or remedial action. The NTSB will not routinely request regulatory enforcement records or investigation results.

§ 831.6 Request to withhold information.

(a) Applicability.

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

(b) Disclosure.

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

(c) Disclosure procedures.

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

(d) Voluntarily provided safety information.

- (1) The NTSB will not disclose safety-related information voluntarily submitted to the NTSB if the information is not related to the exercise of the NTSB's investigation authority, and if the NTSB finds disclosure of the information might inhibit the voluntary provision of that type of information.
- (2) The NTSB will review voluntarily provided safety information for confidential content, and will de-identify or anonymize any confidential content referenced in its products.

- (e) *Other.* Any person may make written objection to the public disclosure of any other information, such as interview summaries or transcripts, contained in any report or document filed, or otherwise obtained by the NTSB, stating the grounds for such objection. The NTSB on its own initiative or if such objection is made, may order such information withheld from public disclosure, when, in its judgment, the information may be withheld under the provisions of an exemption to the FOIA (see part 801 of this chapter), and its release is found not to be in the public interest.

§ 831.7 Representation during an interview.

- (a) Any person interviewed in any manner by the NTSB has the right to be accompanied during the interview by no more than one representative of the witness's choosing. The representative—
 - (1) May be an attorney;
 - (2) May provide support and counsel to the witness;
 - (3) May not supplement the witness's testimony; and
 - (4) May not advocate for the interests of a witness's other affiliations (e.g., the witness's employer).
- (b) An investigator conducting the interview may take any necessary action (including removal of the representative from the interview) to ensure a witness's representative acts in accordance with the provisions of paragraph (a) of this section during the interview, and to prevent conduct that may be disruptive to the interview.

§ 831.8 Investigator-in-charge.

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

- (a) Organize, conduct, control, and manage the field phase of an investigation, even when a Board Member is present;
- (b) Coordinate all resources and supervise all persons (including persons not employed by the NTSB) involved in an on-site investigation; and
- (c) Continue his or her organizational and management responsibilities through all phases of the investigation, including consideration and adoption of a report or brief determining one or more probable causes of an accident

§ 831.9 Authority during investigations.

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

- (b) Subpoenas. The NTSB may issue a subpoena, enforceable in Federal District Court, to obtain testimony or evidence related to an accident, including but not limited to personal electronic devices.
 - (1) The NTSB's authority to issue subpoenas includes access to medical records and specimens.
 - (2) For purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the regulations promulgated by the DHHS, 45 CFR 164.501 et seq., the NTSB is a "public health authority" to which protected health information may be disclosed by a HIPAA "covered entity" without the prior written authorization of the subject of the records. In addition, the NTSB may issue a subpoena to gain access to such information
- (c) Examination of evidence. In accordance with 49 U.S.C. 1134
- (d) the NTSB has exclusive authority to decide timing, manner and method of testing and examination of evidence, and extraction of data.

§ 831.10 Autopsies and postmortem testing.

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

- (a) The NTSB is authorized to obtain, with or without reimbursement, a copy of a report of autopsy performed by a State or local authority on such person.
- (b) The NTSB may order an autopsy or other postmortem tests of any person as may be related to its investigation of a transportation accident. The IIC may direct that an autopsy or other test be performed if necessary for an investigation. Provisions of local law protecting religious beliefs with respect to autopsies shall be observed to the extent they are consistent with the needs of the investigation.

§ 831.11 Parties to the investigation.

- (a) *Participants.*
 - (1) The IIC may designate one or more entities to serve as parties in an investigation. Party status is limited to those persons, Federal, state, or local government agencies and organizations whose employees, functions, activities, or products were involved in the accident and that can provide suitable qualified technical personnel to actively assist in an investigation. To the extent practicable, a representative proposed by party organizations to participate in the investigation may not be a person who had direct involvement in the accident under investigation.
 - (2) Except for the FAA, no entity has a right to participate in an NTSB investigation as a party.
 - (3) The participation of the Administrator of the FAA and other Federal entities in aviation accident investigations is addressed in § 831.21 of this part.
 - (4) Participants in an investigation (e.g., party representatives, party coordinators, and/or the larger party organization) must follow all directions and instructions from NTSB representatives. Party status may be revoked or suspended if a party fails to comply with assigned duties and instructions, withholds information, or otherwise acts in a manner prejudicial or disruptive to an investigation.
- (b) *Prohibitions on serving as party representatives.*
 - (1) In accordance with § 845.6 of this chapter, no party representative may occupy a legal position or be a person who also represents claimants or insurers.
 - (2) Failure to comply with these provisions may result in sanctions, including loss of party status.
- (c) *Disclosures.*
 - (1) The name of a party and its representative may be disclosed in documents the NTSB places in the public docket for the investigation.

- (2) The NTSB may share information considered proprietary or confidential by one party with other parties during the course of an investigation, but will preserve the confidentiality of the information to the greatest extent possible.
- (3) Section 831.6(d) of this part describes how the NTSB will handle voluntarily submitted safety information, and the NTSB's determination whether to share any such information. The NTSB will de-identify the source of such information when deciding to share it.
- (d) **Party agreement.** Except for representatives of other Federal agencies, all party representatives must sign the "Statement of Party Representatives to NTSB Investigation" (Statement) upon acceptance of party status. Failure to timely sign the statement may result in sanctions, including loss of party status. Representatives of other Federal agencies, while not required to sign the Statement, will be provided notice of and must comply with the responsibilities and limitations set forth in the agreement.
- (e) **Internal review by a party.**
 - (1) To assure coordination of concurrent efforts, a party to an investigation that conducts or authorizes a review of its own processes and procedures as a result of an accident the NTSB is investigating, by signing the party agreement, agrees to, in a timely manner—(i) Inform the IIC of the nature of the review; and(ii) Provide the IIC with the findings from the review.
 - (2) If the findings from a review contain privileged information—,(i) The submitting party must inform the IIC that the review contains privileged information;(ii) The submitting party must identify the privileged content at the time of submission to the IIC; and(iii) The NTSB must, if informed that such information is being submitted, review the information for relevancy to the investigation, and determine whether public disclosure of the information is necessary for the investigation.
 - (3) The NTSB may use the protections described in § 831.6 of this part, as applicable, to protect certain findings from public disclosure.
 - (4) Investigations performed by other Federal agencies during an NTSB investigation are addressed in § 831.5 of this part.

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

- (a) Only persons authorized by the NTSB IIC may be permitted access to wreckage, records, mail, or cargo.
- (b) Wreckage, records, mail, and cargo in the NTSB's custody will be released when the NTSB determines it has no further need for such items. Recipients of released wreckage must sign an acknowledgement of release provided by the NTSB.

§ 831.13 Provision and dissemination of investigative information.

- (a) *Applicability.* This section applies to:
 - (1) Information related to the accident or incident;
 - (2) Any information collected or compiled by the NTSB as part of its investigation, such as photographs, visual representations of factual data, physical evidence from the scene of the accident, interview statements, wreckage documentation, flight data and cockpit voice recorder information, and surveillance video; and
 - (3) Any information regarding the status of an investigation, or activities conducted as part of the investigation
- (b) *Provision of information.* All information described in paragraph (a) of this section and obtained by any person or organization participating in the investigation must be promptly provided to the NTSB, except where the NTSB authorizes the party to retain the information.
- (c) *Release of information.* Parties are prohibited from releasing information obtained during an investigation at any time prior to the NTSB's public release of information unless the release is consistent with the following criteria:

- (1) Information released at the scene of an accident—(i) Is limited to factual information concerning the accident and the investigation released in coordination with the IIC; and(ii) Will be made by the Board Member present at the scene as the official spokesperson for the NTSB. Additionally, the IIC or representatives from the NTSB's Office of Safety Recommendations and Communications may release information to media representatives, family members, and elected officials as deemed appropriate.
- (2) The release of information described in paragraph (a)(1) of this section by the NTSB at the scene of an accident does not authorize any party to the investigation to comment publicly on the information during the course of the investigation. Any dissemination of factual information by a party may be made only as provided in this section.
- (3) A party may disseminate information related to an investigation to those individuals within its organization who have a need to know for the purpose of addressing a safety issue including preventive or remedial actions. If such internal release of information results in a planned safety improvement, the party must inform the IIC of such planned improvement in a timely manner before it is implemented.
- (4) Any other release of factual information related to the investigation must be approved by the IIC prior to release, including:(i) Dissemination within a party organization, for a purpose not described in paragraph (b)(3) of this section;(ii) Documents that provide information concerning the investigation, such as written directives or informational updates for release to employees or customers of a party;(iii) Information related to the investigation released to an organization or person that is not a party to the investigation;(d) The release of recordings or transcripts from certain recorders may be made only in accordance with the statutory limitations of 49 U.S.C. 1114(c) and (d).

§ 831.14 Proposed findings.

- (a) *General.* Any party to the investigation designated under § 831.11 may submit to the NTSB written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendation(s) designed to prevent future accidents.
- (b) *Timing of submissions.* The IIC will inform parties when submissions are due. All written submissions must be received by the IIC by the due date. If there is a Board meeting, the due date will be set prior to the date the matter is published in the **Federal Register**.

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- 1) The authority of a representative of the FAA during such investigations is the same as that of a board investigator under this part.
 - 2) Part 850 also governs the conduct of certain investigations in which the Board and the Coast Guard participate jointly.

Subpart B—Aviation Investigations

§ 831.20 Authority of NTSB in aviation accident investigations.

- (a) *Scope.* The NTSB is authorized to investigate—
 - (1) Each accident involving a civil aircraft in the United States, and any civil aircraft registered in the United States when an accident occurs in international waters;
 - (2) Each accident involving a public aircraft as defined in 49 U.S.C. 40102(a)(41), except for aircraft operated by the U.S. Armed Forces or by an intelligence agency of the United States;
 - (3) With the participation of appropriate military authorities, each accident involving a military aircraft and—
 - (i) a civil aircraft; or
 - (ii) certain public aircraft as described in paragraph (a)(2) of this section.

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

§ 831.21 Other Government agencies and NTSB aviation investigations.

- (a) Pursuant to 49 U.S.C. 1132(c) and 106(g)(1)(A), the NTSB will provide for the participation of the Administrator of the FAA in the investigation of an aircraft accident when participation is necessary to carry out the duties and powers of the FAA Administrator.
- (b) Title 49 U.S.C. 1131(a)(2) provides for the appropriate participation by other departments, agencies, or instrumentalities of the United States Government in the investigation of an aircraft accident by the NTSB.
- (c) Rights and duties of other Federal agencies.
 - (1) The FAA and other Federal agencies named as parties to an aircraft accident investigation will be accorded the same rights and privileges, and are subject to the same limitations, as other parties. Participation in an investigation includes the duty to timely share with the NTSB any information that has been developed by the FAA or other Federal agency in the exercise of that agency's investigative authority.
 - (2) In exercising its authority, the FAA or other Federal agency may obtain information directly from a party to an accident or incident under investigation by the NTSB.
 - (3) Information obtained by another Federal agency must be timely shared with the NTSB.
 - (4) Investigative activities by another Federal agency must be coordinated to ensure that they do not interfere with the NTSB's investigation.
 - (5) Under no circumstances may an NTSB aviation accident investigation for which the FAA or any other Federal agency has conducted fact-finding be considered a joint investigation with shared responsibility. Decisions about what information to include in the public docket will be made by the NTSB.
 - (6) Notwithstanding the rights and duties described in paragraphs (c)(1) through (5) of this section, determining the probable cause of an accident is exclusively the right and duty of the NTSB.
- (d) An FAA employee designated to act by the NTSB IIC has the same authority as an NTSB investigator when conducting activities under this part. The investigation remains that of the NTSB.
- (e) Nothing in this section may be construed as inhibiting the FAA from proceeding with activities intended to fulfill a statutory requirement or objective, including the collection of data for safety management or enforcement purposes. Section 831.5 of this part also applies to the investigation of aviation accidents.

§ 831.22 International aviation investigations.

- (a) *General.*
 - (1) Annex 13 to the Convention on International Civil Aviation, Aircraft Accident and Incident Investigation (Annex 13) contains standards and recommended practices for the notification, investigation, and reporting of certain accidents involving international civil aviation.
 - (2) Annex 13 provides that the state of occurrence of an accident or incident is responsible for the investigation when the state is a signatory to the Convention.
- (b) The NTSB—
 - (1) Is the U.S. agency that fulfills the obligations of the United States under Annex 13, in coordination with and consistent with the requirements of the United States Department of State.
 - (2) Participates in the investigation as the accredited representative to an international investigation when the accident involves a civil aircraft—

- (i) of a U.S. operator;
 - (ii) of U.S. registry;
 - (iii) of U.S. manufacture; or
 - (iv) when the U.S. is the state of design or manufacture of the aircraft or parts thereof.
- (c) *Technical advisers.* Once designated the accredited representative in an international investigation, the NTSB may elect to receive assistance by appointing one or more advisers to serve under the NTSB's direction. Such technical advisers—
 - (1) Work at the direction and under the supervision of the NTSB accredited representative.
 - (2) Are subject to the provisions of § 831.13 of this part while working under the supervision of the NTSB accredited representative.
- (d) If an accident occurs in a foreign state that is not a signatory to the Convention, or if an accident or incident involves an aircraft that is not a civil aircraft, the NTSB will participate in the investigation in accordance with any agreement between the United States and the foreign state that addresses such occurrences.
- (e) The NTSB's disclosure of records of a foreign investigation is limited by statute (49 U.S.C 1114(f)) and by § 831.6 of this part.

Subpart C—Highway Investigations

§ 831.30 Authority of NTSB in highway investigations.

- (a) *Scope.* The NTSB is responsible for the investigation of selected highway accidents (e.g., collisions, crashes and explosions), including at railroad grade-crossing accidents. Such investigations will be conducted in cooperation with the designated authorities of the state or local jurisdiction in which the accident occurred.
- (b) *Authority to examine or test.* Pursuant to § 831.9 of this part, a credentialed employee of the NTSB is authorized to examine or test any item, including any vehicle, part of a vehicle, equipment, or contents of any vehicle or equipment involved in an accident subject to the NTSB's authority. Examination or testing will be conducted—
 - (1) To the extent practicable, so as to not interfere with or obstruct the transportation services provided by the owner or operator of a vehicle or equipment; and
 - (2) In a manner that preserves evidence relating to the transportation accident, in cooperation with the owner or operator of the vehicle or equipment, and consistent with the needs of the investigation.
- (c) Any Federal, state, or local agency that conducts an investigation of the same highway accident the NTSB is investigating shall provide the results of its investigation to the NTSB.

Subpart D—Railroad, Pipeline, and Hazardous Materials Investigations

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

- (a) *Scope.*
 - (1) *Railroads.* Consistent with its statutory authority, the NTSB is responsible for the investigation of railroad accidents, collisions, crashes, derailments, explosions, incidents, and releases in which there is a fatality, substantial property damage, or which involve a passenger train, as described in part 840 of this chapter.
 - (2) *Pipelines.* The NTSB is responsible for the investigation of pipeline accidents, explosions, incidents, and ruptures in which there is a fatality, significant injury to the environment, or substantial property damage. This excludes accidents involving pipelines only carrying water or sewage.
 - (3) *Hazardous Materials.* The NTSB is responsible for evaluating the adequacy of safeguards and procedures for the transportation of hazardous materials, and the performance of other entities of the Federal government responsible for the safe transportation of hazardous materials. Such evaluations

may take place as part of the investigation of a transportation accident subject to the NTSB's authority and include applicable regulations in other subparts of this part.

- (b) *Authority to examine or test.* Pursuant to § 831.9 of this part, during an investigation, a credentialed employee of the NTSB is authorized to examine or test any rolling stock, track, or pipeline component, or any part of any such item (or contents therein) when such examination or testing is determined to be required for purposes of such investigation. Examination or testing will be conducted—
 - (1) To the extent practicable, so as to not interfere with or obstruct the transportation services provided by the owner or operator of such rolling stock, track, signal, rail shop, property, or pipeline component; and
 - (2) In a manner that preserves evidence relating to the transportation accident consistent with the needs of the investigation.

Subpart E—Marine Investigations

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

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

§ 831.50 Applicability of this subpart.

- (a) The regulations in this subpart apply when the NTSB is leading a marine or major marine casualty investigation.
- (b) In a marine or major marine casualty investigation led by the United States Coast Guard (USCG), this subpart applies if:
 - (1) Upon USCG's request for assistance, the NTSB is leading an associated investigative activity; or
 - (2) Upon coordination with the USCG, the NTSB elects to collect, test or analyze additional evidence beyond the scope of the USCG's investigation.

§ 831.51 Definitions.

The following definitions apply throughout this subpart.

IIC means the NTSB investigator-in-charge.

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

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

Marine casualty means—

- (1) Any casualty, accident or event described in 46 CFR 4.03-1
- (2) An occurrence that results in an abandonment of a vessel
- (3) Other marine occurrences that the NTSB or USCG, or both, determine require investigation.

§ 831.52 Responsibility of NTSB in marine investigations.

- (a) The NTSB may conduct an investigation of a major marine casualty or a marine casualty of a vessel (including, but not limited to, allisions, abandonments, and accidents) alone or jointly with the USCG pursuant to the joint regulations in part 850 of this chapter.
- (b) Nothing in this part may be construed to conflict with the regulations in part 850 of this chapter, which were prescribed jointly by the NTSB and USCG under the authority of 49 U.S.C. 1131(a)(1)(E).
- (c) In an investigation led by the USCG, the NTSB may perform separate activities in furtherance of its own analysis or at the request of the USCG. The NTSB and USCG will coordinate to ensure the agencies do not duplicate work or hinder the progress of the investigation.

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

§ 831.53 Authority of Director, Office of Marine Safety.

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

§ 831.54 Nature of investigation.

- (a) *General.* The NTSB conducts investigations, or has them conducted, to determine the facts, conditions, and circumstances relating to a major marine casualty or a marine casualty. The NTSB uses these results to determine one or more probable causes of a major marine casualty or a marine casualty, and to issue safety recommendations to prevent or mitigate the effects of a similar major marine casualty or a marine casualty. The NTSB is required to report on the facts and circumstances of major marine casualties or marine casualties it investigates. The NTSB begins an investigation by monitoring casualty situations and assessing available facts to determine the appropriate investigative response. Following an initial assessment, the NTSB notifies persons and organizations it anticipates will be affected as to the extent of its expected investigative response.
- (b) *NTSB products.* An investigation may result in a report or brief of the NTSB's conclusions and other products designed to improve transportation safety. Other products may include factual records, safety recommendations, and other safety information.
- (c) NTSB investigations are fact-finding proceedings with no adverse parties. The investigative proceedings are not subject to the Administrative Procedure Act (5 U.S.C. 551 et seq.), and are not conducted for the purpose of determining the rights, liabilities, or blame of any person or entity, as they are not adjudicatory proceedings.

§ 831.55 Relationships with other agencies.

- (a) *Relationship with the USCG.*
 - (1) The NTSB conducts marine casualty and major marine casualty investigations, in accordance with 49 U.S.C. 1131(a)(1)(E) and (F), and part 850 of this chapter. The NTSB and USCG work together to collect evidence related to marine casualties and major marine casualties.
 - (2) The NTSB and USCG coordinate to avoid duplicative efforts to the maximum extent practicable.
 - (3) The NTSB independently analyzes the evidence and determines the probable cause of marine casualties and major marine casualties.
- (b) *Relationships with other Federal agencies.*
 - (1) Except as provided in 49 U.S.C. 1131(a)(2)(B) and (C) regarding suspected criminal actions, an investigation conducted under the authority of the NTSB has priority over any investigation conducted by another Federal agency.
 - (2) The NTSB will provide for appropriate participation by other Federal agencies in any NTSB investigation. Such agencies may not participate in the NTSB's probable cause determination.
 - (3) The NTSB has first right to access wreckage, information, and resources, and to interview witnesses the NTSB deems pertinent to its investigation.
 - (4) The NTSB and other Federal agencies will exchange information obtained or developed in the course of their investigations in a timely manner. Nothing in this section prohibits the NTSB from sharing factual information with other agencies.
- (c) As indicated in § 831.59(c) of this part, the NTSB has exclusive authority to determine when and how the testing and examination of evidence will occur.

- (d) The NTSB may take possession of records, wreckage, or information if it determines such possession is necessary for an investigation.
- (e) *Investigations by Federal agencies.*
 - (1) Nothing in this section impairs the authority of any other Federal agency to conduct an investigation of a marine casualty or major marine casualty.
- (f) *Incident command system.*
 - (1) The NTSB recognizes the role of incident command systems to address emergencies. The NTSB does not assume the role of a first responder agency.
 - (2) The NTSB IIC or his designee will participate in the incident command system to identify and coordinate investigative needs as it relates to the preservation and collection of information and evidence.
 - (3) The NTSB IIC or his designee will coordinate with the Coast Guard Investigation Officer to identify and coordinate investigative needs as it relates to the preservation and collection of information and evidence.
 - (4) The NTSB may collect information and evidence from an incident command in a timely and reasonable manner so as not to interfere with its operations.

§ 831.56 Request to withhold information.

- (a) *Applicability.* This section applies to information the NTSB receives from any source that may be subject to the Trade Secrets Act (18 U.S.C. 1905) or the Freedom of Information Act (FOIA, 5 U.S.C. 552).
- (b) *Disclosure.* The NTSB is authorized by 49 U.S.C. 1114(b) to disclose, under certain circumstances, confidential commercial information that would otherwise be subject to penalties for disclosure under the Trade Secrets Act, or excepted from disclosure under FOIA. The NTSB may exercise this authority when disclosure is necessary to support a key finding, a safety recommendation, or the NTSB's statement of probable cause of a major marine casualty or a marine casualty.
- (c) *Disclosure procedures.* Information submitted to the NTSB that the submitter believes qualifies as a trade secret or as confidential commercial information subject either to the Trade Secrets Act or Exemption 4 of FOIA must be so identified by the submitter on each page that contains such information. In accordance with 48 U.S.C. 1114(b), the NTSB will provide the submitter of identified information (or information the NTSB has reason to believe qualifies as subject to the Trade Secrets Act or Exemption 4 of FOIA) the opportunity to comment on any disclosure contemplated by the NTSB. In all instances in which the NTSB decides to disclose such information pursuant to 49 U.S.C. 1114(b) or 5 U.S.C. 552, the NTSB will provide at least 10 days' notice to the submitter.
- (d) *Voluntarily provided safety information.*
 - (1) The NTSB will not disclose safety-related information voluntarily submitted to the NTSB if the information is not related to the exercise of the NTSB's investigation authority, and if the NTSB finds disclosure of the information might inhibit the voluntary provision of that type of information.
 - (2) The NTSB will review voluntarily provided safety information for confidential content, and will de-identify or anonymize any confidential content referenced in its products.
- (e) *Other.* Any person may make written objection to the public disclosure of any other information, such as interview summaries or transcripts, contained in any report or document filed, or otherwise obtained by the Board, stating the grounds for such objection. The Board, on its own initiative or if such objection is made, may order such information withheld from public disclosure when, in its judgment, the information may be withheld under the provisions of an exemption to the Freedom of Information Act (5 U.S.C. 552, see part 801 of this chapter), and its release is found not to be in the public interest.

§ 831.57 Representation during an interview.

- (a) Any person interviewed in any manner by the NTSB has the right to be accompanied during the interview by no more than one representative of the witness's choosing. The representative—
 - (1) May be an attorney;
 - (2) May provide support and counsel to the witness;
 - (3) May not supplement the witness's testimony; and
 - (4) May not advocate for the interests of a witness's other affiliations.
- (b) An investigator conducting the interview may take any necessary action (including removal of the representative from the interview) to ensure a witness's representative acts in accordance with the provisions of paragraph (a) of this section during the interview, and to prevent conduct that may be disruptive to the interview.

§ 831.58 Investigator-in-charge.

- (a) In addition to the subpoena and deposition authority delegated to investigative officers under this chapter, a person designated as IIC for an investigation is authorized to—
 - (1) Organize, conduct, control, and manage the field phase of an investigation, even when a Board Member is present.
 - (2) Coordinate all resources and provide direction to all persons (including persons not employed by the NTSB) involved in an on-site investigation.
 - (3) Work with other Federal agencies in the investigation of a marine casualty or major marine casualty when other agencies are participating, to ensure all agencies will obtain the information, evidence, and resources needed for the investigation(s) or investigative activities.
 - (4) Work with the USCG to ensure the agencies do not duplicate work to the maximum extent practicable.
 - (5) Continue his or her organizational and management responsibilities through all phases of the investigation, including consideration and adoption of a report or brief determining one or more probable causes of a marine casualty or major marine casualty.

§ 831.59 Authority during investigations.

- (a) *General authority of investigators.* To carry out the statutory responsibilities of the agency, an NTSB investigator may—
 - (1) Conduct hearings;
 - (2) Administer oaths;
 - (3) Require, by subpoena or other means, the production of evidence and witnesses;
 - (4) Enter any property where a major marine casualty or marine casualty subject to the NTSB's jurisdiction has occurred, or wreckage from any such major marine casualty or marine casualty is located, and take all actions necessary to conduct a complete investigation;
 - (5) Inspect, photograph, or copy any records or information (including medical records pursuant to paragraph (b)(2) of this section), and correspondence regardless of the date of its creation or modification, for the purpose of investigating an accident;
 - (6) Question any person having knowledge relevant to a marine casualty or major marine casualty.
- (b) *Subpoenas.* The NTSB may issue a subpoena, enforceable in Federal District Court, to obtain testimony or evidence related to its investigation of a marine casualty or major marine casualty, including but not limited to personal electronic devices.
 - (1) The NTSB's authority to issue subpoenas includes access to medical records and specimens.

- (2) For purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the regulations promulgated by the Department of Health and Human Services, 45 CFR 164.501 et seq., the NTSB is a “public health authority” to which protected health information may be disclosed by a HIPAA “covered entity” without the prior written authorization of the subject of the records. In addition, the NTSB may issue a subpoena to gain access to such information.
- (c) *Examination of evidence.* In accordance with 49 U.S.C. 1134(d), the NTSB has exclusive authority to decide when, and in what manner, testing, extraction of data, and examination of evidence will occur.

§ 831.60 Autopsies and postmortem testing.

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

- (a) The NTSB is authorized to obtain, with or without reimbursement, a copy of a report of autopsy performed by a State or local authority on such person.
- (b) The NTSB may order an autopsy or other postmortem tests of any person as may be related to its investigation of a marine casualty or major marine casualty. The IIC may direct that an autopsy or other test be performed if necessary for an investigation. Provisions of local law protecting religious beliefs with respect to autopsies shall be observed to the extent they are consistent with the needs of the investigation.

§ 831.61 Parties to the investigation.

(a) Participants.

- (1) The IIC may designate one or more entities to serve as parties in an investigation. The NTSB will provide to the USCG the opportunity to participate in all NTSB investigations and investigative activities the NTSB conducts under this subpart. For all other organizations, party status is limited to those persons, government agencies (Federal, state, or local), companies, and organizations whose employees, functions, activities, or products were involved in the marine casualty or major marine casualty and that can provide suitable qualified technical personnel actively to assist in an investigation. To the extent practicable, a representative proposed by party organizations to participate in the investigation may not be a person who had direct involvement in the major marine casualty or marine casualty under investigation.
- (2) Except the USCG, no entity has a right to participate in an NTSB marine investigation as a party.
- (3) Participants in an investigation (e.g., party representatives, party coordinators, and the larger party organization) must respond to direction from NTSB representatives.
- (4) No party representative may—
 - (i) Occupy a legal position; or
 - (ii) Be a person who also represents claimants or insurers.
- (5) Party status may be revoked or suspended if a party fails to comply with either paragraph (a)(3) or (a)(4) of this section. Sanctions may also be imposed if a party withholds information or acts in a manner prejudicial or disruptive to an investigation.

(b) Disclosures.

- (1) The name of a party or its representative may be disclosed in documents the NTSB places in the public docket for the investigation.
- (2) The NTSB may share information considered proprietary or confidential by one party with other parties during the course of an investigation, but will preserve the confidentiality of the information to the greatest extent possible.

- (3) Section 831.6(c) of this part describes how the NTSB will handle voluntarily submitted safety information, and the NTSB's determination whether to share any such information. The NTSB will de-identify the source of such information when deciding to share it.
- (c) *Party agreement.* All party representatives must sign the "Statement of Party Representatives to NTSB Investigation" (Statement) upon acceptance of party status. Failure to timely sign the Statement may result in sanctions, including loss of party status. Representatives of Federal agencies are not required to sign the Statement, but must comply with the responsibilities and limitations set forth in the agreement.
- (d) *Internal review by a party.*
 - (1) To assure coordination of concurrent efforts, a party to an investigation that conducts or authorizes a review of its own processes and procedures as a result of a major marine casualty or a marine casualty the NTSB is investigating must inform the IIC in a timely manner of the nature of its review. A party performing such review must provide the IIC with the findings from this review.
 - (2) If the findings from a review contain privileged information—
 - (i) The submitting party must inform the IIC that the review contains privileged information;
 - (ii) The submitting party must identify the privileged content at the time of submission to the IIC;
 - (iii) The NTSB must, when informed that such information is being submitted, review the information for relevancy to the investigation, and determine whether the information is needed for the investigation or may be excluded from the party's response.
 - (3) The NTSB may use the protections described in § 831.56 of this part, as applicable, to protect certain findings from public disclosure.
 - (4) Investigations performed by other Federal agencies during an NTSB investigation are addressed in § 831.55 of this part.

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

- (a) Only persons authorized by the NTSB to participate in any particular investigation, examination or testing may be permitted access to wreckage, records, mail, or cargo.
- (b) Wreckage, records, mail, and cargo in the NTSB's custody will be released when the NTSB determines it has no further need for such items. Prior to release, the NTSB will inform the USCG of the upcoming release of wreckage or evidence. Recipients of released wreckage must sign an acknowledgement of release provided by the NTSB.

§ 831.63 Provision and dissemination of investigative information.

- (a) *Applicability.* This section applies to:
 - (1) Any information related to a marine casualty or major marine casualty;
 - (2) Any information collected or compiled by the NTSB as part of its investigation, such as photographs, visual representations of factual data, physical evidence from the scene of the major marine casualty or the marine casualty, interview statements, wreckage documentation, voyage data recorder information, and surveillance video;
 - (3) Any information regarding the status of an investigation, or activities conducted as part of the investigation.
- (b) *Provision of information.* All information described in paragraph (a) of this section and obtained by any person or organization participating in the investigation must be provided to the NTSB, except for information the NTSB authorizes the party to retain.
- (c) *Release of information.* Parties are prohibited from releasing information obtained during an investigation at any time prior to the NTSB's public release of information unless the release is consistent with the following criteria:

- (1) Information released at the scene of a marine casualty or major marine casualty:
 - (i) Is limited to factual developments concerning the accident and the investigation released in coordination with the IIC; and
 - (ii) Will be made by the Board Member present at the scene as the official spokesperson for the NTSB. If no Board Member is present, information will be released by a representative of the NTSB's Office of Media Relations or the IIC. To the maximum extent practicable, the NTSB will inform the USCG of its planned releases of information before the release occurs.
- (2) The release of information described in paragraph (a)(1) of this section by the NTSB at the scene of a marine casualty or major marine casualty does not authorize any party to the investigation to comment publicly on the information during the course of the investigation. Any dissemination of factual information by a party may be made only as provided in this section.
- (3) A party may disseminate information related to an investigation to those individuals within its organization who have a need to know for the purpose of addressing a safety issue, including preventive or remedial actions. If such internal release of information results in a planned safety improvement, the party must inform the IIC of such planned improvement in a timely manner before it is implemented.
- (4) Any other release of factual information related to the investigation must be approved by the IIC prior to release, including:
 - (i) Dissemination within a party organization, for a purpose not described in paragraph (b)(3) of this section;
 - (ii) Documents that provide information concerning the investigation, such as written directives or informational updates for release to employees or customers of a party; and
 - (iii) Information related to the investigation released to an organization or person that is not a party to the investigation.
- (d) The release of recordings or transcripts from certain recorders may be made only in accordance with the statutory limitations of 49 U.S.C. 1114(c), 1114(d), and 1154(a).

§ 831.64 Proposed findings.

- (a) *General.* Any party to an investigation designated under § 831.61 may submit to the NTSB written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendation(s) designed to prevent future major marine casualties and marine casualties.
- (b) *Timing of submissions.* The IIC will inform parties when submissions are due. All written submissions must be received by the due date. If there is a Board meeting, the due date will be set prior to the date the matter is published in the Federal Register.

TITLE 49 – TRANSPORTATION
SUBTITLE B -- OTHER REGULATIONS RELATING TO TRANSPORTATION CONTINUED)
CHAPTER VIII -- NATIONAL TRANSPORTATION SAFETY BOARD
PART 845 -- RULES OF PRACTICE IN TRANSPORTATION: INVESTIGATIVE HEARINGS; MEETINGS,
REPORTS, AND PETITIONS FOR RECONSIDERATION

Sec.845.1 Applicability.

Subpart A—Investigative Hearings

- 845.2 Investigative hearings.
- 845.3 Sessions open to the public.
- 845.4 Determination to hold hearing.
- 845.5 Board of inquiry.
- 845.6 Designation of parties.
- 845.7 Hearing officer.
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- 845.12 Evidence.
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Subpart B—Meetings

- 845.20 Meetings.
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Subpart C—Miscellaneous Provisions

- 845.30 Board products.
- 845.31 Public docket.
- 845.32 Petitions for reconsideration or modification of report.
- 845.33 Investigation to remain open.

Authority: Sec. 515, Pub. L. 106-554, App. C, 114 Stat. 2763, 2763A-153 (44 U.S.C. 3516 note); 49 U.S.C. 1112, 1113(f), 1116, 1131, unless otherwise noted.

Source: 80 FR 80287, Dec. 24, 2015, unless otherwise noted.

§ 845.1 Applicability.

Unless otherwise specifically ordered by the National Transportation Safety Board (NTSB), the provisions of this part shall govern all NTSB proceedings conducted under the authority of 49 U.S.C. 1113 and 1131, and reports issued by the Board.

Subpart A—Investigative Hearings

§ 845.2 Investigative hearings.

Investigative hearings are convened to assist the NTSB in further developing the facts, conditions, and circumstances of the transportation accident or incident, which will ultimately assist the Board in determining the cause or probable cause of the accident or incident, and in ascertaining measures that will tend to prevent such accidents or incidents and promote transportation safety. Investigative hearings are fact-finding proceedings with no adverse parties. They are not

subject to the provisions of the Administrative Procedure Act (5 U.S.C. 554) and are not conducted for the purpose of determining the rights, liabilities, or blame of any person or entity.

§ 845.3 Sessions open to the public.

- (a) All investigative hearings shall normally be open to the public. However, no person shall be allowed at any time to interfere with the proper and orderly functioning of the hearing.
- (b) Sessions shall not be open to the public when evidence of a classified nature or which affects national security is to be received.

§ 845.4 Determination to hold hearing.

- (a) The Board may order an investigative hearing as part of an investigation whenever a hearing is deemed necessary in the public interest.
- (b) If a quorum of the Board is not immediately available in the event of a catastrophic accident, the determination to hold an investigative hearing may be made by the Chairman of the Board.

§ 845.5 Board of inquiry.

- (a) *Composition of board of inquiry.* The board of inquiry shall consist of a chairman of the board of inquiry, as specified in paragraph (c) of this section, and other members in accordance with Board policy.
- (b) *Duties of board of inquiry.* The board of inquiry shall examine witnesses and secure, in the form of a public record, facts pertaining to the accident or incident under investigation and surrounding circumstances and conditions from which the Board may determine probable cause and may formulate recommendations and/or other documents for corrective or preventative action.
- (c) *Chairman of board of inquiry.* The chairman of the board of inquiry, or his or her designee, shall have the following powers:
 - (1) To designate parties to the investigative hearing and revoke such designations;
 - (2) To open, continue, or adjourn the investigative hearing;
 - (3) To determine the admissibility of and to receive evidence and to regulate the course of the investigative hearing;
 - (4) To dispose of procedural requests or similar matters; and
 - (5) To take any other appropriate action to ensure the orderly conduct of the investigative hearing.

§ 845.6 Designation of parties.

- (a) The chairman of the board of inquiry shall designate as parties to the investigative hearing those persons and organizations whose participation in the hearing is deemed necessary in the public interest and whose special knowledge will contribute to the development of pertinent evidence. Parties to the investigative hearing shall be represented by suitable representatives who do not occupy legal positions.
- (b) No party to the investigation and/or investigative hearing shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party to the investigative hearing.

§ 845.7 Hearing officer.

The investigative hearing officer, upon designation by the NTSB Chairman or a Board Member designated by the Chairman, shall have the following powers:

- (a) To give notice concerning the time and place of investigative hearing;
- (b) To administer oaths and affirmations to witnesses; and

- (c) To issue subpoenas requiring the attendance and testimony of witnesses and production of documents. The investigative hearing officer may, in consultation with the chairman of the board of inquiry and the NTSB Managing Director, add witnesses until the time of the prehearing conference.

§ 845.8 Technical panel.

The appropriate office director(s) and/or the hearing officer, in consultation with the NTSB Managing Director, shall determine if a technical panel is needed and, if so, shall designate members of the NTSB technical staff to participate in the investigative hearing. Members of the technical panel may conduct pre-screening of witnesses through interviews, and may take other actions to prepare for the hearing. At the hearing, the technical panel will initially examine the witnesses through questioning. The technical panel shall examine witnesses and secure, in the form of a public record, facts pertaining to the accident or incident under investigation and surrounding circumstances and conditions.

§ 845.9 Prehearing conference.

- (a) Except as provided in paragraph (d) of this section, the chairman of the board of inquiry, or his/her designee, shall hold a prehearing conference with the parties to the investigative hearing at a convenient time and place prior to the hearing. At the prehearing conference, the parties shall be advised of the witnesses to be called at the investigative hearing, the topics about which they will be examined, and the exhibits that will be offered in evidence.
- (b) At the prehearing conference, parties to the investigative hearing shall submit copies of any additional documentary exhibits they desire to offer for admission at the hearing.
- (c) A party to the investigative hearing who, at the time of the prehearing conference, fails to advise the chairman of the board of inquiry of additional exhibits he or she intends to submit, or additional witnesses he or she desires to examine, shall be prohibited from introducing such evidence unless the chairman of the board of inquiry determines for good cause shown that such evidence should be admitted.
- (d) The board of inquiry may hold an investigative hearing on an expedited schedule. The chairman of the board of inquiry may hold a prehearing conference for an expedited investigative hearing. When an expedited investigative hearing is held, the chairman of the board of inquiry may waive the requirements in paragraphs (b) and (c) of this section concerning the identification of witnesses, exhibits or other evidence.

§ 845.10 Right of representation.

Any person who appears to testify at an investigative hearing has the right to be accompanied, represented, or advised by counsel or by any other representative.

§ 845.11 Examination of witnesses.

- (a) *Examination.* In general, the technical panel shall initially examine witnesses. Following such examination, parties to the investigative hearing shall be given the opportunity to examine such witnesses. The board of inquiry shall then conclude the examination following the parties' questions.
- (b) *Objections.* (1) Materiality, relevancy, and competency of witness testimony, exhibits, or physical evidence shall not be the subject of objections in the legal sense by a party to the investigative hearing or any other person.
- (c) Such matters shall be controlled by rulings of the chairman of the board of inquiry on his or her own motion. If the examination of a witness by a party to the investigative hearing is interrupted by a ruling of the chairman of the board of inquiry, the party shall have the opportunity to show materiality, relevancy, or competency of the testimony or evidence sought to be elicited from the witness.

§ 845.12 Evidence.

In accordance with § 845.2, the chairman of the board of inquiry shall receive all testimony and evidence that may be of aid in determining the probable cause of the transportation accident or incident. He or she may exclude any testimony or exhibits that are not pertinent to the investigation or are merely cumulative.

§ 845.13 Proposed findings.

Following the investigative hearing, any party to the hearing may submit proposed findings to be drawn from the testimony and exhibits, a proposed probable cause, and proposed safety recommendations designed to prevent future accidents or incidents. The proposals shall be submitted within the time specified by the investigative hearing officer at the close of the hearing, and shall be made a part of the public docket. Parties to the investigative hearing shall serve copies of their proposals on all other parties to the hearing.

§ 845.14 Transcript.

A verbatim report of the investigative hearing shall be taken. Any interested person may obtain copies of the transcript from the NTSB or from the court reporting firm preparing the transcript upon payment of the fees fixed therefor. (See part 801, subpart G, Fee schedule.)

§ 845.15 Payment of witnesses.

Any witness subpoenaed to attend the investigative hearing under this part shall be paid such fees for travel and attendance for which the hearing officer shall certify.

Subpart B—Meetings

§ 845.20 Meetings.

The Board may hold a meeting concerning an investigation or Board product, as described in § 804.3 of this chapter or any other circumstance, when the Board determines holding a meeting is in the public interest.

§ 845.21 Symposiums, forums, and conferences

(a)

(1) *Definitions.*

- (i) A symposium is a public proceeding focused on a specific topic, where invited participants provide presentations of their research, views or expertise on the topic and are available for questions.
- (ii) A forum is a public proceeding generally organized in a question-and-answer format with various invited participants who may make presentation and are available for questioning by the Board or designated NTSB staff as individuals in a panel format.
- (iii) A conference is a large, organized proceeding where individuals present materials, and a moderator or chairperson facilitates group discussions.

(2) These proceedings are related to transportation safety matters and will be convened for the purpose of focusing attention, raising awareness, encouraging dialogue, educating the NTSB, or generally advancing or developing safety recommendations. The goals of the proceeding will be clearly articulated and outlined, and will be consistent with the mission of the NTSB.

(b) A quorum of Board Members is not required to attend a forum, symposium, or conference. All three types of proceedings described in paragraph (a) of this section may have a relationship to previous or ongoing investigative activities; however, their purpose is not to obtain evidence for a specific investigation.

(c) Symposiums, forums, and conferences are voluntary for all invited participants.

Subpart C—Miscellaneous Provisions

§ 845.30 Board products.

(a) *Reports of investigations.*

- (1) The Board will adopt a report on the investigation. The report will set forth the relevant facts, conditions, and circumstances relating to the accident or incident and the probable cause thereof, along with any appropriate safety recommendations and/or safety alerts formulated on the basis of

the investigation. The scope and format of the report will be determined in accordance with Board procedures.

- (2) The probable cause and facts, conditions, and circumstances of other accidents or incidents will be reported in a manner and form prescribed by the Board. The NTSB allows the appropriate office director, under his or her delegated authority as described in § 800.25 of this chapter, to issue a "brief," which includes the probable cause and relevant facts, conditions, and circumstances concerning the accident or incident. Such briefs do not include recommendations. In particular circumstances, the Board in its discretion may choose to approve a brief.

(b) *Studies and reports—*

- (1) NTSB studies and reports. The NTSB may issue reports describing investigations of more than one accident or incident that share commonalities. Such reports are similar to accident or incident investigation reports, as described in paragraph (a)(1) of this section. Such reports often include safety recommendations and/or safety alerts, which the Board adopts.
- (2) Safety studies and reports. The NTSB issues safety studies and reports, which usually examine safety concerns that require the investigation of a number of related accidents or incidents to determine the extent and severity of the safety issues. Such studies and reports often include safety recommendations and/or safety alerts, which the Board adopts.

- (c) *Safety recommendations.* The Board may adopt and issue safety recommendations, either as part of a Board report or as a stand-alone Board product.

§ 845.31 Public docket.

(a) *Investigations.*

- (1) As described in § 801.3 of this chapter, the public docket shall include factual information concerning the accident or incident. Proposed findings submitted pursuant to § 831.14 or § 845.13 and petitions for reconsideration and modification submitted pursuant to § 845.32, comments thereon by other parties, and the Board's rulings on proposed findings and petitions shall also be placed in the public docket.
- (2) The NTSB shall establish the public docket following the accident or incident, and material shall be added thereto as it becomes available. Where an investigative hearing is held, the exhibits will be introduced into the record at the hearing and will be included in the public docket.

- (b) *Other Board reports and documents.* The NTSB may elect to open and place materials in a public docket concerning a safety study or report, special investigation report, or other agency product. The NTSB will establish the public docket following its issuance of the study or report.

- (c) *Availability.* The public docket shall be made available to any person for review, as described in § 801.30 of this chapter. Records within the public docket are available at www.nts.gov.

§ 845.32 Petitions for reconsideration or modification of report.

(a) *Requirements.*

- (1) The Board will only consider petitions for reconsideration or modification of findings and determination of probable cause from a party or other person having a direct interest in an investigation.
- (2) Petitions must be in writing and addressed to the NTSB Chairman. Please send your petition via email to correspondence@ntsb.gov. In the alternative, you may send your petition via postal mail to: NTSB Headquarters at 490 L'Enfant Plaza SW., Washington, DC 20594.
- (3) Petitions must be based on the discovery of new evidence or on a showing that the Board's findings are erroneous.

- (i) Petitions based on the discovery of new matter shall: Identify the new matter; contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and state why the new matter was not available prior to Board's adoption of its findings.
 - (ii) Petitions based on a claim of erroneous findings shall set forth in detail the grounds upon which the claim is based.
- (b) *Acceptance of petitions.* The Board will not consider petitions that are repetitious of proposed findings submitted pursuant to § 845.13, or of positions previously advanced.
- (c) *Proof of service.*
 - (1) When a petition for reconsideration or modification is filed with the Board, copies of the petition and any supporting documentation shall be served on all other parties to the investigation or investigative hearing and proof of service shall be attached to the petition.
 - (2) Any party served with a copy of the petition may file comments no later than 90 days after service of the petition.
- (d) *Oral presentation.* Oral presentation normally will not form a part of proceedings under this section. However, oral presentation may be permitted where a party or interested person specifically shows the written petition for reconsideration or modification is an insufficient means by which to present the party's or person's position.

§ 845.33 Investigation to remain open.

The Board never officially closes an investigation, but provides for the submission of new and pertinent evidence by any interested person. If the Board finds such evidence is relevant and probative, the evidence shall be made a part of the public docket and, where appropriate, the Board will provide parties an opportunity to examine such evidence and to comment thereon.

SECTIONS OF OSHA REGULATIONS RELEVANT TO ACCIDENT SITE

Personal Protective Equipment 29 U.S.C. 1910.1030 (c):

(3) Personal protective equipment--

- (i) Provision. When there is occupational exposure, the employer shall provide, at no cost to the employee, appropriate personal protective equipment such as, but not limited to, gloves, gowns, laboratory coats, face shields or masks and eye protection, and mouthpieces, resuscitation bags, pocket masks, or other ventilation devices. Personal protective equipment will be considered "appropriate" only if it does not permit blood or other potentially infectious materials to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth, or other mucous membranes under normal conditions of use and for the duration of time which the protective equipment will be used.

Blood borne pathogens §1910.1030.

- (a) Scope and Application. This section applies to all occupational exposure to blood or other potentially infectious materials as defined by paragraph (b) of this section.
- (b) Definitions. For purposes of this section, the following shall apply:
"Blood borne Pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

An exposure control plan is required:

(c) Exposure control--

(1) Exposure Control Plan.

- (i) Each employer having an employee(s) with occupational exposure as defined by paragraph (b) of this section shall establish a written Exposure Control Plan designed to eliminate or minimize employee exposure.
- (ii) The Exposure Control Plan shall contain at least the following elements:
 - (A) The exposure determination required by paragraph(c)(2),
 - (B) The schedule and method of implementation for paragraphs (d) Methods of Compliance, (e) HIV and HBV Research Laboratories and Production Facilities, (f) Hepatitis B Vaccination and Post-Exposure Evaluation and Follow-up, (g) Communication of Hazards to Employees, and (h) Recordkeeping, of this standard, and
 - (C) The procedure for the evaluation of circumstances surrounding exposure incidents as required by paragraph (f)(3)(i) of this standard.
- (iii) Each employer shall ensure that a copy of the Exposure Control Plan is accessible to employees in accordance with 29 CFR 1910.20(e):
- (iv) The Exposure Control Plan shall be reviewed and updated at least annually and whenever necessary to reflect new or modified tasks and procedures which affect occupational exposure and to reflect new or revised employee positions with occupational exposure.

Employee training is required for those that may face exposure § 1910.1030 (g)(2):

- (ii) Training shall be provided as follows:
 - (A) At the time of initial assignment to tasks where occupational exposure may take place;
 - (B) At least annually thereafter.

- (iii) [Reserved]
- (iv) Annual training for all employees shall be provided within one year of their previous training.
- (v) Employers shall provide additional training when changes such as modification of tasks or procedures or institution of new tasks or procedures affect the employee's occupational exposure. The additional training may be limited to addressing the new exposures created.

PRINCIPLES OF UNDERSTANDING
BETWEEN ATA CARRIERS AND THE NTSB
REGARDING CERTAIN AVIATION EXPENDITURES
RELATED TO THE RECOVERY AND IDENTIFICATION
OF AVIATION ACCIDENT VICTIMS

With respect to aviation accidents occurring on or after the date hereof, the Air Transport Association (ATA) on behalf of its member airlines and the National Transportation Safety Board (NTSB) agree to abide in good faith and to the extent feasible under the circumstances by the following Principles of Understanding relating to certain expenditures arising out of or connected with major aviation accidents over which the NTSB has primary jurisdiction or control.

As a result of such major accidents, there are various expenses relating to logistical support and transportation for families of victims, victim recovery, victim identification, and burial arrangements that are incurred. In addition, the ATA carriers need to ensure that they retain their normal legal rights and remedies, and that some dispute resolution mechanism and continuing consultation process are agreed. The foregoing items thus form the basis for the following "Principles of Understanding":

1. Logistical and Transportation Expenses for Families. For a reasonable period of time after an aviation accident, the operating carrier will pay or cause to be paid the various reasonable logistical and transportation expenses (including food, lodging, local transportation, and travel to/from their home or other starting point) of the families of victims to, at and from the accident site or nearest appropriate location.
2. Victim Recovery. The ATA carriers and NTSB agree (a) that the operating carrier in a disaster has an interest in determining the proper identities of deceased victims, (b) that local coroners or medical examiners have responsibilities as well under state or federal law, or common law, to identify victims and to issue death certificates, and (c) that the NTSB is responsible under federal law for facilitating such activities. Given the factual variety in potential locations and consequences of aviation disasters, the ATA carriers and NTSB agree that no single set of principles can be applied in all situations relative to efforts to recover victims. When the operating carrier or NTSB believes in good faith that the commencement or continuation of the victim recovery effort in a particular accident is not reasonably practicable, the parties agree to consult forthwith in good faith to determine how, whether or to what extent to proceed, and to communicate their decision(s) jointly to the families when practical. The respective governmental agency/ies involved in recovery efforts will in any event continue to be responsible for the usual and customary costs of salaries, wages and benefits of their employees, contractors and volunteers, and of the normal costs of such operations (e.g., heat, light, power, supplies, etc.), pursuant to applicable law. The ATA carriers agree to consider in good faith paying or contributing to the payment of overtime wages of such persons when (a) the scope and proximity of the aviation disaster places a clearly excessive burden on the resources of the local medical authority and local fire and rescue personnel, and (b) procedures are agreed in advance for the documentation and reasonable control and scheduling of such overtime. However, the ATA carriers agree, in general, that the operating carrier should pay or cause to be paid the reasonable out of pocket

operating expenses incurred for the recovery of victims and remains (as distinct from wreckage) when the recovery effort or its continuation is reasonably practicable, and consistent with both the purpose of the recovery or salvage effort described immediately below and of the identification hierarchy described in Paragraph 3 below. If the recovery or salvage equipment is recovering both wreckage (pursuant to an on-going accident investigation) and human remains, the operating carrier is not financially or operationally responsible for any such salvage costs; however, if the salvage equipment is intended and is used solely to recover remains, then the operating carrier is responsible subject to the provisions of these Principles of Understanding.

3. Victim Identification. For the sole purpose of identifying deceased victims, not unassociated or individual tissue or remains, the operating carrier will pay or cause to be paid the usual and customary out of pocket expenses incurred as a result of the aviation accident by the local medical authority (i.e., local coroner or medical examiner) for identification of victims through traditional means (e.g., visual, dental records, medical records, etc.). To the extent unidentified deceased victims remain thereafter, the operating carrier will pay or cause to be paid the reasonable out of pocket expenses incurred for reasonable alternative technological identification methods, such as DNA testing, solely to complete the victim identification process. Local governmental authorities will continue to be responsible for the salaries and wages of their employees or contractors, and the normal costs of operations, pursuant to applicable law. It is further agreed that the NTSB will itself use its good offices to support strongly the foregoing identification hierarchy processes with local coroners, medical examiners, other governmental agencies (federal, state and local), family or victim assistance groups, etc., in an effort to reduce the cost of such identification processes to the maximum extent feasible. The ATA carriers agree in good faith to consider paying or contributing to the payment for (1) the transportation of the federal Disaster Mortuary Team ("DMT") and its mobile morgue to and from the site, (2) the DMT's extraordinary, but reasonable, out of pocket operating and resupply costs, subject to Paragraph 6, and (3) the DMT's reasonable daily salary costs, while on site, determined pursuant to the relevant federal employee pay scale; provided, however, that the local medical authority independently requests the DMT's assistance to facilitate and expedite the identification and release of victims' remains.
4. Burial Arrangements. The ATA carriers agree that the operating carrier should pay for reasonable and customary funeral expenses (including shipment of remains) for identified victims once the local medical examiner or coroner has released the remains.
5. Airline Remedies. Nothing in these Principles of Understanding is intended or is to be construed to limit, modify or waive any of the legal rights and available remedies of the ATA carriers (or their insurers through subrogation) for any airline expenses paid pursuant to these Principles of Understanding as against any third party, including without limitation any party who is or may be wholly or partially responsible for such accident, including but not limited to airframe, engine or component manufacturers, airport authorities, air traffic or other flight controllers, maintenance service or fuel providers, etc.
6. Dispute Resolution and Consultations Regarding Victim Recovery and Identification.
 - A. The ATA carriers and the NTSB agree that throughout the duration of an aviation disaster, including the on-site period as well as the subsequent response duration, representatives of the operating carrier and the NTSB will confer and consult with each

other on an on-going basis, especially as it pertains to victim recovery and identification, but not to include the investigative process or its results. The NTSB agrees that any expenses for which the operating carrier is or may be responsible under these Principles of Understanding shall be reviewed with and approved by such carrier in advance to the maximum extent practicable, but in any event no major or material expenses of the operating carrier hereunder shall be committed by the NTSB without the operating carrier's prior consent. The ATA carriers and NTSB agree that every effort will be made to implement reasonable procedures for expeditious review and approval that are appropriate to the circumstances of the disaster in question.

- B. The ATA carriers and NTSB agree further that (a) if any disputes arise under these Principles of Understanding, (b) if situations arise when their application is not certain, or (c) if either the operating carrier or NTSB disagrees with the application or prospective application of these Principles in a particular accident (which application has or may have a material adverse financial effect on the operating carrier or its insurers), the parties will act expeditiously and in good faith to resolve the dispute or uncertainty through direct discussions. The operating carrier may invite its aviation insurance broker and representatives of its insurers to participate in such resolution, in addition to legal counsel and other relevant advisors or representatives of the foregoing. The NTSB may invite such other assistance or representatives as it believes are relevant to resolve the dispute or uncertainty in question. The parties agree, however, to work in good faith and to make every attempt to conduct such dispute or uncertainty resolution on a confidential basis and without recourse to the media or other communications channels. Further, the ATA carriers, the ATA and the NTSB agree to hold periodic consultations in the future regarding their respective experiences under these Principles and other matters, and to work together in good faith to avoid or mitigate identified problem areas.

AGREED and EFFECTIVE this 7th day of September 1999

AIR TRANSPORT ASSOCIATION
OF AMERICA

By:

Its: Coral Gullett
President & CEO

NATIONAL TRANSPORTATION
SAFETY BOARD

By:

Its: Carol E. Hall
Chairman



ATTN: [illegible]

cc: [illegible]

James
DeLo

May 9, 2000

Mr. Dan Campbell
Deputy Managing Director
National Transportation Safety Board
490 L'Enfant Plaza E., SW
Washington, DC 20594-2000

Re: Principles of Understanding Between ATA Carriers and the NTSB Regarding
Certain Aviation Expenditures Related to the Recovery and Identification of
Aviation Accident Victims Dated September 7, 1999 (the "Principles")

Dear Dan:

A long time ago, Ken Levinson, of NW, and I promised you a letter clarifying
some points you raised regarding the above. I would have sworn I countersigned the
letter, and sent it in to you. However, as I can't find a copy of the letter in my file, I am
sending you another one.

Regards,


Christa Meyer Hinckley
1999 Vice Chair
ATA Insurance Committee

cc: K. Levinson (w/enclosure - original)

Kenneth S. Levinson, Esq.
Vice President
Tax, Risk Management and Insurance

Northwest Airlines, Inc. 612 726-4000
Department A4450 612 727-4280 Fax
5101 Northwest Drive
St. Paul MN 55111-3034

September 30, 1999

Mr. Dan Campbell
Deputy Managing Director
National Transportation Safety Board
490 L'Enfant Plaza E., SW
Washington, DC 20594-2000

Re: Principles of Understanding Between ATA Carriers and the
NTSB Regarding Certain Aviation Expenditures Related to
the Recovery and Identification of Aviation Accident Victims
Dated September 7, 1999 (the "Principles")

Dear Mr. Campbell:

This letter will confirm the representations made in the telephone conversation on September 3, 1999, among yourself, Ms. Christa Hinckley of American Airlines, and me regarding Section 2 of the Principles. Christa and I represented the ATA carriers as 1999 Vice Chair and Chair, respectively, of the ATA Insurance Committee.

In particular, regarding the last portion of Section 2, found on the top of page 2 of the Principles, we represented to you as Deputy Managing Director of the NTSB that:

1. The above-referenced portion of Section 2 was intended to deal especially with extraordinary aviation accidents occurring after the effective date of the Principles on or over water (in particular, the high seas and Great Lakes);
2. There is no intention by the ATA carriers to limit, pursuant to that portion of Section 2, their existing potential legal liability or to change their existing practices with respect to aviation accidents occurring on land, including but not limited to remediation and recovery; and



Mr. Dan Campbell
September 30, 1999
Page 2

3. Nothing in the Principles is intended to preclude or prevent other contributions or assistance to the salvage or recovery efforts of an accident occurring on or over water by the individual ATA carrier(s) involved in such an aviation accident.

We understand that this letter will become part of the interpretive file underlying the Principles and expect you and your colleagues at the NTSB will refer to it in the future should the need arise.

Sincerely yours,


Kenneth S. Levinson
1999 Chair
ATA Insurance Committee


Christa Meyer Hinckley
1999 Vice Chair
ATA Insurance Committee

cc: Carol Hallet, President & CEO, ATA
Robert Warren, General Counsel, ATA
Jim Casey, Deputy General Counsel, ATA
ATA Insurance Committee Members

**49 USC Section 1155
Aviation Penalties**

(a) Civil Penalty. - (1) A person violating section 1132, section 1134(b), section 1134(f)(1), or section 1136(g) (related to an aircraft accident) of this title or a regulation prescribed or order issued under any of those sections is liable to the United States Government for a civil penalty of not more than \$1,000. A separate violation occurs for each day a violation continues. (2) This subsection does not apply to a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of Military Justice when the member or employee is performing official duties.

The appropriate military authorities are responsible for taking necessary disciplinary action and submitting to the National Transportation Safety Board a timely report on action taken. (3) The Board may compromise the amount of a civil penalty imposed under this subsection. (4) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty. (5) A civil penalty under this subsection may be collected by bringing a civil action against the person liable for the penalty. The action shall conform as nearly as practicable to a civil action in admiralty. (b) Criminal Penalty. - A person that knowingly and without authority removes, conceals, or withholds a part of a civil aircraft involved in an accident, or property on the aircraft at the time of the accident, shall be fined under title 18, imprisoned for not more than 10 years, or both.

Historical And Revision Notes

Revised Source (U.S. Code) Source (Statutes at Large) Section 1155(a)(1), 49 App.:1471(a)(1) Aug. 23, 1958, Pub. L. (2) (related to 85-726, Sec. 901(a)(1) subchapter VII). (related to title VII), 72 Stat. 783; restated July 10, 1962, Pub. L. 87-528, Sec. 12, 76 Stat. 149; Aug. 5, 1974, Pub. L. 93-366, Sec. 107, 88 Stat. 414; Jan. 3, 1975, Pub. L. 93-633, Sec. 113(b), 88 Stat. 2162. 49 App.:1655(d) Oct. 15, 1966, Pub. L. (1st sentence). 89- 670, Sec. 6(d) (1st sentence), 80 Stat. 938. 49 Jan. 3, 1975, Pub. L. App.:1903(a)(1)(A). 93-633, Sec. 304(a)(1)(A), 88 Stat. 2168. 1155(a)(3), 49 App.:1471(a)(2) Aug. 23, 1958, Pub. L. (4) (related to 85-726, Sec. 901(a)(2) subchapter VII). (related to title VII), 72 Stat. 784; July 10, 1962, Pub. L. 87-528, Sec. 12, 76 Stat. 150; restated Oct. 24, 1978, Pub. L. 95-504, Sec. 35(b), 92 Stat. 1740. 49 App.:1655(d) (1st sentence). 49 App.:1903(a)(1)(A). 1155(a)(5) 49 App.:1473(b)(1). Aug. 23, 1958, Pub. L. 85-726, Sec. 903(b)(1), 72 Stat. 786; Oct. 24, 1978, Pub. L. 95-504, Sec. 36, 92 Stat. 1741. 49 App.:1473(b)(4). Aug. 23, 1958, Pub. L. 85-726, Sec. 903(b)(4), 72 Stat. 787. 49 App.:1655(d) (1st sentence). 49 App.:1903(a)(1)(A). 1155(b) 49 App.:1472(p). Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, Sec. 902(p); added Oct. 15, 1962, Pub. L. 87-810, Sec. 4, 76 Stat. 921; Aug. 5, 1974, Pub. L. 93-366, Sec. 103(b), 88 Stat. 410; Dec. 30, 1987, Pub. L. 100-223, Sec. 204(e), 101 Stat. 1520.

In subsection (a)(1), the words "section 1132 or 1134(b) or (f)(1) (related to an aircraft accident) of this title" are substituted for "any provision of subchapter . . . VII . . . of this chapter" in 49 App.:1471(a)(1) because those sections restate the relevant source provisions of 49 App.:ch. 20 carried out by the Board.

The words "regulation prescribed or order issued under either of those sections" are substituted for "rule, regulation, or order issued thereunder" for clarity and consistency in the revised title and with other titles of the United States Code and because "rule" and "regulation" are synonymous.

The words "liable to the United States Government" are substituted for "subject to" for clarity.

The words "for each such violation" are omitted as unnecessary because of 18:1. In subsection (a)(2), the word "civilian" is omitted as unnecessary.

The words "with respect thereto" are omitted as surplus.

In subsection (a)(4), the words "imposed or compromised" are substituted for "finally determined or fixed by order of the Board, or the amount agreed upon in compromise" in 49 App.:1471(a)(2) for consistency and to eliminate unnecessary words.

In subsection (a)(5), the words "imposed or assessed" are omitted as surplus.

The words "civil action against the person" are substituted for "proceedings in personam against the person" in 49 App.:1473(b)(1) for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.) and to eliminate unnecessary words.

The text of 49 App.:1473(b)(1) (1st sentence words after 1st comma and last sentence) is omitted as unnecessary because penalties imposed by the National Transportation Safety Board do not involve liens on aircraft.

The text of 49 App.:1473(b)(4) is omitted as unnecessary because of 28:ch. 131.

References In Text

The Uniform Code of Military Justice, referred to in subsec. (a)(2), is classified generally to chapter 47 (Sec. 801 et seq.) of Title 10, Armed Forces.

Prior Provisions

Prior chapter 31 (Secs. 3101-3104) of subtitle II redesignated and restated as chapter 315 (Secs. 31501-31504) of subtitle VI of this title by Pub. L. 103-272, Sec. 1(c), (e). AMENDMENTS 1996 - Subsec. (a)(1). Pub. L. 104-264 substituted ", section 1134(b), section 1134(f)(1), or section 1136(g)" for "or 1134(b) or (f)(1)" and "any of" for "either of".

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

Section Referred To In Other Sections

This section is referred to in sections 1151, 1152 of this title.

25. Attorney Client & Work Product Privileges

ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGES

This memorandum sets forth the basic requirements for establishing attorney-client and work product privileges. It is important for parties to a lawsuit to understand these privileges and comply with the strict rules that govern them. Failure to understand and follow these rules can result in the disclosure of otherwise privileged documents. Parties should also be aware that different jurisdictions apply different rules, and that reasonable judges can disagree on whether a document is privileged. Thus, no matter how carefully documents are prepared, there is always a chance that they will ultimately be disclosed in litigation. For this reason, parties should be very careful about what is said in such documents. If there is a sensitive issue that needs to be discussed with counsel, it should probably be dealt with in a meeting or a teleconference.

In many instances both the attorney-client and work product privileges will apply to a document. If in doubt, indicate the document is both attorney-client and work product privileged and abide by the rules for both privileges.

ATTORNEY-CLIENT PRIVILEGE

The attorney-client privilege generally attaches to two main types of communications. The first is a communication made in confidence between a client and an attorney for the purpose of seeking or providing legal advice. These communications are privileged because a client and an attorney should be able to speak freely in seeking or providing legal advice.

The second type is a communication from a client to an attorney containing factual information intended to keep the attorney apprised of continuing developments in a legal matter. This type of communication is privileged because an attorney must be provided with relevant facts in order to give sound and informed advice. In fact, the first step in the resolution of any legal problem is ascertaining the factual background and sifting through the facts with an eye toward the legally relevant.

Any communication with an attorney that does not fall within one of these two groups is at risk of being disclosed in litigation. Thus, parties should include language in their communications with counsel that confirms the purpose of the communication and states an understanding that the matter is privileged.

For corporations, an additional rule may apply. In some jurisdictions, the attorney-client privilege attaches only to communications made by a member of the corporation's "control group." The control group is essentially "top management" of a corporation, generally those with the authority to make final decisions regarding legal representation. Some jurisdictions expand the control group to include employees who advise top management in areas relevant to the litigation. Generally, if a decision would not normally be made on a given topic without the advice or opinion of a certain employee, that employee is considered part of the control group for issues within his or her areas of responsibility or expertise.

In some jurisdictions, the attorney-client privilege is waived if an otherwise privileged document is created by or disclosed to a person who is not in the "control group" of a corporation. In all jurisdictions, the privilege is waived if shown to someone outside the company, with limited exceptions for litigation consultants.

The major points to remember are:

- Mark documents "ATTORNEY-CLIENT PRIVILEGED"
- Documents must be directed to an attorney
- Documents must be created by top management (the "control group")
- Documents must not be disclosed outside the control group
- Communications should reference a request for legal advice
- Communications should state that factual information is relevant to legal issues and provided for use by counsel, at counsel's request, as appropriate

- Assume the document will be disclosed: say nothing in writing that would be damaging if revealed to the public or opponents

WORK PRODUCT PRIVILEGE

The work product privilege protects from disclosure documents and tangible things “prepared in anticipation of litigation or for trial” by or for a party or its representative. The rule for this privilege varies by jurisdiction, but it generally protects documents prepared or obtained because of the litigation. The privilege protects materials that would reveal the theories, mental impressions or litigation plans of a party’s attorney. The privilege may also extend to non-attorneys who create trial preparation materials on behalf of the party or the party’s attorney, including consultants and investigators.

There is no control group test, but the privilege can be waived if documents are disclosed to persons outside the company. Nevertheless, work product materials should only be disclosed to those who are involved in handling the litigation and have a need to know.

The major points to remember are:

- Mark document “WORK PRODUCT PRIVILEGED”
- Indicate document was prepared “in anticipation of litigation”
- Indicate document was prepared at the request of counsel, if appropriate
- Documents can be created by an attorney, a client or a consultant
- Documents must not be disclosed outside the company, preferably only to those involved in litigation with a need to know
- Assume the document will be disclosed: say nothing in writing that would be damaging if revealed to the public or opponents

26. Sample Internal Memo re: Work Product

SAMPLE INTERNAL MEMO RE: WORK PRODUCT

Date: <Month> XX, 202X

Interoffice *Correspondence*

To: Distribution

Subject: _____ Accident Involving [COMPANY] Flight XXXX Litigation and NTSB Investigation

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION ATTORNEY WORK PRODUCT IN ANTICIPATION OF LITIGATION

We [anticipate][have already received] court actions against [COMPANY] as a result of the accident involving Flight _____. In addition, the National Transportation Safety Board (NTSB) is conducting an investigation into the probable cause of the accident. [COMPANY] is a party to the NTSB investigation which is supposed to proceed without regard to the possible consequences for the participants in the courts.

However, both the information uncovered in the NTSB investigation and the conclusions and recommendations that the Board will eventually reach as a result of this investigation may have a substantial effect on the outcome of litigation against [COMPANY]. We have, therefore, asked [Law Firm] to assist [COMPANY] during the NTSB investigation and to work closely with us to defend [COMPANY]'s interests.

The [COMPANY] Legal Department contacts are Attorneys _____, and Paralegal _____. All requests from the NTSB for access to [COMPANY]'s records should be reported to the Legal Department or outside counsel as soon as they are received. NO MATERIAL SHOULD BE SENT TO ANYONE (INCLUDING THE NTSB AND THE FAA) BEFORE THAT MATERIAL IS REVIEWED BY COUNSEL.

IN ADDITION, IN VIEW OF THE PENDING LITIGATION, ALL DOCUMENTS CREATED FROM THIS POINT FORWARD (INCLUDING CORRESPONDENCE AND INTERNAL MEMORANDA) MUST BE APPROVED BY THE LEGAL DEPARTMENT OR OUTSIDE COUNSEL BEFORE BEING FINALIZED AND SIGNED. _____ will be acting as [COMPANY]'s accident investigation coordinator and is working with the NTSB at the direction of [COMPANY]'s Legal Department and outside counsel. Please funnel all requests for approval of such documents through Captain Sharp.

General observations, guidelines and tips to help you get ready for these legal proceedings include the following:

**CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT IN ANTICIPATION OF LITIGATION**

1. NTSB INVESTIGATION. The NTSB investigation is important because it will generate new information affecting [COMPANY]'s defense and will focus on issues that may become important in the litigation.
 - a. All drafts circulated by the NTSB will be reviewed by counsel.
 - b. Challenge anything you think is peculiar in an NTSB draft. It may be the basis for an adverse collateral finding later on, or an attempt by another party to improperly lay blame on [COMPANY]. Use the disclaimer language attached to this memo when signing drafts (after review by counsel).
 - c. Keep a copy of everything you give to the NTSB and keep a file with these documents.
 - d. Counsel will prepare all witnesses for the NTSB Hearing and will advise the Company spokesperson before, during and after the Hearing.
 - e. Retain all original records in a safe, secure location. The NTSB and FAA are not entitled to our original records and we might not get them back. Use a cover letter, with a copy to _____, to record precisely which documents are being provided to the NTSB or FAA. When the NTSB releases the aircraft, be sure to retain all parts that might be at issue in the investigations and litigation. Document the chain of custody for all aircraft parts with a receipt showing who had the part and to whom, when and where the part was given. Both the person giving and accepting the part should sign the receipt. Parts for which a receipt is signed should be kept under lock and key.

BE SURE xxxxxxxxxxxxxxxx IS INFORMED BEFOREHAND OF YOUR INTENDED ACTIONS.

2. DOCUMENTS. Documents, including memos, notes and computer printouts, existing prior to the accident, as well as those created from the date forward, may have serious implication for anticipated litigation against [COMPANY]. Therefore, please adhere to the following guidelines:
 - a. Do not destroy any documents that existed prior to _____ that you believe may refer to any matters relating to the accident. We will "freeze" two copies of all relevant manuals as of the accident.
 - b. Avoid writing any unnecessary documents, since they may need to be provided to lawyers representing people suing [COMPANY]. If it is necessary to write a document, stick to facts and avoid opinions and speculation. You should be aware that all documents, including your scribbled notes, diary entries and comments on memos written by someone else, may eventually be reviewed by lawyers suing [COMPANY]. Please take the time to think carefully about the implications of that which you put on paper.
 - c. If it is necessary to prepare a document relating to Flight XXXX, especially those that refer to possible causes of the accident, responsibility, liability or recommended preventative measures, those documents must be reviewed with counsel in preliminary form. Mark the review copy of "preliminary draft" to preserve your routine practice of discarding superseded materials. Attached to this memo is a format to be followed for all such documents. It is imperative that all Personnel use this format when preparing documents that are in any way related to the Flight XXXX accident. The reason for this format is that, although documents relating to Flight XXXX may be subject to inspection and copying by counsel for parties suing [COMPANY], an exception to this rule may apply to "privileged documents." Privileged documents are those considered confidential communications to our counsel in preparation for litigation. That includes documents the Legal Department, outside counsel or other [COMPANY] representative have asked you to prepare to assist in [COMPANY]'s defense. Use of this format will help us preserve that privilege. Failure to do so may waive [COMPANY]'s privilege.
 - d. We will need to account for all documents relating to Flight XXXX, including documents generated after the accident. Please keep a separate file of materials relating to this accident. Please keep a separate folder within your accident file for communications with counsel. That file should be labeled "Confidential Litigation File."

- e. Documents that might otherwise be privileged but that pass through too many hands prior to receipt by counsel may also waive [COMPANY]'s privilege. Therefore, distribution of all privileged documents must be conducted by counsel through [Party Coordinator or legal counsel]. Please do not routinely or otherwise send copies of privileged documents to anyone other than legal counsel (again, through Party Coordinator). Please do not prepare any documents at the request of non[COMPANY] personnel unless you have first discussed the matter with counsel. The best practice is to check with counsel if you have any questions or concerns prior to preparing any documents or communicating with any outside personnel.
- 3. DEPOSITIONS. Any [COMPANY] employee may be deposed. Counsel will brief all [COMPANY] personnel to be deposed. Depositions and investigations may inquire into prior oral as well as written statements. Therefore, don't give interviews, statements or opinions regarding Flight XXXX to ANYONE. Casual remarks about sensitive material can be the subject of extensive witness examination.
- 4. PROPRIETARY INFORMATION. If you think you have been asked for any [COMPANY] business secret or proprietary material, label it as such so that it will receive special attention by counsel.

Please distribute copies of this memo to others who are working with you on the litigation and NTSB investigation.

CONFIDENTIAL COMMUNICATION TO COUNSEL

M E M O R A N D U M

PRELIMINARY DRAFT (if appropriate)

TO: [Outside Counsel]
Legal Department

FROM: (Employee)

DATE:

Re: Litigation Preparation Involving [COMPANY] Flight XXXX (specific subject)

The purpose of this memorandum is to transmit confidential information to counsel in preparation for anticipated litigation involving [COMPANY] Flight XXXX/Month X, 202X. These matters include the following:

27. Discovery of Electronically Stored Information (ESI)

DISCOVERY OF ELECTRONICALLY STORED INFORMATION

(ESI) Production of Documents, Electronically Stored Information (ESI) – Rule 34

- A party may request production of any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained.

Limitations on ESI Discovery – Rule 26(b)(2)

- Party must provide ESI that is “reasonably accessible”.
 - ESI that is not used in regular ongoing activities may also need to be provided should the computer systems make the ESI readily accessible, e.g., some archived materials.
- Party need not provide discovery of ESI from sources party identifies as “not reasonably accessible because of undue burden or cost.” Rule 26(b)(2)(B).
 - Burden on producing party to show ESI is not reasonably accessible because of undue burden or cost.
 - Court may order discovery if requesting party shows good cause. Cost of discovery may be shifted in whole or in part to requesting party.
- Generally, do not have to produce backed-up data, deleted information, information on systems no longer in use, etc., unless readily accessible. However, sources of information not searched must be identified.
- Must search all active servers, PCs, laptops, PDAs, telephones, peripheral equipments such as printers, etc. unless a claim can be made that it is unduly burdensome and costly due to the amount or type of hardware involved and/or lack of qualified personnel to conduct the searches.

ESI Preservation

- Common law and statutory duties to preserve evidence are unchanged by new rules.
 - ESI that may ultimately be found to be not reasonably accessible must be preserved pending a ruling that it may too burdensome and/or costly to preserve.
- May necessitate deactivation of auto-delete or over-write programs.
- Document Retention Policy must address ESI to avoid claims of spoliation of evidence.
 - Use of auto-delete programs, etc. as part of a standardized Company retention and deletion program is permissible.
 - Notice of claims or litigation may require cessation of standard destruction policies, including auto-delete programs.

28. Retention and Preservation of Electronically Stored Information (ESI)

Retention and Preservation of Electronically Stored Information (ESI) When litigation is anticipated:

1. ☐ Determine whether a duty to take affirmative steps to retain potentially discoverable information has arisen. [See End Note No.1, below]
 - ☐ Has a claim or suit been made or filed?
 - ☐ Is a claim or suit probable?
2. ☐ Identify main issues on which a claim may be based.
3. ☐ Identify company individual who will be responsible for coordinating all discovery, including ESI.
4. ☐ Coordinate with key personnel:
 - (a) Company's duty to preserve potentially discoverable information [Failure to preserve information may lead to additional suits for spoliation and/or summary granting of plaintiff's claims]
 - (b) Main issues raised by claim
 - (c) Identify all personnel who may have discoverable information.
5. ☐ Coordinate with individual(s) responsible for electronic/computer equipment to suspend all automatic deletion, overwrite and/or destruction programs.
 - Identify any such programs that it is not possible or practicable to suspend
 - Identify alternative retention methods where suspension of deletion programs is not practicable, e.g., archiving of materials relevant to known claim issues before auto-deletion or preservation of a hard copy.
6. ☐ Distribute retention memorandum to all individuals who may have potentially discoverable information:
 - (a) ☐ Do not destroy potentially discoverable information, whatever its form, that relates to: [Identify Issues raised by the claim and time period]
 - (d) ☐ Identify sources of potentially discoverable information, both hard copy and digitally based:
 - ☐ Traditional hardcopy files
 - ☐ Servers
 - ☐ PCs
 - ☐ Laptops
 - ☐ PDAs
 - ☐ Back-up tapes, disks, etc.
 - ☐ external storage such as flash drives
 - ☐ Disks (floppy/CD/DVD)
 - ☐ Telephones
 - ☐ Cell phones
 - ☐ Peripheral equipment: fax machines, printers
 - ☐ [Other]
 - (c) ☐ Identify types of data and materials to be retained:
 - ☐ Hard copies of documents
 - ☐ Electronically created or stored versions of documents
 - ☐ Email
 - ☐ IM messages
 - ☐ Voice mail
 - ☐ Draft copies of documents
 - (d) ☐ Suspend normal and/or automatic destruction procedures. Identify alternative retention procedures where needed.

7. ___ Identify all no longer utilized hardware, such as old PCs, laptops, cell phones, PDAs, etc., that may contain discoverable information, and retain the hardware in a centralized location.
 - Retain all software, applications, etc. that are necessary to retrieve information from obsolete or unused hardware.
8. ___ Identify all sources of discoverable information that is held by third-parties, e.g., off-site servers for Company computer systems, email or telephones.
 - ___ Coordinate with third-party computer service providers to retain potentially discoverable information and/or suspend automatic deletion programs

END NOTES

1. The question of whether litigation is “probable,” in the context of when a duty to preserve material arises, is a factual one. There is no bright line that can be drawn. Some guidance can be taken from the ABA’s Civil Discovery Standards that states “[w]hen a lawyer who has been retained to handle a matter learns that litigation is probable or has been commenced, the lawyer should inform the client of its duty to preserve potentially relevant documents....” American Bar Association, Section of Litigation, Civil Discovery Standards, Standard 10 (2004). Further guidance comes from the Federal Court in New York where the court stated that the obligation to preserve arises “where a party is on notice that litigation is likely to be commenced.” *Anderson v. Sotheby’s Inc. Severance Plan*, 2005 WL2583715 at *3 (S.D.N.Y. Oct. 11, 2005).

The ABA has defined “probable” in the context of auditor’s letters to mean “[t]he chance of the future event or events are likely to occur.” American Bar Association, Auditor’s Letter Handbook, at 15.

A similar standard has been applied in defining “in anticipation of litigation” within the work product doctrine. For example, the Fourth Circuit stated that a party could reasonably anticipate litigation “following an actual event or series of events that reasonably could result in litigation.” *National Union Fire Ins. Co. v. Murray Sheet Metal Co.*, 967 F.2d 980, 984 (4th Cir. 1992).

Experience shows that in the context of tort litigation following an accident, whether litigation is probable against a given party seems likely driven by (1) the extent to which the actions or product of the party is apparently related to the cause of the accident, and (2) whether death, serious injury or substantial property damage occurred.

Ten Tips on Avoiding Document Retention Disasters

"LexisNexis - Applied Discovery White Paper"

1. Practice competent pre-litigation planning - develop a policy and enforce it. Know what is being stored, and how long the company must keep it to comply with applicable statutes and court rulings in the subject jurisdiction. Be sure to include electronic data in the policy.
2. Involve the company's technology department in decisions regarding the policy's parameters and methods for enforcement. Remember that the IS or IT department is usually charged with a duty to keep the system from losing any data, and those departments may not realize the implications of keeping too much data for too long.
3. Establish clear accountability for the enforcement of the policy. While an executive-level technology employee may be responsible for overall enforcement, be sure the staff handling daily procedures is educated about the importance of the policy and held accountable for following the guidelines in place. Know in advance who may be called upon to testify about the company's document retention procedures and educate that person in advance of the crisis.
4. Educate all of the company's computer users about the pitfalls of electronic communications. Here is a good rule of thumb for email-before hitting "send," consider whether you would want your employer, your mother, or a jury to read the message. If the answer is no, the message should not be sent. Employees should have no false expectations of the privacy in any information on the company's computer system.
5. Teach employees how to manage their electronic data. As a routine matter, decide which business documents must be kept and which can be discarded on a regular basis. Educate employees about these decisions. Advise them about the legal ramifications of deleting information once the company is on notice of a law suit or other legal document request.
6. If the policy states that certain unnecessary records will be purged at regular intervals – whether electronic or paper- be sure the policy is consistently followed.
7. Consider segregating business email and personal email applying different retention standards. A company may even wish to set standards for automatic deletion of emails unless the author or recipient makes a conscious decision to store the message as a business record.
8. Immediately reconsider and be prepared to suspend regular retention and destruction procedures when litigation or a legal document request is pending or imminent. Have a plan in place for quickly notifying all necessary staff when this action must be taken.
9. Involve the technology department again when litigation or any form of document request is imminent. Make informed decisions about how best to alter the company's usual retention policy, if necessary.
10. Periodically conduct an internal audit of the company's retention policy. It will be easier to argue the policy is reasonable if it is reexamined and any necessary adjustments are made on a regular basis.

While no document retention policy can provide a fail-safe plan for avoiding liability at the hands of electronic data, an educated, methodical approach to retention and destruction of electronic documents will fare well in the eyes of most courts.

FEDERAL RULE OF EVIDENCE 407

Rule 407. Subsequent Remedial Measures

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

NOTES TO RULE 407

HISTORY:

(Jan. 2, 1975, P.L. 93-595, § 1, 88 Stat. 1932.)

Notes of Advisory Committee on Rules

The rule incorporates conventional doctrine which excludes evidence of subsequent remedial measures as proof of an admission of fault. The rule rests on two grounds. (1) The conduct is not in fact an admission, since the conduct is equally consistent with injury by mere accident or through contributory negligence. Or, as Baron Bramwell put it, the rule rejects the notion that "because the world gets wiser as it gets older, therefore it was foolish before." *Hart v. Lancashire & Yorkshire Ry. Co.*, 21 L.T.R. N.S. 261, 263 (1869). Under a liberal theory of relevancy this ground alone would not support exclusion as the inference is still a possible one. (2) The other, and more impressive, ground for exclusion rests on a social policy of encouraging people to take, or at least not discouraging them from taking, steps in furtherance of added safety. The courts have applied this principle to exclude evidence of subsequent repairs, installation of safety devices, changes in company rules, and discharge of employees, and the language of the present rules is broad enough to encompass all of them. See Falknor, *Extrinsic Policies Affecting Admissibility*, 10 Rutgers L.Rev. 574, 590 (1956).

The second sentence of the rule directs attention to the limitations of the rule. Exclusion is called for only when the evidence of subsequent remedial measures is offered as proof of negligence or culpable conduct. In effect it rejects the suggested inference that fault is admitted. Other purposes are, however, allowable, including ownership or control, existence of duty, and feasibility of precautionary measures, if controverted, and impeachment. 2 Wigmore § 283; Annot., 64 A.L.R.2d 1296. Two recent federal cases are illustrative. *Boeing Airplane Co. v. Brown*, 291 F.2d 310 (9th Cir. 1961), an action against an airplane manufacturer for using an allegedly defectively designed alternator shaft which caused a plane crash, upheld the admission of evidence of subsequent design modification for the purpose of showing that design changes and safeguards were feasible. And *Powers v. J. B. Michael & Co.*, 329 F.2d 674 (6th Cir. 1964), an action against a road contractor for negligent failure to put out warning signs, sustained the admission of evidence that defendant subsequently put out signs to show that the portion of the road in question was under defendant's control. The requirement that the other purpose be controverted calls for automatic exclusion unless a genuine issue is present and allows the opposing party to lay the groundwork for exclusion by making an admission.

Otherwise the factors of undue prejudice, confusion of issues, misleading the jury, and waste of time remain for consideration under Rule 403.

For comparable rules, see Uniform Rule 51; California Evidence Code § 1151; Kansas Code of Civil Procedure § 60-451; New Jersey Evidence Rule 51.

Notes of Advisory Committee on Rules - 1997 Amendment

The amendment to Rule 407 makes two changes in the rule. First, the words "an injury or harm allegedly caused by" were added to clarify that the rule applies only to changes made after the occurrence that produced the

damages giving rise to the action. Evidence of measures taken by the defendant prior to the “event” causing “injury or harm” do not fall within the exclusionary scope of Rule 407 even if they occurred after the manufacture or design of the product. See *Chase v. General Motors Corp.*, 856 F.2d 17, 21-22 (4th Cir. 1988). Second, Rule 407 has been amended to provide that evidence of subsequent remedial measures may not be used to prove “a defect in a product or its design, or that a warning or instruction should have accompanied a product.” This amendment adopts the view of a majority of the circuits that have interpreted Rule 407 to apply to products liability actions. See *Raymond v. Raymond Corp.*, 938 F.2d 1518, 1522 (1st Cir. 1991); *In re Joint Eastern District and Southern District Asbestos Litigation v. Armstrong World Industries, Inc.*, 995 F.2d 343 (2d Cir. 1993); *Cann v. Ford Motor Co.*, 658 F.2d 54, 60 (2d Cir. 1981), cert. denied, 456 U.S. 960 (1982); *Kelly v. Crown Equipment Co.*, 970 F.2d 1273, 1275 (3d Cir. 1992); *Werner v. Upjohn, Inc.*, 628 F.2d 848 (4th Cir. 1980), cert. denied, 449 U.S. 1080 (1981); *Grenada Steel Industries, Inc. v. Alabama Oxygen Co., Inc.*, 695 F.2d 883 (5th Cir. 1983); *Bauman v. Volkswagenwerk Aktiengesellschaft*, 621 F.2d 230, 232 (6th Cir. 1980); *Flaminio v. Honda Motor Company, Ltd.*, 733 F.2d 463, 469 (7th Cir. 1984); *Gauthier v. AMF, Inc.*, 788 F.2d 634, 636-37 (9th Cir. 1986).

Although this amendment adopts a uniform federal rule, it should be noted that evidence of subsequent remedial measures may be admissible pursuant to the second sentence of Rule 407. Evidence of subsequent measures that is not barred by Rule 407 may still be subject to exclusion on Rule 403 grounds when the dangers of prejudice or confusion substantially outweigh the probative value of the evidence.

GAP Report on Rule 407

The words “injury or harm” were substituted for the word “event” in line 3. The stylization changes in the second sentence of the rule were eliminated. The words “causing ‘injury or harm’ “ were added to the Committee Note.

Criminal Investigations

31. Criminal Issues Arising From Aircraft Accidents

Potential Criminal Issues Related to an Aircraft Accident

I. Airline Accidents Result in Criminal Charges

Since 2008, there have been an average of 17 major passenger jet accidents worldwide each year. More than 24 criminal investigations have been initiated against airline companies and officials in the last decade alone—with several notable prosecutions in the last few years—for criminal conduct allegedly arising from these accidents. Although such prosecutions are rare in the US, they occur frequently overseas, as we note in just a few examples.

- In the wake of the Air France Flight 4590 (Concorde) accident more than a decade ago, a French court in 2010 convicted Continental Airlines and one of its mechanics of manslaughter, although these convictions were overturned in November of 2012.
- As a result of the Helios Airways Boeing 737-300 accident in Greece, three airline executives were prosecuted in a Cypriot court in 2011. Although the executives were ultimately acquitted, the same three executives, and a British engineer, were convicted in April of 2012 of manslaughter and negligence in an Athens court and sentenced to ten years in prison.
- In the wake of the mid-air collision between the Embraer Legacy 600 and the Gol Boeing 737-800, two American pilots were convicted in a Brazilian court in May of 2011 of failing to notice that the airplane's collision avoidance system had been inhibited.

Although their conviction was upheld on appeal, the Brazilian court reduced their sentence in October of 2012 and allowed the men to avoid prison time.

Airline accidents, especially those occurring abroad, give rise to a number of criminal law issues. First, it appears that, in some foreign countries, mere negligence resulting in injury—which would not be treated criminally in the US—is subject to criminal sanctions overseas. Second, prosecutors—particularly foreign ones—exercise their discretion to bring criminal charges whenever there is a major accident resulting in death or injury. Recently, airlines and international flight authorities have urged prosecuting authorities to exercise restraint in bringing criminal prosecutions—both in the US and overseas. However, despite the prevalence of campaigns aimed at decriminalizing aviation accidents, airline companies and officials still face a significant risk of prosecution in the event of an aviation accident, particularly overseas.

II. Jurisdiction Over Aircraft Accidents

The United States may assert its jurisdiction over aircraft accidents under either 18 U.S.C. § 7 or 49 U.S.C. § 46501. Pursuant to § 7, the US has jurisdiction over accidents involving US or foreign carriers when the accidents occur over US airspace and territorial waters. In addition, the US may use 49 U.S.C. § 46501 to assert jurisdiction over airplane accidents that occur overseas when the aircraft's "destination or last place of departure" is the US. Several other factors may also convey US jurisdiction, such as the aircraft's ownership.

Foreign countries may also assert jurisdiction over aviation accidents. The same factors that give rise to US jurisdiction—such as the place of the accident or the ownership of the aircraft—often provide a basis for foreign jurisdiction as well. Therefore, when the accident occurs in a foreign country, the country will likely have jurisdiction to bring criminal charges against the airline company, executives, and employees.

III. Substantive Bases of US Criminal Liability

A. Involuntary Manslaughter

The US federal government can impose criminal liability on both individuals and corporations for aircraft accidents. Thus, when an airplane accident results in fatalities, manslaughter charges may be brought against the airline and the airline's employees. Charges of voluntary manslaughter are unlikely because voluntary manslaughter requires

the specific intent to harm, see 18 U.S.C. § 1112(a), which is usually not present in aviation accidents. However, charges of involuntary manslaughter may be appropriate. Although there are two types of involuntary manslaughter, the one most applicable in the context of an airline accident is the type colloquially referred to as “gross negligence” or “criminal negligence.” Under federal law, this type of involuntary manslaughter occurs where an individual causes “the unlawful killing of a human being without malice” while “[i]n the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.” *Id.*

An example of this type of involuntary manslaughter can be found in the federal indictment recently issued against two employees of BP for their role in the 2010 Gulf oil spill. Well Site Leaders Robert Kaluza and Donald Vidrine were indicted by a federal grand jury for involuntary manslaughter for failing to adequately supervise several key safety tests that were performed on the Deepwater Horizon drilling rig. See Indictment at 5-6, *United States v. Kaluza & Vidrine*, No. 2:12-cr-00265-SRD-ALC (filed Nov. 14, 2012), available at <http://www.justice.gov/iso/opa/resources/2520121115143638743323.pdf> (noting that, despite “significant indications that the well was not secure, defendants . . . failed to phone engineers onshore at that time to alert them to the problems”). According to the indictment, the defendants’ conduct amounted to gross negligence. *Id.* at 6.

B. Other Federal Statutes

A number of other federal statutes are applicable to criminal conduct resulting from aviation accidents. First, under 18 U.S.C. § 1001(a), an individual may be held criminally liable if he: “(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.” Although prosecutions under 18 U.S.C. § 1001(a) may target statements made during the course of a criminal investigation, the false statements statute also applies to written or oral statements made prior to the onset of an investigation. This typically involves “pencil whipping”—when airline officials or employees falsify airline records to indicate that they performed certain maintenance checks. For example, following the 1996 ValuJet Flight 592 airplane accident, SabreTech, its vice president for maintenance, and two mechanics were indicted, but not convicted, of false statements under § 1001(a).

Second, when a company or individual falsifies documents pertaining to an investigation or persuades witnesses not to cooperate—with the specific intent to impede the investigation—charges of obstruction of justice are possible under 18 U.S.C. §§ 1510-1520. Last, where two or more individuals agree to commit obstruction of justice or to violate the false statements statute, they also subject themselves to liability under 18 U.S.C. § 371, the federal conspiracy statute.

IV. Substantive Bases of Foreign Criminal Liability

While criminal prosecution arising from airplane accidents is certainly a possibility in the US, the risk is significantly greater in foreign countries due to the lack of prosecutorial discretion and the marked differences between US and foreign criminal laws. Most significantly, the willfulness and intent elements that are the hallmark of most US criminal prosecutions may be absent overseas. For example, in 2012, an Athens court convicted airline executives based on negligent acts of their employees that caused the 2005 Helios Airways Boeing 737-300 accident in Greece. Although a Cypriot court had previously acquitted the men of the same charges, the Athens court convicted them of manslaughter and negligence for the reckless, dangerous, and careless actions of their agents in failing to reset the plane’s pressurization valve system.

An earthquake in Italy provides another more recent example of foreign criminal prosecutions for non-intentional conduct. In 2009, a 6.3-magnitude earthquake struck L’Aquila, Italy and killed over 300 people. In the aftermath of this disaster, six Italian scientists and an Italian government official were convicted of manslaughter and sentenced to six years in prison for failing to accurately predict and communicate the risk of the earthquake. See <http://www.cnn.com/2012/10/23/world/europe/italyquake-scientists-guilty/index.html>. Given that earthquakes are notoriously difficult to predict, it is unlikely that a US prosecutor would pursue—or that a US court would sustain—such a conviction. These examples illustrate some of the key differences between US and foreign law with respect to liability, sentencing, and prosecutorial discretion.

V. Corporate Criminal Liability

A. US Corporate Criminal Liability

Even where individual employees are held accountable for their actions, the corporate entity is not immune from criminal liability. Corporate criminal liability was first recognized in the 1909 case of *New York Central & Hudson River Railroad v. United States*, 212 U.S. 481 (1909). In holding that a corporation may be criminally liable for the acts of its agents, the court in *New York Central* noted that “to give [corporations] immunity from all punishment . . . would virtually take away the only means of effectually controlling the subject-matter and correcting the abuses aimed at.” *Id.* at 485-86.

Since 1909, courts have held corporations criminally liable by imputing the criminal intent of the corporation’s employees to the corporate entity under the tort law principle of respondeat superior. See Pamela H. Bucy, *Corporate Ethos: A Standard for Imposing Corporate Criminal Liability*, 75 MINN. L. REV. 1095, 1103 (1991). Under this theory, a corporation is criminally liable for the acts of its agents who “(1) commit a crime (2) within the scope of employment (3) with the intent to benefit the corporation.” *Id.*

However, the “within the scope of employment” element has been rendered almost meaningless in the criminal law context, since courts have considered criminal conduct to be within the scope of employment even where it was forbidden by corporate policy. *Id.* An example of this is the 1972 case of *United States v. Hilton Hotels Corp.*, 467 F.2d 1000 (9th Cir. 1972). In this case, a hotel’s agent threatened suppliers with loss of the hotel’s business if they did not contribute money to a trade association to which the hotel belonged. *Id.* at 1002. Although such a threat was against both corporate policy and the express instructions given to the agent, the court held the corporation criminally liable. See *id.* at 1004 (emphasizing that “[s]uch liability may attach without proof that the conduct was within the agent’s actual authority, and even though it may have been contrary to express instructions”).

Corporate vicarious liability in a criminal context has been upheld where the agent’s conduct was not only unauthorized, but in direct contravention of the corporation’s policies and express instructions. However, a comprehensive and rigorous compliance program may persuade prosecutors to exercise their discretion to refrain from criminally charging an airline for the reckless or intentional acts of its employees. See U.S. Attorney’s Manual § 9-28.300, available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/28mcrm.htm#9-28.300.

B. Foreign Corporate Criminal Liability

While corporate criminal liability is well established in the US, the concept is not universally recognized. In Germany, Greece, Hungary, Mexico, and Sweden, corporate criminal liability, while not a creature of statute, comes in the form of administrative penalties assessed against corporations for their employees’ criminal acts. See Aliens Arthur Robinson, ‘Corporate Culture’ as a Basis for the Criminal Liability of Corporations, 4 (2008), available at <http://www.reports-and-materials.org/All-ens-Arthur-Robinson-Corporate-Culturepaper-for-Ruggie-Feb-2008.pdf>. On the other hand, countries such as Brazil, Bulgaria, Luxembourg, and the Slovak Republic do not recognize corporate criminal liability at all. *Id.*

Of the countries that do impose criminal liability on corporations, there are varying approaches. In South Africa, just like in the US federal criminal system, corporate criminal liability is imputed to the corporation under the theory of vicarious liability. *Id.* Alternatively, the United Kingdom, Canada, and other British Commonwealth nations employ the “identification model,” which imputes senior officials and employees’ criminal conduct to the corporation on the theory that these employees possess the same state of mind, knowledge, and intention as the corporation. *Id.* at 4, 6. Another form of corporate criminal liability, which is recognized in Australia and Switzerland, is termed “organizational liability.” Under this theory, corporations are only criminally liable if the corporate culture, practices, and procedures encouraged or tolerated the criminal conduct at issue. *Id.* Thus, an airline that frequently flies to Australia or Switzerland may avoid corporate criminal liability in those countries by maintaining a corporate culture that clearly prohibits criminal conduct.

As countries differ markedly in how they treat corporate criminal liability, it is difficult to predict the criminal consequences that an aviation company may face following an accident. However, if airline companies familiarize

themselves with the varying treatments of corporate criminal liability, they may be able to better anticipate their potential liability.

VI. Responding to a Criminal Investigation

After an accident involving death or serious injury, airlines should prepare for the eventuality of criminal prosecution, even in the US. After taking the normal steps to collect and preserve all available evidence and witness statements, airlines should analyze the facts against applicable criminal statutes and Justice Department guidelines. Importantly, any decision by federal authorities to pursue a criminal case against an airline would be predicated on an analysis of the Justice Department's U.S. Attorney's Manual. The most important factors that are considered are: (1) the nature and seriousness of the offense; (2) the pervasiveness of wrongdoing within the corporation; (3) the corporation's history of similar misconduct; (4) the existence and effectiveness of a compliance program; and (5) the corporation's remedial actions. See U.S. Attorney's Manual § 9-28.300. Important to note, statements company employees or agents make during the course of their employment constitute "admissions" against the airline. Accordingly, airlines should prepare employees prior to any statements the employees make to safety organizations, such as the National Transportation Safety Board ("NTSB"). When an airline company becomes the target of a foreign criminal investigation, an entirely different—and more unpredictable—set of rules applies. For this reason, airline companies should take certain precautionary measures. First, airline companies should vet and retain, in advance, experienced criminal defense counsel in all countries in which they frequently travel, who can then brief the company on issues such as intent, collective liability, vicarious liability, the risk of arrest, and the detention of airline employees in the foreign jurisdiction. Second, in the event of an accident, and based on legal advice, airlines should consider immediate evacuation of its employees prior to the time they can be questioned or detained.

In the event of an airplane accident resulting in death or serious injury anywhere in the world, all interested parties must anticipate a criminal case. An ounce of prevention is the name of the game: advance preparation may save the company, its agents, and its employees from years of expense and exposure.

32. Advice to Employees on Government Interviews

ADVICE TO EMPLOYEES ON GOVERNMENT INTERVIEWS

Sample Employee Advice of Rights Form

[DATE]

TO: Distribution

Subject: Government Investigation

As you may be aware, the federal government is presently conducting an investigation that apparently focuses on [insert appropriate description].

In the course of this investigation, it is possible that you may be contacted personally at home or at the office by a Government investigator wishing to speak to you regarding the investigation. In the event that you are contacted by a Government investigator who requests a telephone or personal interview, you should know of the following:

1. The investigator may request to speak to you.
2. You have a right to speak to the Government investigator as well as a right not to speak to the Government investigator.
3. The Government investigator does not have a right to insist upon an interview, and he does not possess subpoena or other powers of process requiring attendance at an interview. Submission to an interview is a completely voluntary matter.
4. **[OPTIONAL AND IF APPLICABLE]** The Government investigator may indicate that if you do not agree to an interview, you can be subpoenaed to a grand jury to testify. While the investigator personally does not have subpoena power, the United States Attorney (United States Department of Justice) does have the power to issue a subpoena to require attendance at a grand jury. By agreeing to an interview, however, you do not foreclose the issuance of a grand jury subpoena, and you still may be subpoenaed to testify before the grand jury about the matters discussed in the interview.
5. If you decide that you wish to submit to an interview, you can decide that you will go forward only in the presence of a lawyer, and can schedule the interview at a time and place convenient to you. Under any and all circumstances, you should tell the truth, and a failure to do so could result in a violation of law.
6. If you decide not to submit to an interview, you should politely decline to be interviewed. Additionally, in the event you are contacted by a Government investigator, the Company would appreciate it if you would notify the Company before you decide whether to submit to an interview. The Company has retained attorneys to counsel the Company concerning the investigation. These attorneys can meet with you to discuss the investigation and, if you desire, can accompany you during an interview should you decide to consent to an interview request. Remember, the decisions whether to have an interview, when to have an interview, and who should be present, are your personal decisions and not the decisions of the Government or the Company. Counsel for the Company whom you may notify in the event you are contacted are as follows:

[DESIGNATED PERSONS INCLUDING THEIR OFFICE AND, IF APPROPRIATE, HOME PHONE NUMBERS]

Finally, if you already have been contacted, the Company would appreciate it if you would notify me at the above listed office number.

If you have any questions please let me know.

(SIGNATURE)

33. Advice on Searches by Government Agents

ADVICE ON SEARCHES BY GOVERNMENT AGENTS SEARCH WARRANT CHECKLIST

The material contained in this summary should be viewed only as a general summary of the law by Fox Rothschild LLP and not as a substitute for legal consultation in any particular case.

- PRIOR TO ARRIVAL:** Fax a letter to the U.S. Attorney advising of the prohibition against ex parte interviews of company employees. Pack (1) paper for notes; (2) two copies of the letter faxed to the U.S. Attorney; and (3) telephone numbers for local judges and magistrates (e.g., County Bar directory).
- ON THE SCENE:**
- Arrival:** Make a note of your time of arrival.
- Negotiate:** You may not interfere with the search. Pledge cooperation to and negotiate with the Agent In Charge and the prosecutor while still representing the client.
- The Agent:** Find the Agent In Charge and exchange identification and business cards with him. Ask him the name and telephone number of the prosecutor handling the case.
- Employee Interviews:** Advise the Agent In Charge that ex parte interviews are prohibited and you have so advised the U.S. Attorney. Give him a copy of the letter faxed to the U.S. Attorney. Ask him that ex parte interviews cease or you be allowed access to a telephone to arrange that a judge or magistrate stop the interviews. Notify as many employees as possible that they do not have to submit to an interview or make any statements.
- The Search Warrant:** Obtain a copy of the Search Warrant ("Warrant") and, if possible, the Application and Affidavit for Search Warrant, and any continuation sheets made a part thereof ("Affidavit"). You are only entitled to the Affidavit if the Warrant contains language such as: "Affidavit(s) having been made before me and made a part hereof. . ." or "I am satisfied that the affidavit(s) which are incorporated herein" In short, unless the Warrant expressly incorporates the Affidavit, you are not entitled to the Affidavit. Immediately examine the Warrant and answer these questions:
- Is the date of the search on or before the last date permitted by the Warrant?
 - Is the time of the search during the time ordered in the Warrant?
 - Is the property being searched the property described in the Warrant?
 - Does the Warrant, and the Application, if available to you, appear to be signed by a federal magistrate or a state judge?
 - Does the Warrant at the top correctly state the county or district in which the property being searched is located?
 - If the answer to any of these questions is "no," ask the agent in charge of the search that the search immediately terminate and the agents leave the property.
- Supervisors:** Attempt to form a group to follow your instructions and instruct them to observe agents and employees in their areas and to make notes of key observations, such as:
- property searched
 - property seized
 - persons present
 - persons interviewed
 - focus of search
 - communications

| | |
|------------------------------------|---|
| <u>The Entry:</u> | While fresh in their mind, ask witnesses exactly what the agents did and said when they first entered the property. |
| <u>The Witnesses:</u> | Obtain the identity of and business cards from as many persons present as possible, including all agents. |
| <u>The Search:</u> | Monitor and make notes of the search to the extent possible. What property is being seized from what areas and is that property described in the Warrant? Tell an agent if you believe that the property being seized is not described in the Warrant and make notes when your input is overruled or ignored. Make your own personal inventory as best as possible of number or volume and type of property seized. |
| <u>Privileged Property:</u> | Ask that property which you believe is protected by the attorney-client privilege or some other privilege either be left behind or put in a box which is taped completely around, i.e., sealed. Make notes when your input is overruled or ignored. |
| <u>The Receipt:</u> | A receipt or inventory of the property seized must be given to the person from whom the property was taken. This receipt is so general that it should not be signed by you or the client, though an agent will likely ask that one of you do so. On the other hand, inform the agents if you perceive omissions or inaccuracies in the receipt. |
| <u>Critical Documents:</u> | Ask the agent in charge if he will seize copies of rather than original critical documents or, in the alternative, if copies may be retained prior to seizure of originals. |
| <u>Agent Misconduct:</u> | Be alert to agent misconduct (e.g., searching an employee's purse, barring an employee from leaving though employee promises not to return, barring an employee from leaving unless and until interviewed, threatening employees, etc.) and make notes thereof. |
| <u>Debriefing:</u> | After departure of the agents, interview or schedule interviews of all employees who have made a statement to an agent. Also interview or schedule interviews of all supervisors regarding their observations and instruct them to personally prepare memoranda of their observations. Use a tape recorder for interviews if at all possible. |
| <u>Departure:</u> | Do not leave until the agents leave and the search is completed. Make certain you have (1) a copy of the Warrant; (2) a copy of the Affidavit, if available to you; (3) a copy of the receipt; and (4) your notes and materials before you leave the scene. |

TACTICS AND DEFENSES IN DEALING WITH SEARCH WARRANTS

A. Background

1. The Fourth Amendment to the United States Constitution provides that all "persons" (a corporation, partnership, or sole proprietorship is a "person" for Fourth Amendment purposes) are protected against unreasonable searches, inspections and seizures of their premises, files and records. The Fourth Amendment also limits the government's power to issue warrants for searches and seizures. The government must have probable cause to believe a crime has occurred prior to the issuance of a warrant. Further, a search warrant must describe, with particularity, the place to be searched and/or any items to be seized.
2. Probable cause is a threshold requirement for the issuance of any search warrant authorizing a government intrusion on privacy. Generally, the law requires that a "neutral and detached" magistrate review the facts and circumstances articulated by the government, prior to the issuance of a warrant, to determine whether or not probable cause exists for a search or seizure. Probable cause for a search or seizure must be based on more than the government's mere suspicion of illegal activity. Probable cause requires that the government possess reasonable grounds to believe that the specific items or persons to be searched for and/or seized are located on the property to which entry is sought. Thus, probable cause for a search can become "stale" if too long a time passes and it becomes likely that the items sought are no longer on the premises.

3. The Fourth Amendment protects “persons” and their expectations of privacy—wherever they exist. Accordingly, there can be no “search or seizure,” as defined by the Fourth Amendment, if the government does not intrude upon an expectation of privacy. For example, a search conducted following the consent of a suspect or “target” of an investigation will be upheld by courts, even in the absence of probable cause or a search warrant. In the absence of a warrant, it is important that the target of an investigation demonstrate and maintain an expectation of privacy regarding its premises, records, and files to defeat any potential claim of consent to a search. By consenting to the government’s intrusion, a target gives up its expectation of privacy, thereby losing all Fourth Amendment protection.
4. Over the years, searches and seizures conducted by the government have generated a vast amount of litigation. As a result, interpreting the Fourth Amendment, recognizing exceptions to the probable cause and expectation-of-privacy standards, and raising other relevant issues, such as challenging the government’s use of informant testimony to establish probable cause, are exceedingly complex tasks which require legal counsel who is experienced in litigating criminal procedure issues. Moreover, the earliest possible retention of counsel, for the purpose of obtaining advice on the particular matter giving rise to the government’s search, is critical to ensure that the target of the government’s investigation is afforded the fullest protection of its rights under the law.

B. How to Respond to a Search Warrant

The factual details and circumstances surrounding the execution of the warrant are critical to defending the criminal investigation. It is therefore important to note and record the conduct of the agents during the search, in as much detail as possible, so that counsel may use whatever facts are helpful to challenge the warrant or the use of proceeds from the warrant and to develop potential issues for litigation.

1. Once a search is announced, counsel must be notified immediately and must proceed forthwith to the scene. Warrants are often executed by large numbers of federal agents who disperse rapidly throughout the facility and have little patience for amenities. Counsel’s role under these circumstances is delicate but vital.
2. Tell the agents or officers that counsel has been retained with regard to the investigation for which the warrant was issued and that individuals present on the premises may not be interrogated by the agents or officers without first advising counsel that they wish to contact such individuals.
3. Note what language the government agents or officers use when demanding entry to the premises. The common law requires that an agent state his or her identity and purpose prior to entry. In the absence of a warrant, do not be persuaded by an agent’s claim of authority or a threat to obtain a warrant. Permitting a search without a warrant could be construed as a voluntary consent to the search and could eliminate the protections of the Fourth Amendment. Also be wary of an employee’s inadvertent consent to a search in the absence of a warrant. (For example, an office manager may possess sufficient authority over corporate files to consent to the government’s search of those files.)
4. Read the warrant and obtain a copy of it and any other documents or affidavits attached to the warrant. A search warrant should contain the following information:
 - a. The date on which it is issued.
 - b. An authorization addressed to an officer or agent who is empowered to execute the warrant.
 - c. The identity of the issuing authority and the date when the application for the warrant was made.
 - d. The identity of the applicant and all persons whose affidavits were submitted in support of the application.
 - e. The issuing authority’s finding of reasonable cause for the warrant.
 - f. The identity of the place to be searched and the location, usually a street address, of the place to be searched.
 - g. The items constituting the object of the search.

- h. The time of day or night and the period of time, usually five to 10 days from the date the warrant was issued, during which the execution of the warrant is authorized.
 - i. The period of time, usually not more than five days, following execution of the warrant within which it must be returned to the issuing authority.
- 5. Counsel should note the names of all officers executing the warrant, identify the Agent In Charge, and identify all witnesses to the search. Counsel then should pledge cooperation, and seek to engage the agents in an accommodation to limit disruption of the facility. Counsel should offer to direct agents to areas where the material identified in the warrant is likely to be found. The agents cannot be required by counsel to search only in designated areas, but often they will accept reasonable limits on the areas to be searched.
- 6. Counsel must review the warrant carefully, noting the area to be searched and the items to be seized, which are specified on the face of the warrant.
- 7. Counsel should seal off the search area from the rest of the facility to minimize disruption and avoid chance encounters between agents and employees.
- 8. Notify all employees that, upon the advice of counsel, they may but are not obligated to discuss any aspect of the investigation with the agents or officers.
- 9. Advise all employees that their persons and/or personal effects are not subject to search unless an individual is specifically identified in the warrant. A search warrant for a premises will not authorize a search of any individual found there unless the warrant specifies that the individual may be searched or if there is probable cause to believe the individual is involved in an illegal activity.
- 10. Advise employees that they should not attempt to prevent the search from taking place since agents may use non-deadly force, if necessary, to execute the warrant.
- 11. If the search extends beyond the limits of the warrant, or if the warrant contains facial inadequacies or defects, such as a misidentification of the company or the wrong address, these matters should be called to the agents' attention immediately. This will foreclose a later claim by the government that the warrant was executed in good faith.
- 12. Counsel should accompany the agents and make detailed notes as to what areas are searched and what materials are seized. These notes are often more helpful than the formal inventory that the agents are required to leave with the company. This is especially true when the agents seize large quantities of documents that may be necessary to the ongoing business of the company. Counsel's detailed notes are essential in light of the Government's history of sometimes failing to return complete sets of seized documents. In lieu of notes, counsel can dictate the course of the search into a tape recorder. Use of a video recorder is also proper but should not be employed if the agents object to its use.
- 13. Record in detail any aspect of the search that appears to exceed the scope of the warrant, e.g., places searched or persons questioned that were not authorized by the warrant.
- 14. Note whether the agents or officers leave the premises and return later to conduct an additional search. Such "gaps" in the search may require a second warrant.
- 15. As an additional precaution, counsel should request that the agents permit the company to photocopy selected original documents before they are removed from the premises. Alternatively, counsel should seek a commitment from the Agent In Charge that the company will be permitted access to and an opportunity to duplicate all the documents once they are in federal custody.
- 16. Counsel should seek to prevent the seizure of any attorney-client materials located in the areas to be searched. If agents do seize such materials, counsel should immediately notify attorneys for the government, suggest an agreement that such documents not be removed from the premises or, alternatively, that such documents be placed in a sealed envelope, pending agreement on the nature and disposition of the material.

17. As a general proposition, counsel should attempt to monitor the search to detect overreaching by the agents, clues as to the reason for the search, and any grounds for suppression based on overreaching. Counsel should note if the agents appear familiar with the office layout or files. Counsel should attempt to determine the nature of the investigation based on the type of files that the agents are reviewing.
18. Obtain a receipt, prepared by the agent in the presence of witnesses to the search, for all items seized.
19. Upon the advice of corporate counsel, request that employees not discuss the search or investigation with the news media. If photographers or television cameras arrive, however, company executives should not attempt to dodge or duck from the cameraperson since these photographs can be highly prejudicial.

**TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I – CRIMES
CHAPTER 73 - OBSTRUCTION OF JUSTICE**

Sec. 1512. Tampering with a witness, victim, or an informant

(a)

- (1) Whoever kills or attempts to kill another person, with intent to -
 - (A) prevent the attendance or testimony of any person in an official proceeding;
 - (B) prevent the production of a record, document, or other object, in an official proceeding; or
 - (C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings; shall be punished as provided in paragraph (3).
- (2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to -
 - (A) influence, delay, or prevent the testimony of any person in an official proceeding;
 - (B) cause or induce any person to -
 - (i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
 - (ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;
 - (iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
 - (iv) be absent from an official proceeding to which that person has been summoned by legal process; or
 - (C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings; shall be punished as provided in paragraph (3).
- (3) The punishment for an offense under this subsection is -
 - (A) in the case of a killing, the punishment provided in sections 1111 and 1112;
 - (B) in the case of -
 - (i) an attempt to murder; or
 - (ii) the use or attempted use of physical force against any person; imprisonment for not more than 30 years; and
 - (C) in the case of the threat of use of physical force against any person, imprisonment for not more than 20 years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to –

- (1) influence, delay, or prevent the testimony of any person in an official proceeding;

- (2) cause or induce any person to –
 - (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
 - (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;
 - (C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
 - (D) be absent from an official proceeding to which such person has been summoned by legal process; or
 - (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation supervised release, parole, or release pending judicial proceedings; shall be fined under this title or imprisoned not more than 20 years, or both.
- (c) Whoever corruptly -**
- (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or
 - (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.
- (d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from -**
- (1) attending or testifying in an official proceeding;
 - (2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation supervised release, parole, or release pending judicial proceedings;
 - (3) arresting or seeking the arrest of another person in connection with a Federal offense; or
 - (4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding; or attempts to do so, shall be fined under this title or imprisoned not more than 3 years, or both.
- (e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.**
- (f) For the purposes of this section -**
- (1) an official proceeding need not be pending or about to be instituted at the time of the offense; and
 - (2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.
- (g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance -**
- (1) that the official proceeding before a judge, court, magistrate judge, grand jury, or government agency is before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or
 - (2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

- (h) There is extraterritorial Federal jurisdiction over an offense under this section.**
- (i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.**
- (j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.**
- (k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.**

(Added Pub. L. 97-291, Sec. 4(a), Oct. 12, 1982, 96 Stat. 1249; amended Pub. L. 99-646, Sec. 61, Nov. 10, 1986, 100 Stat. 3614; Pub. L. 100-690, title VII, Sec. 7029(a), (c), Nov. 18, 1988, 102 Stat. 4397, 4398; Pub. L. 101-650, title III, Sec. 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103-322, title VI, Sec. 60018, title XXXIII, Sec. 330016(1)(O), (U), Sept. 13, 1994, 108 Stat. 1975, 2148; Pub. L. 104-214, Sec. 1(2), Oct. 1, 1996, 110 Stat. 3017; Pub. L. 104-294, title VI, Sec. 604(b)(31), Oct. 11, 1996, 110 Stat. 3508; Pub. L. 107-204, title XI, Sec. 1102, July 30, 2002, 116 Stat. 807; Pub. L. 107-273, div. B, title III, Sec. 3001(a), (c)(1), Nov. 2, 2002, 116 Stat. 1803, 1804; Pub. L. 110-177, title II, Sec. 205, Jan. 7, 2008, 121 Stat. 2537.)

AMENDMENTS

2008 - Subsec. (a)(3)(A). Pub. L. 110-177, Sec. 205(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;". Subsec. (a)(3)(B). Pub. L. 110-177, Sec. 205(1)(B), substituted "30 years" for "20 years" in concluding provisions. Subsec. (a)(3)(C). Pub. L. 110-177, Sec. 205(1)(C), substituted "20 years" for "10 years". Subsec. (b). Pub. L. 110-177, Sec. 205(2), substituted "20 years" for "ten years" in concluding provisions. Subsec. (d). Pub. L. 110-177, Sec. 205(3), substituted "3 years" for "one year" in concluding provisions.

2002 - Subsec. (a)(1). Pub. L. 107-273, Sec. 3001(a)(1)(A), substituted "as provided in paragraph (3)" for "as provided in paragraph (2)" in concluding provisions. Subsec. (a)(2). Pub. L. 107-273, Sec. 3001(a)(1)(C), added par. (2). Former par. (2) redesignated (3). Subsec. (a)(3). Pub. L. 107-273, Sec. 3001(a)(1)(B), (D), redesignated par. (2) as (3), added subpars. (B) and (C), and struck out former subpar. (B) which read as follows: "(B) in the case of an attempt, imprisonment for not more than twenty years." Subsec. (b). Pub. L. 107-273, Sec. 3001(a)(2), struck out "or physical force" after "intimidation" in introductory provisions. Subsec. (b)(3). Pub. L. 107-273, Sec. 3001(c)(1), inserted "supervised release," after "probation". Subsec. (c). Pub. L. 107-204 added subsec. (c). Former subsec. (c) redesignated (d). Subsec. (d). Pub. L. 107-204 redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e). Subsec. (d)(2). Pub. L. 107-273, Sec. 3001(c)(1), inserted "supervised release," after "probation". Subsecs. (e) to (j). Pub. L. 107-204 redesignated former subsecs. (d) to (i) as (e) to (j), respectively. Subsec. (k). Pub. L. 107-273, Sec. 3001(a)(3), added subsec. (k).

1996 - Subsec. (a)(2)(A). Pub. L. 104-294 inserted "and" after semicolon at end. Subsec. (i). Pub. L. 104-214 added subsec. (i). 1994 - Subsec. (a)(2)(A). Pub. L. 103-322, Sec. 60018, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and". Subsec. (b). Pub. L. 103-322, Sec. 330016(1)(U), substituted "fined under this title" for "fined not more than \$250,000" in concluding provisions. Subsec. (c). Pub. L. 103-322, Sec. 330016(1)(O), substituted "fined under this title" for "fined not more than \$25,000" in concluding provisions. 1988 - Subsec. (b). Pub. L. 100-690, Sec. 7029(c), substituted "threatens, or corruptly persuades" for "or threatens". Subsec. (h). Pub. L. 100-690, Sec. 7029(a), added subsec. (h).

1986 - Subsec. (a). Pub. L. 99-646, Sec. 61(2), (3), added subsec. (a) and redesignated former subsec. (a) as (b). Subsecs. (b) to (g). Pub. L. 99-646, Sec. 61(1), (3), redesignated former subsec. (a) as (b), inserted ", delay, or prevent", and redesignated former subsecs. (b) to (f) as (c) to (g), respectively.

CHANGE OF NAME -- Words "magistrate judge" and "United States magistrate judge" substituted for "magistrate" and "United States magistrate", respectively, in subsec. (f)(1) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1996 AMENDMENT -- Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of this title.

EFFECTIVE DATE -- Section 9 of Pub. L. 97-291 provided that: "(a) Except as provided in subsection (b), this Act and the amendments made by this Act [enacting this section and sections 1513 to 1515, 3579, and 3580 of this title, amending sections 1503, 1505, 1510, and 3146 of this title and Rule 32 of the Federal Rules of Criminal Procedure, and enacting provisions set out as notes under this section and sections 1501 and 3579 of this title] shall take effect on the date of the enactment of this Act [Oct. 12, 1982]. "(b)(1) The amendment made by section 2 of this Act [enacting provisions set out as a note under this section] shall apply to presentence reports ordered to be made on or after March 1, 1983. "(2) The amendments made by section 5 of this Act [enacting sections 3579 and 3580 of this title] shall apply with respect to offenses occurring on or after January 1, 1983."

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES -- Section 2 of Pub. L. 97-291 provided that: "(a) The Congress finds and declares that: "(1) Without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders. "(2) All too often the victim of a serious crime is forced to suffer physical, psychological, or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim. "(3) Although the majority of serious crimes falls under the jurisdiction of State and local law enforcement agencies, the Federal Government, and in particular the Attorney General, has an important leadership role to assume in ensuring that victims of crime, whether at the Federal, State, or local level, are given proper treatment by agencies administering the criminal justice system. "(4) Under current law, law enforcement agencies must have cooperation from a victim of crime and yet neither the agencies nor the legal system can offer adequate protection or assistance when the victim, as a result of such cooperation, is threatened or intimidated. "(5) While the defendant is provided with counsel who can explain both the criminal justice process and the rights of the defendant, the victim or witness has no counterpart and is usually not even notified when the defendant is released on bail, the case is dismissed, a plea to a lesser charge is accepted, or a court date is changed. "(6) The victim and witness who cooperate with the prosecutor often find that the transportation, parking facilities, and child care services at the court are unsatisfactory and they must often share the pretrial waiting room with the defendant or his family and friends. "(7) The victim may lose valuable property to a criminal only to lose it again for long periods of time to Federal law enforcement officials, until the trial and sometimes and [sic] appeals are over; many times that property is damaged or lost, which is particularly stressful for the elderly or poor. "(b) The Congress declares that the purposes of this Act [see Short Title of 1982 Amendment note set out under section 1501 of this title] are - "(1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; "(2) to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant; and "(3) to provide a model for legislation for State and local governments."

FEDERAL GUIDELINES FOR TREATMENT OF CRIME VICTIMS AND WITNESSES IN THE CRIMINAL JUSTICE SYSTEM - - Section 6 of Pub. L. 97-291, as amended by Pub. L. 98-473, title II, Sec. 1408(b), Oct. 12, 1984, 98 Stat. 2177, provided that: "(a) Within two hundred and seventy days after the date of enactment of this Act [Oct. 12, 1982], the Attorney General shall develop and implement guidelines for the Department of Justice consistent with the purposes of this Act [see Short Title of 1982 Amendment note set out under section 1501 of this title]. In preparing the guidelines the Attorney General shall consider the following objectives: "(1) Services to victims of crime. - Law enforcement personnel should ensure that victims routinely receive emergency social and medical services as soon

as possible and are given information on the following - "(A) availability of crime victim compensation (where applicable); "(B) community-based victim treatment programs; "(C) the role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and "(D) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained. "(2) Notification of availability of protection. - A victim or witness should routinely receive information on steps that law enforcement officers and attorneys for the Government can take to protect victims and witnesses from intimidation. "(3) Scheduling changes. - All victims and witnesses who have been scheduled to attend criminal justice proceedings should either be notified as soon as possible of any scheduling changes which will affect their appearances or have available a system for alerting witnesses promptly by telephone or otherwise. "(4) Prompt notification to victims of serious crimes. - Victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims should, if such persons provide the appropriate official with a current address and telephone number, receive prompt advance notification, if possible, of - "(A) the arrest of an accused; "(B) the initial appearance of an accused before a judicial officer; "(C) the release of the accused pending judicial proceedings; and "(D) proceedings in the prosecution and punishment of the accused (including entry of a plea of guilty, trial, sentencing, and, where a term of imprisonment is imposed, a hearing to determine a parole release date and the release of the accused from such imprisonment). "(5) Consultation with victim. - The victim of a serious crime, or in the case of a minor child or a homicide, the family of the victim, should be consulted by the attorney for the Government in order to obtain the views of the victim or family about the disposition of any Federal criminal case brought as a result of such crime, including the views of the victim or family about - "(A) dismissal; "(B) release of the accused pending judicial proceedings; "(C) plea negotiations; and "(D) pretrial diversion program. "(6) Separate waiting area. - Victims and other prosecution witnesses should be provided prior to court appearance a waiting area that is separate from all other witnesses. "(7) Property return. - Law enforcement agencies and prosecutor should promptly return victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it. "(8) Notification to employer. - A victim or witness who so requests should be assisted by law enforcement agencies and attorneys for the Government in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or attorneys for the Government, is subjected to serious financial strain, should be assisted by such agencies and attorneys in explaining to creditors the reason for such serious financial strain. "(9) Training by federal law enforcement training facilities. - Victim assistance education and training should be offered to persons taking courses at Federal law enforcement training facilities and attorneys for the Government so that victims may be promptly, properly, and completely assisted. "(10) General victim assistance. - The guidelines should also ensure that any other important assistance to victims and witnesses, such as the adoption of transportation, parking, and translator services for victims in court be provided. "(b) Nothing in this title shall be construed as creating a cause of action against the United States. "(c) The Attorney General shall assure that all Federal law enforcement agencies outside of the Department of Justice adopt guidelines consistent with subsection (a) of this section." [Amendment of section 6 of Pub. L. 97-291 by Pub. L. 98-473, set out above, effective 30 days after Oct. 12, 1984, see section 1409(a) of Pub. L. 98-473, set out as an Effective Date note under section 10601 of Title 42, The Public Health and Welfare.]

FAA Enforcement Investigations

35. FAA Certificate Actions Against an Air Carrier; or Airman After an Airline Accident

FAA CERTIFICATE ACTIONS AGAINST AN AIR CARRIER OR AIRMAN AFTER AN AIRCRAFT ACCIDENT

I. Summary

- The FAA Administrator may revoke, modify, or suspend a certificate on an emergency or non-emergency basis.
- Both emergency and non-emergency certificate actions can be reviewed by the NTSB.
- Consistent with the Pilot's Bill of Rights, Pub. L. 112-53, August 3, 2012, as amended by the Fairness to Pilots Act, title III, subtitle C, Pub. L. 115-254, October 5, 2016, the NTSB is not bound by any factual findings made by the FAA or by any FAA interpretations of statutes, regulations, and FAA policy guidance concerning sanctions for violations.
- A petition for review to the NTSB of a non-emergency certificate action stays the FAA's action during the appeal.
 - Appeal must be begun within 20 days after the date on which the Administrator's order was served on the certificate holder.
 - The Administrator files a complaint which must be answered by the certificate holder within 20 days.
 - Proceedings are held before an NTSB Administrative Law Judge (ALJ).
- The ALJ issues an initial decision after a hearing that can be appealed to the entire Board.
- If either the certificate holder or the FAA can petition the Board for a rehearing, reconsideration, or modification of a Board order.
 - Either the certificate holder or the FAA Administrator (when the Administration determines that the Board's order will have a significant adverse impact on the FAA's ability to carry out its aviation progress may petition a U.S. Court of Appeals to review the NTSB's order. Under the Pilot's Bill of Rights a certificate holder may appeal an NTSB order to a U.S. District Court rather than a U.S. Court of Appeals.
- Appeal of an emergency certificate differs in that there is no stay of the action pending appeal.
 - The FAA's finding that an emergency exists is subject to expedited appeal directly to the Board.
 - Review of the "emergency" finding must be sought within 48 hours. The Board has five days to rule.
- If the Board finds that an emergency exists, then the "emergency" ruling is appealable to a federal Court of Appeals.
- The appeal of the merits of the revocation follows the same general procedure as non-emergency actions, but with a shortened time line.
- Appeals of any final action by the Board are to the Court of Appeals for the DC Circuit or the federal Court of Appeals where the carrier has its principle place of business. In addition, an individual airman substantially
 - affected by an order of the Board may elect to file an appeal in a U.S. District Court rather than a Court of Appeals.
- NTSB orders are only overturned if it can be demonstrated that the FAA's action was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law.

II. Authority of the FAA to revoke carrier certificates

Congress has delegated the authority to act to ensure aviation safety to the Federal Aviation Administration.

Pursuant to that delegation, the FAA Administrator is empowered to “reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or reexamine an airman holding a certificate” 49 U.S.C. § 44709. In addition, the Administrator is empowered to take a number of remedial actions pursuant to a reinspection or reexamination of any certificate holder. These include issuing “an order amending, modifying, suspending, or revoking any part of a certificate” if the Administrator decides that “safety in air commerce or air transportation and the public interest require that action” 49 U.S.C. § 44709(b)(1)(A).

In addition to the statute, the FAA has published internal guidelines to determine if a certificate should be revoked. According to these materials:

The Administrator is authorized to review any certificate when the certificate holder lacks the qualifications to hold the certificate. A certificate holder may lack the qualifications to hold the certificate because of: (i) a lack of technical []; (ii) the failure to meet airman medical standards; or (iii) a lack of care, judgment, or responsibility required of a certificate holder.

Compliance and Enforcement Program, FAA Order No. 2150.3B, Chapter 7, paragraph 4.(a)(3); see also *Echo Inc. v. Hinson*, 48 F.3d 8, 10 (3d Cir. 1995).

Under normal circumstances, the Federal Aviation Act requires that, before the Administrator takes any action, the certificate holder be advised “of the charges or other reasons on which the Administrator relies for the proposed action.” 49 U.S.C. § 44709(c). In addition, the Administrator is required to “provide the holder an opportunity to answer the charges and be heard why the certificate should not be amended, modified, suspended, or revoked.” *Id.* However, this provision does not apply if the Administrator determines that there is “an emergency.” *Id.*

Thus, it is clear that the FAA Administrator is given broad powers to act without prior notice. Furthermore, the range of actions open to the Administrator allows remedial actions up to and including the immediate revocation of the carrier’s or airman’s certificate.

III. Review by the National Transportation Safety Board

If the Administrator acts to suspend, modify or revoke a carrier’s or airman’s certificate, the next step that must be taken is an appeal of the Administrator’s decision to the National Transportation Safety Board. Any certificate holder is entitled to appeal any act by the Administrator under 49 U.S.C. § 44709 to the National Transportation Safety Board. The Board is entitled to “amend, modify, or reverse the order when the Board finds that “safety in air commerce or air transportation and the public interest do not require affirmation of the order” 49 U.S.C. § 44709(d)(1)(A). The Board is also empowered to modify a suspension or revocation of a certificate to the imposition of a civil penalty. 49 U.S.C. § 44709(d)(2). Review by the Board differs from a traditional appeal in one important respect, unlike a court of appeals, the Board is specifically not bound by any factual findings by the Administrator. 49 U.S.C. § 44709(d)(3). Finally, as set forth more fully below, under 49 U.S.C. § 44709(e)(3), the Board is authorized to review the Administrator’s finding that an emergency exists and that immediate action is required.

Review of the Administrator’s decision by the Board takes place on two separate tracks: a normal track, and an expedited track in cases where the Administrator has declared that an emergency exists. The procedures applicable to both tracks are set forth below.

A. Procedure on appeal of a certificate action if the Administrator has not declared an emergency

If no emergency has been declared, filing an appeal with the National Transportation Safety Board immediately stays any order by the FAA Administrator. 49 U.S.C. § 44709(e)(1). An appeal before the Board contesting the revocation of a certificate must be filed within 20 days of service of the order of the Administrator. 49 CFR § 821.30(a). The appeal must identify the Administrator's order and any certificate affected and the Administrator's action from which the appeal is sought. 49 CFR § 821.30(b). The respondent's notice of appeal must be served on the Administrator. 49 CFR § 821.30(a). Once the notice of appeal is filed, the Administrator is required to file a copy of its order which "shall serve as the complaint." 49 CFR § 821.31(a). The respondent then has 20 days to file an answer to the complaint, and must state any affirmative defenses. 49 CFR § 821.31(b). The burden of proof in all proceedings on the revocation of a certificate is on the Administrator. 49 CFR § 821.32.

Any party to a proceeding before the Board has the right to be represented by counsel. 49 CFR § 821.6(b). Documents filed with the Board should be sent by personal delivery, U.S. Postal Service First Class Mail (sent to the Office of Administrative Law Judges, National Transportation Safety Board, 490 L'Enfant Plaza East, S.W. Washington, DC 20594) overnight delivery service, facsimile or electronic mail as specified in the NTSB Administrative Law Judges web page on the NTSB's public website (<https://www.nts.gov/legal/alj>). 49 CFR § 821.7(a)(3) and addressed to the law judge assigned to the case, if any. 49 CFR § 821.7(a)(1). An executed original and three copies of each document must be filed. 49 CFR § 821.7(b). In addition, the first filing with the Board must contain the name and address of the individual entitled to receive service of documents in the proceeding. 49 CFR § 821.7(f).

After a complaint or a petition for review of an FAA emergency determination (see below) or of a mandatory certificate action under 49 U.S.C. § 44106(d) (revocation of aircraft certificate for controlled substances violations) 49 U.S.C § 44710(d) revocation of airman certificates for controlled substances violated, or 49 U.S.C. § 44726(d) (denial and revocation of certificate for counterfeit parts violations), is filed with the Board, any party is permitted to take discovery without seeking prior Board approval. 49 CFR. § 821.19(a). In accordance with the Pilot's Bill of Rights, Pub. L. 112-53, proceedings before an NTSB ALJ shall, to the extent practicable, be conducted in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence. In addition, a party can obtain a subpoena for the production of documents or compel the attendance of witnesses from the ALJ assigned to the case, or if none is assigned, from the chief law judge. 49 CFR § 821.20(a).

The law judge assigned to the case then sets the date for a hearing. 49 CFR. § 821.37(a). Each party has the right to present "arguments in support of, or in opposition to, motions, objections, and proposed rulings." 49 CFR § 821.39. In addition, hearsay evidence is admissible. *Id.* The parties are also afforded a reasonable opportunity to submit proposed findings and conclusions to the ALJ prior to his "initial decision." *Id.*

The ALJ renders his "initial decision," either orally, at the conclusion of the hearing, or in writing at a later date. 49 CFR § 821.42(a). The initial decision is binding if an appeal is not timely filed with the Board. 49 CFR § 821.43. This initial decision is appealed by filing a notice of appeal with the Board. The notice must be filed within 10 days after the initial decision was orally rendered or served if it was a written decision. 49 CFR § 821.47(a).¹ The petitioner then has either 50 days after an oral decision or 30 days after a written decision to file an appeal brief with the Board. 49 CFR § 821.48(a). The opposing party then has 30 days to file a reply brief. 49 CFR § 821.48(c). Requests for oral argument before the Board are usually not granted. 49 CFR § 821.48(e). Review by the Board is limited to a determination of whether the findings of fact are supported by a preponderance of the evidence; whether conclusions are made in accordance with law, precedent, and policy; whether the questions on appeal are substantial; and whether any prejudicial errors occurred. 49 CFR § 821.49(a).

¹ *If a petitioner wishes, he may ask the ALJ to reconsider his decision within 10 days, which has the effect of moving the deadline for appeal to the Board to 10 days after the ALJ rules on the request to reconsider. Id.*

If the Board rules against a party on appeal, then the party may seek rehearing, reargument, reconsideration or modification of the Board order. 49 CFR § 821.50(a). A petition seeking further relief must be filed within 30 days of service of the Board's order. 49 CFR § 821.50(b). The opposing party has 15 days to file a reply. 49 CFR § 821.50(e). Thus, appeal to the Board is a two-tiered process. The first proceeding consists of a trial-like process before an ALJ which results in an initial decision. The second proceeding is a written appeal, usually without argument, of the ALJ's decision to the Board. If the certificate holder does not prevail, then the next step is appeal to the United States Court of Appeals as set out in section III, *infra*.

B. District Court or the Procedures if the Administrator has declared an emergency

Under normal circumstances, filing an appeal with the National Transportation Safety Board immediately stays any order by the FAA Administrator. 49 U.S.C. § 44709(e)(1). However, "the order of the Administrator is effective immediately if the Administrator advises the Board that an emergency exists and safety in commerce or air transportation requires the order to be effective immediately." If the Administrator declares an emergency, the "Board shall make a final disposition of an appeal under subsection (d) not later than 60 days after the date on which the appeal is filed." 49 U.S.C. § 44709(e)(4).

A certificate holder has the right to immediately appeal the "emergency" finding to the Board. The certificate holder must file a petition for review within 48 hours of the FAA's finding that there is an emergency affecting air safety. 49 U.S.C. § 44709(e)(3). The Board then has five days after the request for review is filed to make its ruling. *Id.* If it finds in favor of the certificate holder, then the order is stayed pending appeal. *Id.* The law judge's ruling on a certificate holder's petition is "final, and is not appealable to the Board." 49 CFR § 821.54(f). If the finding is against the certificate holder, the statute is silent as to what, if any, further review is available. However, a good argument could be made that the order of the Board denying the stay would be final under 49 U.S.C. § 1153(a), which would allow appeal of that order to a United States Court of Appeals, while the merits of the revocation continue to be heard before the Board.

If the Board affirms that an emergency exists, then the certificate is revoked pending review of the merits of the action by the Board. Generally, the procedures outlined in Section II(A) apply in "emergency" actions, with the following exceptions. The certificate holder must appeal within 10 days of service of the Administrator's emergency order. 49 CFR § 821.53(a). The Administrator has three days to file the order as his complaint. 49 CFR § 821.55(a). The certificate holder has five days after service of the complaint to file an answer. 49 CFR § 821.55(b). Discovery is still permitted in emergency proceedings; however, "given the short time available, parties are directed to cooperate to ensure timely completion prior to the hearing." 49 CFR. § 821.55(d). Discovery requests are to be served "as soon as possible." *Id.*

Within three days of notification of the emergency, the Board must set a date for the hearing, which cannot be more than 30 days after the respondent's appeal was received and docketed. 49 CFR § 821.56(a). The ALJ's initial decision is to be made orally upon termination of the hearing and after opportunity for oral argument. 49 CFR § 821.56(c). The certificate holder or the FAA then has two days after the initial decision has been rendered to appeal to the Board. 49 CFR § 821.57(a). Within five days after filing the notice of appeal, the appellant must file his initial brief. 49 CFR § 821.57(b). The respondent has seven days to file a reply. *Id.* Petitions for reconsideration are only permitted based on new matters which have been discovered. 49 CFR § 821.57(d).

Thus, the only real substantive difference in an emergency proceeding is the dramatically shortened time table. A loss before the Board in an emergency proceeding is still appealable to a United States Court of Appeals.

IV. Judicial Review

If the certificate holder loses his appeal to the NTSB, the next step is to seek judicial review of the NTSB order affirming the Administrator. In the case of an aircraft certificate holder, the exclusive jurisdiction to review any final order of the NTSB is vested in "the appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia Circuit." 49 U.S.C. § 1153. The "appropriate court of appeals" is the

court of appeals where the company has its principal place of business. 49 U.S.C. § 1153(b)(1). A petition for review must be filed within 60 days of the issuance of the Board's order. 49 U.S.C. § 1153(a).

Upon receipt of the petition of review, the Board is required to file a record of the proceedings below with the Court of Appeals. 49 U.S.C. § 1153(b)(2). On appeal, any factual findings by the Board are considered conclusive if they are supported by "substantial evidence." 49 U.S.C. § 1153(b)(3). The Court of Appeals is empowered, after providing reasonable notice to the Board, to grant "interim relief by staying the order or taking other appropriate action when cause for its action exists." *Id.* Furthermore, just as with appellate review of a trial court proceeding, review on appeal is limited to those parts of the proceeding to which a timely objection was made before the Board. 49 U.S.C. § 1153(b)(4). If the aircraft certificate holder loses on appeal, he may appeal to the Supreme Court pursuant to 28 U.S.C. § 1254, by filing a petition for certiorari under procedures dealing with discretionary review of appellate decisions.

In accordance with section 2(d) of the Pilot's Bill of Rights, Pub. L. 112-53, upon a decision by the FAA under 49 U.S.C. § 44703(d) (to deny an application for the issuance or renewal of an individual's airman certificate) or under 49 U.S.C. § 44709(d) or (e) (to impose a punitive civil action or emergency order amending, modifying, suspending, or revoking any part of the individual's airman certificate), if the individual loses his appeal to the NTSB, he can elect to seek judicial review either in the U.S. District Court in which the individual resides or in the U.S. District Court for the District of Columbia. If he chooses not to file an appeal in a U.S. District Court, he may file an appeal in an appropriate U.S. Court of Appeals. In addition, under 49 U.S.C. § 1153(c), when the Administrator "decides that an order of the Board under section 44703(d), 44709, or 46301(d)(5) [FAA imposition of civil penalties against an individual acting as a pilot, flight engineer, mechanic, or repairman for violations of various statutory provisions] of [title 49, U.S.C.] will have a significant adverse impact on carrying out [the statutory provisions] related to an aviation matter, the Administrator may obtain judicial review of the order under [49 U.S.C. § 46110]. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence."

NATIONAL TRANSPORTATION SAFETY BOARD
AVIATION INVESTIGATION MANUAL
MAJOR TEAM INVESTIGATIONS

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NATIONAL TRANSPORTATION SAFETY BOARD

AVIATION INVESTIGATION MANUAL

MAJOR TEAM INVESTIGATIONS

November 2002

RECORD OF REVISIONS

This manual and its appendixes have been revised significantly, and any previous versions of these documents should be replaced in their entirety. Future revisions will be logged using the table below.

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FOREWORD

NOTE: This manual is a National Transportation Safety Board (NTSB) staff product and is intended to provide information and guidance to NTSB employees who are involved in organizing and conducting investigations. This manual has not been adopted by the NTSB Board Members, is not regulatory in nature, is not a binding statement of policy, and is not all-inclusive. The recommended procedures are not intended to become obligations of the NTSB or to create any rights in any of the parties to an NTSB investigation. Deviation from the guidance offered in this manual will at times be necessary to meet the specific needs of an investigation. However, such deviations from the guidance offered in this manual shall be within the sole discretion of the appropriate NTSB employees and shall not be the prerogative of parties to the investigation or other individuals not employed by the NTSB.

The procedures in this NTSB *Aviation Investigation Manual—Major Team Investigations* apply to “Go Team” investigations of major aviation accidents. An investigation of this type could involve more than 100 technical specialists, representing as many as a dozen parties and multiple Federal and local government agencies.

This manual provides general information to assist the investigator-in-charge (IIC), group chairmen, and others who may participate in a major aviation accident investigation. It is intended to provide guidance on the process of conducting a major investigation, from initial notification to the adoption of the final report, probable cause, and recommendations by the Members of the Safety Board.

Although this publication includes some technical information related to investigative activities in major aviation accidents, it is primarily intended to provide guidance of a procedural or administrative nature. Investigators should refer to Annex 13 of the International Civil Aviation Organization (ICAO) for procedural references and to the ICAO *Manual of Aircraft Accident Investigation* for technical information and examples of investigative techniques. Other sources, such as military investigation manuals, can also be used to supplement information in the NTSB’s *Aviation Investigation Manual*.

The Major Investigations Division (AS-10) will be responsible for keeping this manual updated. The “Record of Revisions” on the preceding page should be used to acknowledge receipt of new or amended pages. The manual’s original printing date will be indicated in the lower left corner of the cover page. The effective date of any page change will be indicated by the entry on the revision sheet. All recipients of this manual are encouraged to submit information to be considered for inclusion.

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1. Pre-Investigation Preparation

1.1 The Go Team

The Go Team is a group of investigators who are on-call for immediate assignment to major accident investigations. The Major Investigations Division (AS-10) provides the IIC for the Go Team. Divisions of the Office of Aviation Safety (OAS) and the Office of Research and Engineering (RE) provide specialists and laboratory support. Regional investigators may be used on the Go Team when headquarters investigators are unavailable and as the needs of the investigation dictate. On some investigations, an investigator from a regional office might be assigned as the IIC.

A full Go Team may consist of the following specialists: air traffic control, operations, meteorology, human performance, structures, systems, powerplants, maintenance records, survival factors, aircraft performance, cockpit voice recorder (CVR), flight data recorder (FDR), and metallurgy. Additional groups may be formed to interview witnesses, examine the response of aircraft rescue and firefighting (ARFF) personnel, or other duties, as required, to support the investigation. Each of the NTSB specialists will be the chairman of an investigative group. NTSB specialists who are in training will be assigned as members of investigative groups, under the supervision of another NTSB employee, usually a group chairman or IIC.

1.2 The Go Team Roster

The Go Team roster is a spreadsheet of names and telephone and pager numbers of all Board personnel assigned current standby duty for major accident investigations and their Division Chiefs. The Go Team list also identifies the names and numbers of all Board Members, the Public Affairs (PA) Officer, the Executive and Managing Directors, the Directors of the Offices of Government Affairs (GA), PA and Transportation Disaster Assistance (TDA), and the Directors of the Regional Offices. A new list is prepared once each week or when necessary after a change of duty officers or the launch of a prior group of Go Team members.

The current Go-Team roster is available on the intranet to authorized personnel. Copies are distributed to all Board Members; the Offices of the Managing Director (MD), Aviation Safety (OAS), Research and Engineering (RE), General Counsel (GC), Safety Recommendations and Accomplishments (SR), GA, PA, and TDA; and each Division Chief and investigator in the OAS headquarters office. Copies are also transmitted to each OAS Regional Office, the Federal Aviation Administration's (FAA) command center and accident investigation office, the Safety Board's Communications Center and the Department of State's Office of Aviation Policy (EB/TRA/AVP).

All personnel on call should arrange their personal affairs such that they are able to depart for the scene of an accident with a minimum of delay. Regardless of when they are notified about an accident, Go Team members should be able to arrive at the airport within approximately 2 hours of being notified. For launches that occur during duty hours, Go Team members who live too far to travel home and return to the airport within this timeframe should bring clothing and other launch essentials to the office. Go Team members and their Division Chiefs should always ensure that the information listed on the Go Team sheet concerning their phone/pager numbers is correct. In addition, personnel should always ensure that they can be reached when on call. This includes “testing” the pager for proper operation, forwarding alternate phone numbers to the Communication Center, IIC, and supervisors in advance of expected travel, and maintaining contact with the NTSB communication centers at the Safety Board. When changes to Go Team assignments are made, the persons involved shall ensure that the IIC/duty officer, the Chief of the Major Investigations Division, the OAS Director, and the Safety Board’s Communications Center are notified and provided updated phone and pager numbers.

2. Notification And Initial Response

Early notification is essential to initiate and organize the investigation. Initial information concerning the facts and circumstances of the occurrence will often be incomplete and erroneous. For this reason, early factual information transmitted for alerting purposes must be handled with considerable discretion. Parties notified are to be cautioned about the preliminary nature of the data.

2.1 Headquarters Responsibilities and Procedures

2.1.1 Domestic Investigations

Initial notification of a major aviation accident will usually be received by the Safety Board’s Communications Center. The Communications Center will advise the IIC on duty and the Chief or Deputy Chief of the Major Investigations Division, who will inform the Director of OAS or, in his absence, the Deputy Director. The OAS Director or Deputy Director, with input from OAS Division Chiefs, will decide whether to launch a Go Team in consultation with the Safety Board’s Chairman and/or the Executive or Managing Director.

Following a decision to dispatch the Go Team, the Chief of the Major Investigations Division, the OAS Director, or the Deputy Director, will:

- (1) notify the Chairman, the Executive or Managing Director, and the on-call Go Team Board Member of the preliminary circumstances of the accident;
- (2) obtain the Go Team Board Member's decision regarding travel; ascertain if he/she will accompany the team, and notify the IIC accordingly;

- (3) notify GA, PA, and TDA;
- (4) notify the other Board Members (this can be done by pager);
- (5) notify the NTSB Communications Center and the involved Regional Office(s) of plans (e.g., travel, arrival, number of personnel, etc.)

2.1.2 International Investigations

The Chief of the Major Investigations Division, the OAS Director, or the Deputy Director of Technical/Investigative Operations will advise the Chairman and Executive Director of any major accidents outside the United States or its territories involving a U.S.-manufactured, operated, or registered aircraft. If the Board is sending a U.S. Accredited Representative, GA, PA, and TDA will also be notified. Section 5 contains NTSB policies and procedures for international accidents. The Chief of the Major Investigations Division (or his designee) will notify the FAA, interested parties, and the Department of State of an intended NTSB launch to a foreign country.

2.1.3 Role of the Safety Board Communications Center

The Safety Board's Communications Center was established to provide a centralized operation to support all modes of transportation at critical periods during the accident investigative process. Before a Go Team launch, the Communications Center can provide important initial accident information through alphanumeric pagers and logistical support through arrangements for air travel and rental car and hotel accommodations. After the launch, it can assist the IIC with setting up the on-scene command post, configuring cellular telephones, laptop computers, and pagers, and providing satellite telephone capabilities and language translation services. The IIC is responsible for coordinating with the Communications Center on logistics.

2.2 Regional Office Responsibilities and Procedures

During duty hours, Regional Offices will notify headquarters via the Communications Center whenever an accident (or incident with serious implications) occurs that involves the following:

- air carrier, commuter, or air taxi operations,
- public figures or officials with widespread recognition or prominence,
- fatal midair collisions or collisions involving ATC, or
- matters of potentially high public interest.

During nonduty hours, the designated Regional Office duty officer shall notify the Communications Center duty officer by the most expeditious means if receiving notification of a

major accident or incident of the type described above. Travel to the accident scene will be initiated without delay.

2.2.1 Regional Office Responsibilities Related to a Go Team Launch

NTSB Regional Offices are responsible for implementing notification procedures in their geographic areas of jurisdiction. These offices will ensure that specific personnel are designated to be on-call. The Regional Office with geographic jurisdiction for the accident will typically provide at least one investigator to travel immediately to the site and perform initial public affairs and “stakedown” coordination duties of the IIC. The regional investigator will continue to function in this role until relieved by the IIC. After briefing the on-scene Board Member, IIC, and Go Team, the regional investigator may be assigned as a chairman of one of the working groups, provide support as necessary, or be released from the investigation. NTSB Regional Office personnel who travel to a major investigation site will be considered part of the investigation team until the IIC releases them from their duties.

2.2.2 Stakedown Guidelines

Regional Office personnel assigned to the initial stakedown of a major accident have important duties that contribute to the overall success of the investigation. Those personnel include investigators dispatched to the scene, as well as those handling administrative affairs (see [Appendix C](#)). Personnel assigned to respond to the accident scene are obligated to reach the scene as quickly and as safely as possible and to remain at the scene until properly relieved. NTSB representation at this time is essential to convey to the news media, local authorities, and the public that the investigation is under NTSB jurisdiction. The only information released to the media should be that the Go Team is en route, name of the Board member on scene, name of the IIC, name of the media contact, and when the team is expected to arrive. Initial activities, in addition to those listed herein, should be aimed at gathering as much pertinent information as possible to brief the Board Member and Go Team upon their arrival.

Remoteness of the crash site or difficult accessibility does not diminish the need to establish NTSB jurisdiction. Every effort should be made to get to the crash site, even if environmental conditions preclude remaining at the site for any appreciable length of time.

2.3 Notification and Assignment of Go Team Specialists

Once the initial notification of an accident has been received and the decision to launch Go Team members has been made, the composition of the Go Team must be determined. This decision will be based on the probable scope of the investigation and the magnitude of the tasks but will also include the following factors: the number of injuries/fatalities, type of aircraft, previous

accidents of this type, location of the accident, extent of aircraft or ground damage, weather, public interest, and specialist workloads.

Because information about the nature of the accident is often incomplete and frequently erroneous at the time of the launch, there may not be sufficient information with which to make a final decision about the composition of the Go Team. If questions persist about requesting a particular specialty, the specialist should be requested to accompany the Go Team. If his or her expertise is later considered to be unnecessary, he or she should be released by the IIC at that time. Regardless of the circumstances, accidents involving large air transport or “new generation” aircraft will normally be staffed with a large Go Team.

The Office of Aviation Safety may determine that some accidents do not require full Go Teams. For example, under most circumstances, a runway collision would require that air traffic control (ATC) and operations specialists participate in the investigations, with possibly a human performance specialist assisting in examining human performance factors. If an accident occurred during potentially restricted visual conditions, icing conditions, or convective activity, the participation of a weather specialist would be required. If evidence in an accident indicates a probable aircraft malfunction, the participation of structures, systems, powerplants, and maintenance records specialists would be required.

For partial Go Team launches, the participating specialists (and maybe even the IIC) might be responsible for multiple areas of the investigation. Such a launch might result in the assignment of an airworthiness group chairman responsible for any of the structures, systems, powerplants, and maintenance records investigative areas. Likewise, an operations group chairman might be assigned to cover any of the operations, air traffic control, meteorology, or human performance areas.

2.4 Party Notification

2.4.1 Domestic Participants

The Safety Board typically extends party status to those organizations that can provide the necessary technical assistance to the investigation. The IIC typically confers party status to the operator, aircraft, systems, and powerplant manufacturers, and labor organizations involved because of the accident circumstances. Most aviation-related organizations that the NTSB might work with are familiar with NTSB procedures and will have their own sources to notify them of an accident. However, this may not be the case with some parties. With the assistance of the Safety Board’s Communications Center, the IIC should ensure that the appropriate parties are informed of the accident, the location of the command post, and the time and location of the organizational meeting.

By statute, the FAA is automatically a participant in Safety Board investigations. Many FAA personnel have worked closely with Board investigators over the years and are familiar with major investigation procedures. The role of the FAA representatives is to support the Safety Board's investigation and determine if immediate regulatory action is necessary to prevent another accident. FAA representatives are not to use their participation to develop information for punitive actions or issuing violations.

Police, firefighters, National Guard, Department of Defense (DoD), Federal Bureau of Investigation (FBI), Federal Emergency Management Agency (FEMA), National Disaster Mortuary Team (D-MORT), Red Cross, Salvation Army, and other agencies can provide assistance at the scene and attend on scene meetings but are not made parties to the investigation.

2.4.2 International Participants

International standards (Annex 13 to the Convention on International Aviation) provide for the participation of an Accredited Representatives and their advisors. With the assistance of the Safety Board's Communications Center, the IIC will ensure that the appropriate state accident investigation authorities and technical advisors (usually foreign manufacturers and foreign certification authorities) are informed of the accident, the location of the command post, and the time and place for the organization meeting.

2.5 Travel Arrangements

Typically, the IIC will have sufficient support from the Safety Board's Communications Center and other personnel for much of the initial coordination effort necessary to make arrangements for the Go Team launch. During off-duty hours, the IIC should expect assistance from the Safety Board's Communications Center, back-up duty officer, other IICs, and management personnel to help with such important items as travel arrangements, hotels, rental cars, and on-site administrative support.

Whenever possible, the entire Go Team will travel together to the accident site. It is important that all Go Team members begin the investigative process as soon as possible and with the most current and accurate information. Investigators who travel separately should report to the on-scene command post promptly upon their arrival.

2.5.1 FAA Aircraft

An FAA airplane can be the most efficient and convenient way to get to or near the accident site. The Chief or Deputy Chief of the Major Investigations Division, the OAS Director, or the Deputy Director should submit the request for an FAA airplane to the FAA's Accident Investigation Division (AAI-100) at (202) 267-8190. After hours, the AAI-100 duty officer can be reached through the FAA's communication center at (202) 267-3333 or (202) 863-5100.

If an FAA airplane is available, the FAA representative will require a complete list of the names of the Safety Board individuals who will comprise the team. At a minimum, seating on the airplane should be provided for the IIC, the Board Member on duty, group chairman, and the GA, PA, and TDA representatives. The FAA uses a Cessna Citation; a Lear Jet, and a Gulfstream IV (G-IV) for transporting accident investigators to an accident site. The Cessna and Lear Jet can hold 5 to 6 passengers, and the G-IV can hold 16 passengers. The G-IV has intercontinental range, but passenger capacity may have to be reduced to obtain long-range capability.

If space on an FAA airplane is limited, team members should be selected according to the importance of accomplishing their duties during the first few hours of the investigation. Give priority to group chairmen whose initial presence on site with the IIC is critical. Typically, the structures and systems group chairmen is needed to ensure oversight of on-site activities and the operations group chairman is needed to interact with air carrier and pilot labor association personnel on site. Other team members should be given priority on FAA aircraft according to the circumstances of the accident. In all cases, if space is limited, Safety Board personnel who are in on-the-job-training status should not be transported on the FAA airplane. Ensure that all intended passengers on the FAA airplane understand the proper reporting time to appear at Hangar 6 at Reagan Washington National Airport (DCA). The reporting time is generally 30 minutes before departure time.

Those who will not be transported on the FAA airplane may be required to make their own transportation arrangements, with the understanding that they should arrive at the site as soon as practical, either by first available commercial flight, rental car or train. Team members who are traveling separately should notify the Communications Center of their travel plans. The Communications Center will relay this information to the IIC. All Go Team members not traveling on the FAA airplane must be informed of the location of the command post and the approximate time of the organizational meeting. If the location and time of the organizational meeting are not yet known, Go Team members arriving after the rest of the team should contact the Safety Board's Communications Center to obtain this information. All Go Team members will be expected to report to the command post in sufficient time to participate in the organizational meeting. A late arrival or an unexplained absence from the organizational meeting or other official on-site duties may result in disciplinary action.

2.5.2 Commercial Aircraft

If an FAA aircraft is unavailable and the distance to the site is beyond reasonable driving distance, commercial aircraft will be used to transport the team. The Safety Board's Communications Center can arrange airline tickets and rental cars through the travel agency used by the Safety Board. Because return times may vary among the team members, open returns should be requested for travel back to Washington, DC. Normally, prepaid or electronic tickets should be requested for team members to pick up at the airport. This will allow everyone to obtain his or her tickets, particularly during off hours, with relative ease. Investigators traveling to the scene via

airline jumpseat should check “Must Fly” on their jumpseat authorization forms (NTSB Form 7000-5) and ensure that the carrier understands the urgency of their travel. Investigators returning from an accident via jumpseat should not check “Must Fly” on the form.

2.5.3 Rental Cars

Rental cars should be reserved for NTSB personnel when initial travel arrangements are made. The number of required rental cars may vary, but a good rule of thumb is to initially reserve one car for the IIC, one for the Board Member, and one for each group chairman. Because additional cars can be rented and returned if they are not needed, reserve more rather than fewer cars if in doubt. In some cases, SUVs or vans will provide greater comfort for personnel and more capacity for parts, equipment, etc.

2.5.4 Hotels

The Chief of the Major Investigations Division or his/her designee will coordinate arrangements for accommodation and meeting rooms for the Go Team with the Safety Board’s Communications Center. NTSB Regional Office personnel, FAA FSDO staff, the NTSB’s travel agency, or local law enforcement or military officials can also be used to assist in obtaining hotel accommodations and facilities for the command post. The following factors should be considered when selecting a hotel:

- Proximity to the accident site,
- Availability and adequacy of guest rooms for Safety Board personnel,
- Availability of two meeting rooms of sufficient size for a) a Command Post, and b) a press briefing room,
- Cost of accommodations and meeting room, and
- Compliance with government hotel/motel requirements.
- Separate from the hotel where TDA staff are staying

If at all possible, major hotel chains are preferable to smaller, individual establishments. When communicating with hotel personnel, NTSB personnel should identify themselves and the purpose of the visit. A sufficient number of rooms to accommodate the entire team should be requested, with people assigned the following priority: 1) the Safety Board, 2) other Federal agencies, 3) International participants and 4) other organizations. The Safety Board cannot “guarantee” rooms for other agencies or organizations.

2.5.5 Backup IIC Duties

The backup IIC or another AS-10 staff member will log the accident information into the AS-10 accident record (green) book, the Board's Accident Data Management System (ADMS), and NTSBKeys, and will draft the initial notification memo.

3. On-Scene Activities

3.1 Command Post/Meeting Room

The number of people expected to participate in the investigation will dictate the size of the meeting room. This will depend on the expected number of groups established, parties designated, and personnel from each party. In general, regardless of how small the team dispatched, the meeting room should accommodate at least 30 people. On major air transport accident investigations, the room should accommodate 100 to 150 people. Remember to account for the space required by support personnel, furniture, phone lines, fax machines, copiers and the like when considering whether the meeting room will be large enough to accommodate the number of people anticipated.

For large investigations, instruct the hotel personnel to set up the room theater style, with tables and chairs set up in rows. If possible, an aisle should bisect the room, with aisles on either side of the rows of tables and chairs. The hotel should set up a head table at the front of the room to accommodate the IIC, the Board Member, and his/her assistant, and Accredited Representatives. The hotel should be requested to provide a chalkboard and/or whiteboard. A table should be placed at the rear of the room where reports, documents, and other material to be distributed to the parties can be placed. If possible, a separate room or area should be made available for PA use. If this is not possible, a table for PA should be set up in the Command Post and located away from the head table. It is important to note that the Safety Board is not authorized to pay for any food or beverages for accident investigation participants. If the hotel provides coffee or other amenities, ensure that the Safety Board is not billed for such items.

3.1.1 Press Briefing Room

The hotel containing the Command Post should also have an available room for press briefings. The size of the room depends on the magnitude of the accident and the amount of media present. GA, PA, and TDA are responsible for the setup of this room, which should include a lectern with a pull-out shelf, if possible; 6 to 10 rows of seats with 8 to 10 seats per row, arranged theater style; and risers behind the seats for cameras. Two entrances are preferred, one allowing the Safety Board briefer to enter and exit without having to pass through a phalanx of reporters and camera persons. It is also preferred that the press briefing room not be adjacent to the Command Post.

3.1.2 Telephones and Communications

The Safety Board's Communications Center will make arrangements with the hotel and the local telephone company for the installation, on an emergency basis, of outside telephone lines in the meeting room. For a full Go Team investigation, the IIC should instruct the Communications Center to request 10 outside lines or more, as required; for a partial Go Team launch, the Communications Center should request four outside lines. The telephones are for investigative team members to communicate with their home offices. All calls will be billed to the Safety Board. Instruct team members that the phones are for official use only.

The IIC should reserve at least one outside line for exclusive use by the PA officer and for incoming media calls. Because this line will likely receive extensive use, it should be placed away from the other lines so that it will not disturb the work of others in the Command Post. In addition, the IIC should reserve one line for his or her exclusive use to receive calls from headquarters; this phone number should not be given to team members. This line will facilitate communications between headquarters and investigative personnel on site. A list of all onsite phone numbers should be sent to the Communications Center for distribution.

All Go Team members have cell phones, which should always be turned on when on scene (team members should ensure that their cell phone batteries are charged and should carry a spare set.) In remote locations where cell phone coverage is inadequate or in situations where secure communications are necessary, the IIC can request the FAA coordinator to provide on-site communications support. Also, unique communications requirements should be directed to the FEMA representative who can access major national resources.

3.1.3 Equipment/Supplies

The Command Post/Meeting Room should be equipped with many of the tools of the modern office, including the following:

- two photocopy machines (with sorters, toner, and paper),
- IBM compatible portable computers, if issued laptop computers are unavailable,
- printers and printer paper (two printers are available from AS-10),
- facsimile machine,
- a telephone message board and telephone message pads, and
- mailboxes and a table to place mail and materials for each of the parties.(the top of a large box can be used for this purpose)

Because it may be unreasonable to ask the hotel to acquire this equipment on short notice, the IIC should be prepared to arrange with local vendors to rent the equipment and the needed supplies. Find potential vendors in the *Yellow Pages* or through recommendations or suggestions of the hotel. If possible, survey several sources to determine prevailing rates and

confirm that the rental costs are in accordance with prevailing rates. The Safety Board's Communications Center can assist with efforts to secure the appropriate equipment and supplies.

The IIC should ensure that the following items are available in the Command Post:

- NTSB laptop computer with Accident Data Management System (ADMS) program and supplements (as required) installed
- Pilot/operator accident report form (NTSB form 6120.1)
- Attendance rosters
- Subpoena forms
- Witness Statements
- Wreckage Release forms
- Party Coordinator Signature form,
- Guidance to Party pamphlet (See [Appendix F](#))
- On-Scene Organizational chart (see [Appendix D](#))
- NTSB telephone directory
- Annex 13 (if appropriate)

Many of these items are available from the Safety Board's intranet site or on the IIC Checklist CD available from AS-10.

3.1.4 Administrative Support

Depending on the size of the team, the scope of the investigation, and the availability of administrative support personnel from the Board, temporary clerical/secretarial assistance may be hired for the Command Post. The IIC may request on-scene support from the NTSB administrative staff. On a major investigation, a Command Post secretarial assistant will be needed to answer the multitude of phone calls and to take and distribute telephone messages. Secretarial services will also usually be needed toward the end of the on-scene phase when field notes will be prepared, photocopied, and distributed. When arranging for secretarial services, be sure to inform the temporary agency that the services will be needed at the NTSB Command Post and that the secretarial assistant should expect to work unusual and long hours.

3.1.5 Contracting for Services or Supplies

The IIC will enter into any necessary agreement with vendors and will be responsible for ensuring payment after the Command Post is closed. Where possible, purchases should be made using the government purchase card. When using the government purchase card to acquire goods or services, form SF44 may be used to document the terms of agreement with vendors. If this form is used, it should be attached to the purchase card statement as supporting documentation for the charge. Where purchases cannot be accomplished using the government

purchase card, form SF44 should be used to document the terms of the agreement and provide billing instructions to the vendor. Accordingly, the IIC must fully understand the details of the agreement made to obtain services or supplies and obtain accurate estimates of the charges incurred for those services or supplies. Before leaving the site, arrangements should be made to settle vendor accounts (i.e., the charges are billed to the government purchase card, or the SF44 has been issued to the vendor indicating the services that were provided and the address to which to send their invoice). Board Orders regarding financial matters must be followed.

If translation services are required, the Department of State's Operations Center (listed on the Go Team roster) should be contacted for the appropriate personnel. The memorandum of understanding (MOU) developed by the Office of Transportation Disaster Assistance and the Department of State will be used.

3.1.6 AS-10 Support Equipment

AS-10 has two "flyaway" suitcases available for use during the investigation. The two kits contain such things as a video camera and tape, laptop computer, printer, various charging devices, film, administrative supplies, and copies of the investigator's manual. Mailing labels attached to the kits allow them to be mailed quickly to an accident scene upon direction by the IIC. The kits are intended for use with large accident investigations, where a considerable amount of supplies or equipment might be needed. The IIC is responsible for the equipment in the kits and for mailing them back to Washington after the on-scene phase of the investigation has been completed. The kits, or at least the electronic equipment, should be secured each evening.

Each suitcase is equipped with a programmable combination lock that should be set by the IIC prior to departure, if possible. Otherwise, AS-10 will set the combinations and inform the IIC of the combinations while the kits are en route.

Additionally, two computer printers in the AS-10 area are boxed and can be shipped to the command post.

3.2 Organizational Meeting

The manner in which the IIC conducts the organizational meeting will establish the tone of the investigation. Therefore, the importance of being organized, articulate, assertive, composed, and understanding cannot be overstated.

As the formal opening of the investigation into an aviation accident, the organizational meeting serves several purposes. It will:

- Provide the opportunity to share preliminary information on the accident;

- Introduce the participants of the investigation to each other and identify those eligible to participate;
- Organize participants into investigative groups;
- Establish rules of conduct for the investigation; and
- Reiterate safety and health considerations for all participants.

All on scene activities should be shut down pending the organizational meeting. If search and recovery operations are still in progress, the IIC should designate an NTSB representative to remain at the site during the organizational meeting. The organizational meeting should be held as soon as practicable upon arrival of the Go Team at the accident site according to the time of day and the number of parties that have arrived. For example, if the Go Team members arrived at the site during the night, key personnel from the parties may not arrive until the next morning. Therefore, the meeting should not be held until after the key parties have arrived. If the team has arrived in midafternoon and most of the parties will be expected to arrive in late afternoon, the meeting should be in the early evening.

The IIC will prepare an outline of the issues to be covered in the organizational meeting. The IIC will identify himself/herself and, after calling the meeting to order, ask reporters, attorneys, and others not technically qualified or needed for the investigation (e.g., an accountant with the airline) to leave the room. The IIC should then distribute the attendance roster for each person to sign and make sure that business cards (or equivalent information) have been collected. Photocopying the cards and distributing copies to investigation participants will allow participants to maintain contact with each other after the on-scene phase has been completed. Then, depending on which of the following are present, the IIC will introduce the Board Member, the Board Member's assistant, the GA, PA, and TDA representatives and all other Safety Board employees. Following the introductions, other personnel in the room should identify themselves, their organizations, and their positions within their particular organizations. Potential parties or individuals should understand that, with the exception of the FAA, participation in the Board's investigation is a privilege, not a right. All party-group members are to be employees, not contractors, and are there to contribute to the investigation or otherwise be helpful to the investigation.

After introductions, the IIC should state that the primary purposes of the meeting are to explain operating procedures and to assign specialists to the investigative groups. The facts of the accident will be reviewed and should include the following:

- Operator;
- Aircraft type and registration number;
- Type of flight, origin and intended destination;
- Number of fatalities (or best information presently known);
- Condition and location of crewmembers;
- Extent of aircraft damage; and
- Other information considered relevant (e.g., hazardous material (HAZMAT) and site considerations)

After preliminary information about the accident has been given, the IIC will discuss the information contained in the "IIC's Opening Statement at Organizational Meeting" (see [Appendix E](#)). This statement advises the participants of Board policies relevant to the investigation. The opening statement will include the following points:

- Safety Board authority to conduct the investigation
- Role of the Board member
- Role of PA, TDA, and GA;
- Role of parties to the investigation;
- Role of international participants in investigation (accredited representatives and technical advisors)
- Organization of the team into groups of specialists;
- Qualifications of personnel to participate in the investigation;
- Expected participation of participants for the duration of on-site activities and follow-up activities;
- Dissemination of information among investigation participants;
- Public release of information about the investigation;
- Site safety and security;
- Roles of party coordinators, group chairmen, accredited representative and advisors;
- Identification of the appointed Safety Board group chairmen;
- Who will be allowed at the progress meetings;
- CVR and FDR group participation; and
- On site commander

Following the IIC's opening remarks, the Board Member present should be offered an opportunity to speak to the group. After the Board Member's remarks, the IIC will begin assigning party participants to individual investigative groups in consultation with the group chairmen. The IIC should bring handouts that explain such things as the NTSB's authority and investigation process and the role of parties in the investigation (see [Appendix F](#)). These handouts should be distributed to the parties after the organizational meeting. The IIC should adjourn the organizational meeting (and all progress meetings) by stating the time of the next meeting.

3.2.1 Identification and Assignment of Personnel

The IIC determines who will be parties to the investigation and should be selective when making these designations. During the party designation process, party coordinators are also identified. A party coordinator is the main spokesperson/representative for a party and is the IIC's main point of contact within a party during the investigation. This individual should have sufficient authority within the party's organization to be able to make decisions without a great deal of consultation with his/her supervisors. Additionally, he or she should be available to the IIC at all times during the investigation. Only party coordinators and participants will be allowed to attend future meetings.

As the investigative groups are formed, the party coordinators will be given the opportunity to propose personnel from their organizations for assignment to one or more of the groups. Only technically qualified individuals with the necessary expertise will be permitted to participate in the investigation. Specialists typically include representatives of the operator, manufacturers of the aircraft, powerplant, and accessories, labor associations, and other parties who can contribute knowledge and expertise. The group chairmen and the IIC will assess the qualifications of proposed group members when assigning them to the working groups. The group should be limited to those personnel having the expertise to contribute to the investigation by studying, evaluating, and documenting a particular discipline. The final decision regarding the assignment of specialists will be made by the IIC in coordination with the respective group chairmen.

For investigations involving international participation, Accredited Representatives may have technical advisors under their supervision. The IIC and Accredited Representatives may assign technical advisors to groups based on their technical qualifications.

For parties that are unfamiliar with Board procedures, such as small airlines, it is advisable that the IIC fully explain the methods used to conduct the investigation, outline the major tasks that will be expected to be accomplished during the subsequent days onsite, and explain that a progress meeting will be held at the end of each day. It may be necessary for the group chairmen to discuss the areas that their particular group will be focusing on and the type of expertise needed by members of that particular group. The parties must be informed that all participants are expected to be available for the duration of the investigation and that substituting personnel is not allowed except in extreme situations.

Participants will be asked to report to their respective group chairmen after the organizational meeting for further instructions.

3.2.2 Forms and Badges

As the investigative groups are being formed and party personnel are being assigned, the IIC should use an “On Scene Organizational Chart” to assist in registering the investigative members, their group assignments, and party affiliation. The IIC should also distribute the form "Statement of Party Representatives to NTSB Investigation" to each party coordinator and obtain their signatures (see [Appendix D](#)). This form contains pertinent excerpts from 49 *Code of Federal Regulations* (CFR) Part 831 and explains that, by signing the form, the coordinators are obligating and indicating the organizations they represent and all personnel assigned to the investigative groups that they understand the rules and that they are willing to abide by them. It should be noted that the FAA coordinator, Accredited Representatives and Technical Advisors to Accredited Representatives are not required to sign this form. In subsequent phases of the investigation (CVR and FDR analysis, component testing, etc.), all participants may be required to sign the form or a similar nondisclosure form as a condition of their participation.

The IIC has the option of distributing identification badges to the group chairmen for investigation participants. The badges provide a method of restricting access to the accident site and Command Post to only those individuals approved by the group chairmen or the IIC. Other arrangements may be made with local authorities depending on the level of security desired and the location of the accident site. If identification badges are used, the group chairmen will be responsible for keeping track of their group members' badges.

3.3 Accident Site Safety Precautions

Aircraft wreckage sites may expose investigators to certain risks, including biohazards, airborne hazards, adverse terrain and adverse climatic conditions. The NTSB safety officer will coordinate with the local Incident Commander (local police, National Guard, or fire and rescue), if present, to determine hazards at the accident site and safety resources available to the investigative staff. Personnel involved in the recovery, examination, and documentation of wreckage may be exposed to physical hazards from such things as hazardous cargo, flammable or toxic materials and vapors, sharp or heavy objects, pressurized equipment, and disease. The IIC and/or a designated NTSB safety officer will be responsible for conducting a risk assessment of the accident site, which will identify possible hazards, and determine the level of risk (high, medium, low) at the work site. An environmental risk assessment can be conducted while en route and a more detailed assessment accomplished following the initial visit to the accident site. The safety officer will then develop countermeasures to identified risks and ensure that the appropriate countermeasures are applied at the accident site (see [Appendix G](#)). The safety officer or the on-scene commander will conduct daily safety briefings with all individuals who are working at the accident site. Throughout the on-scene phase of the investigation, the IIC and the group chairmen will monitor everyone to exercise good judgment, use necessary protective devices and clothing, and use extreme caution when working in and around the wreckage.

It is the job of the Incident Commander to ensure that hazardous material is identified at the accident site, and decisions to either remove the material or reduce the risk of contamination or injury must be made before the investigative team is permitted to enter the site. Once such actions have been taken, work at the site will be permitted. All team members should be advised to be on the alert for any undeclared hazardous material and, if such material is found, should immediately notify a group chairman or the IIC so that appropriate measures can be taken.

During the IIC's opening statement, the IIC will state that the Safety Board will not assume responsibility for any personal injuries incurred during the course of an investigation by representatives of organizations participating in the investigation as a party or by an authorized observer nor will the Board provide protective equipment to party participants. Safety Board investigators shall remind all participants to use extreme care and to provide for their own needs on site. Any safety concerns should be promptly expressed to the group chairmen or the IIC. Parties not properly protected will not be allowed on site.

All Safety Board personnel traveling to an area with certain known public health risks or suspected diseases will be cleared by their supervisor before departure. The supervisor will ensure that adequate personal protective equipment (PPE) is provided and the employee is medically qualified for the work to be done. The Safety Board's physician and the Department of State health clinic can be excellent sources of information on the risks associated with certain countries or areas. Inoculations can typically be arranged through an individual's personal medical care facility or through government agencies with which the NTSB has agreements.

The scene of an airplane accident may contain bloodborne pathogens. Bloodborne pathogens are viruses, bacteria, and parasites that are present in the blood, tissue, or other body fluids of infected persons. They could include, but are not limited to, hepatitis B and C virus (HBV) and the human immunodeficiency virus (HIV), which causes AIDS. Some of these viruses do not die upon contact with oxygen or when the fluids dry out. Studies, in fact, show that certain climatic conditions may prolong the infectiousness of HIV. Those who work in or around the wreckage must use extreme caution to minimize direct contact with bloodborne viruses. At a minimum, heavy leather work gloves over nonpermeable rubber gloves should be used and in some case will be required when touching the wreckage. Under certain conditions, such as within the wreckage where investigators may come into contact with blood or human remains, full face masks, protective goggles, and disposable overalls and booties shall be worn. Protective biohazard suits are also available in Hangar 6 at Washington's Reagan National Airport. Occupational Safety and Health Administration (OSHA) requirements concerning training and on-scene protection procedures and equipment are included in the Safety Board's Exposure Control Plan, a copy of which is included in [Appendix T](#). The Safety Board's Occupational Safety and Health Coordinator is responsible for maintaining the plan and ensuring that it is updated annually; copies of the plan may be obtained from the intranet. Each investigator who will be working on-scene will have two packages of biohazard equipment as part of his or her go-team equipment.

3.4 Observers

The IIC may allow properly accredited members of Congressional oversight, designated military personnel, representatives of other Federal agencies, or representatives of foreign governments to be observers to the investigation. Training and familiarization with the Safety Board's investigative process is the sole purpose of the observer status. Observers should not have any self-interest in the investigation, and they will be permitted access to only those portions of the investigation deemed appropriate by the IIC. Observer status must be coordinated and approved in advance. Although observers will sometimes work with one of the investigative groups, they will be under the overall authority of the IIC and will be given factual information on a "need to know basis." The restrictions concerning public dissemination of accident information apply to all observers.

3.5 Lines of Authority

The IIC is the senior person on-scene and all investigative activity at the site is under his/her control. The IIC has the overall authority and responsibility to resolve any difficulties that may arise on scene.

Group members will first attempt to resolve problems directly with their respective group chairmen if any difficulties arise among the team members during the on-scene investigation. If a resolution is not reached, the group members should alert their respective party coordinators. Concurrently, the group chairman will notify the IIC. The IIC and the party coordinator will discuss the problem and attempt to resolve it, informing the group member and group chairman of the decision.

If the IIC and party coordinator cannot reach resolution of a problem, they will then discuss it with the Chief of the Major Investigations Division. If the issue cannot be resolved at that level, it will be elevated to the OAS Director or other senior NTSB management levels for final resolution (see the investigation organization chart in [Appendix D](#) for a detailed delineation of the lines of authority).

3.6 Group Chairmen Responsibilities

Immediately following the organizational meeting, each group chairman should meet with his/her group members. Since some group members will be unfamiliar with the procedures of an NTSB accident investigation, several things should be discussed with the group, including the scope of the group's investigation, assignment of duties, and NTSB protocol concerning field notes. It should be explained that for all matters related to the accident and the investigation, the team members' primary responsibility is to their working group and respective group chairman—not to their respective organization. They must arrange their personal schedules to conform to the schedule determined by the respective group chairman and commit to staying with the group until released by the IIC and their respective group chairman.

3.6.1 Field Notes

Each group chairman is required to compile field notes documenting the on-site activities of his/her group. Field notes represent the summation of factual material gathered and information obtained by each investigative group participating in the investigation. Each group will have one official set of field notes. The field notes will contain applicable information outlined in a set of checklists (see [Appendix H](#)), as well as other information collected or documented by the group. Appendix H also contains information on the responsibilities of each working group.

At the end of each day of the on-site investigation, each group should discuss its efforts and review the progress of its field notes. This is most conveniently accomplished before the daily progress meeting (see section 3.7). At the end of the on-scene investigation, every member of each working group must sign the group's field notes. These signatures indicate and clearly convey

that each member of the group has read all of the field notes and either agrees with the information included in the notes or has indicated, in writing, specific areas of disagreement and the reasons for that disagreement. If group members do not attach written statements of disagreement to the field notes, it will be assumed that they agree with the content and completeness of the information contained in the field notes.

The IIC will draft a summary of the accident for each group chairman to use in his or her field notes.

At the conclusion of the on-scene investigation, the group chairman will present the group's field notes to the IIC for review and signature. After the IIC's approval, the group chairman should make copies of the field notes for his/her group members and for each party coordinator. The IIC should inform the party coordinators that factual information will be shared with all parties unless it is proprietary in nature or there is other concern for the dissemination of sensitive material. **The group chairman and, therefore, the group members will not be released until the field notes have been approved and distributed.** The IIC should be aware of the group's future plans and provide direction, as required, to obtain information that has not been included in the field notes.

Following the on-scene phase of the investigation, the group chairman may reconvene the group in whole or in part to conduct followup work such as witness/crew interviews, maintenance records reviews, flight testing/simulations, or the testing/teardown of powerplants, instruments, and system components. Field notes will also be required to document any such additional investigative work.

3.6.2 Followup Activities

Followup activities may or may not include the group. The group chairman should ensure that the group discusses in advance the scope of any planned followup work. Upon reconvening, the group chairman should meet with the group and, if necessary, other technicians who might be assisting in the activity to review the planned activity and resolve any remaining questions. Group members should be reminded that only the Safety Board may release information about the investigation. (This does not prevent group members from providing factual information to their organization after it is approved by the group chairman.) The IIC and the group chairmen's Division Chief should receive periodic updates during the followup activity.

If the followup work involves representatives from an organization that is not a party to the investigation and the IIC authorizes the organization to become a party, the group chairman should have the party's coordinator (or one of the party's representatives) sign the "Statement of Party Representatives" form. Status as a party allows an organization to participate in certain Safety Board meetings and to receive all public docket material generated during the investigation. This allows the organization access to specific information that it might not otherwise have, as well as information it could use to initiate preventive or corrective action quickly. The IIC may grant limited party status, such that a party will only receive specific factual information and not all factual reports produced during the investigation.

If an organization is not a party to the investigation but will only provide assistance necessary for the investigation (e.g., testing facility or specific technical expertise) the form will not be signed. However, the representatives and the organization(s) should be informed about limitations regarding discussion with anyone outside the investigation and/or dissemination of any investigative information. If there are any questions or problems involving these issues, the group chairman should contact the IIC and, as necessary, other OAS management and the Board's General Counsel for resolution. The IIC or group chairman and the organization providing assistance need to reach an understanding regarding "ownership" of the work product, subsequent testimony about it, and other conditions or limitations. The Board's General Counsel can provide draft agreement or contract language.

As with the on-scene investigation, signed field notes of the followup work will be required. A closeout meeting should be held to review the field notes and to discuss future activities involving the group's work. It might also be helpful to discuss the Board's process regarding the overall investigation and the preparation of the final report and to seek opinions from the group regarding conclusions or corrective actions related to the group's work.

3.7 Progress Meetings

On-site Progress meetings are held daily to disseminate information obtained during the day's activities and to discuss plans for subsequent investigative activities. The meetings also provide factual information to the Board Member, PA officer, and TDA representative for dissemination to the media at press briefings and family meetings.

The IIC will schedule progress meetings as he or she sees fit. However, when possible, progress meetings should be scheduled to begin late enough for participants to clean up after spending time on site but early enough for everyone to have dinner afterwards and get sufficient rest for the next day's activities. Generally, 1800 is a good time to start the first progress meeting. Because participants become tired and stressed during the course of the on-scene phase of an investigation, progress meetings should be scheduled earlier as the on-scene work progresses.

The IIC will begin the meeting by calling the group to order and asking any reporters and attorneys representing possible claimants to leave. The IIC will then distribute the attendance roster and ask those who are new to the investigation to stand and identify themselves, their organizations, and their roles in the organizations. For the first few meetings, all attendees must identify themselves at the start of the meeting. Any new persons who are acceptable to the IIC and the group chairmen will be assigned to investigative groups. This must be coordinated before the start of the progress meeting. Each group chairman will then present the prominent facts obtained that day and the investigative activities planned for the next day and also request needed support or establish coordination meetings with other groups (see [Appendix I](#)). The group chairman should be prepared to respond to any questions about his/her area of responsibility. Questions or discussions on group chairmen's presentations should be limited to factual material only. Analytical questions to

the group chairmen on the implications of their findings will not be allowed. The progress meetings should not be used for a discussion of accident causation. Each group chairman's report should take 5 to 10 minutes, unless it is absolutely necessary to relay more facts to the audience.

The IIC should present a brief outline of activities performed by the FDR and CVR groups, as well as other groups, working at Safety Board headquarters. A telephone or facsimile contact should be made before the progress meeting begins.

The IIC should take notes during the group chairman's presentations. The notes will be beneficial during discussions with the Board Member before the press conference and at later briefings to headquarters personnel.

After all group chairmen have completed their presentations, each party coordinator and the Board Member present should be allowed time to make comments and the next evening's progress meeting should be scheduled. The IIC should remind participants not to discuss the investigation in public areas or in places in which their conversations can be overheard. Participants should also be reminded to remove their personal belongings and notes from the Command Post overnight or at other times when the room is unattended.

3.8 Initial Notification and Status Reports

While the Go Team is conducting the on-scene phase of the investigation, an official-use-only initial notification memo and subsequent status reports will be distributed to the Board Members, GA, PA, TDA, and OAS management. An initial notification memo is provided by the Chief, Major Investigations Division, the Deputy Chief of Major Investigations, the standby IIC, or can be delegated to another IIC, and is usually distributed within a day of the launch of the Go Team. The initial notification briefly describes the circumstances of the accident and lists the members of the Go Team and the parties. Status reports on the progress of the investigation are issued to notify the Board when significant new information is obtained about an accident under investigation. A status report might be issued upon the return of the investigative team from the site but only if new information is obtained following the distribution of the initial notification and subsequent status reports. If the results are potentially significant, status reports will be issued to disseminate the results of teardowns, records examinations, and interviews. During the on-scene phase of the investigation status reports will be written by the IIC for the signature of the Chief, Major Investigations Division, and either mailed electronically or faxed to NTSB headquarters.

3.9 Press Briefing

Press briefings are normally conducted after the progress meetings when information concerning the facts of the investigation is fresh. Members of the press are not allowed in any progress meeting and should not be allowed in the Command Post. Guidelines for the conduct of press briefings follow.

3.9.1 Board Member Present

The Board Member will brief the press after the progress meetings. With the help of the PA officer, it is the IIC's responsibility to prepare the Board Member for the briefing. Before the briefing, the IIC should review the high points of the progress meeting with the Board Member and the PA officer. The IIC should be alert for information that is unconfirmed or unsubstantiated and ensure that the Board Member is aware of any such information and the advisability of not releasing information unless it is confirmed. Any information that might inhibit the Safety Board's ability to gather other needed factual information (e.g., controversial or spurious witness observations) should not be released. Group chairmen may be requested to provide briefing notes or other assistance for this preparation.

The Member, IIC, and PA officer should attempt to anticipate potential press questions that could be expected to follow the release of certain information. Reporters want to know the cause of the accident and are often unfamiliar with Board procedures regarding the determination of probable cause. A reference to the pilot will often lead to a question about "pilot error." A discussion of alcohol or drug testing could lead reporters to ask if the Board suspects that the pilots were under the influence of drugs or alcohol at the time. Information about a failed check ride some years before the accident could lead to questions about the competency of the pilots involved in the accident. Similarly, a reference to a mechanical malfunction or Minimum Equipment List (MEL) item often leads to a question about the quality of the airplane or its maintenance and whether either one caused the accident. In each of these examples, the answer must convey only confirmed factual information and should not contain any speculation as to probable cause.

The IIC should attend the press briefing and be available nearby. The IIC should be aware that reporters may be looking to him/her for body language or facial expressions during the Member's briefing and should, therefore, maintain as neutral an expression as possible during the briefing. Assistance to the Member should **not** be provided during the briefing unless requested. The IIC should determine in advance what action the Member would want if he/she has misstated a fact or omitted information. Other NTSB investigators should not interrupt the briefing **under any circumstances** unless specifically directed to by the Member.

3.9.2 Board Member Not Present

If no Board Member is present, the IIC or the PA officer may brief the press. The same guidelines for Member-conducted briefings apply to IIC briefings. The IIC is discouraged from giving multiple press briefings in a single day.

The IIC should not speculate on the accident cause and should limit the briefing only to a presentation of facts obtained during the day. Rely on tried and true phrases such as, "That is one of the many things we will be looking at;" "It is much too early to tell at this point;" "Right now we are not ruling anything out;" "At this stage we are only gathering evidence;" and "The Board will consider all potential causes after we have reviewed the evidence." The IIC should be prepared to

answer questions following the briefing and be suitably attired to be photographed and videotaped during the briefing.

If material gathered during the day is highly technical, the particular group chairmen should be requested to attend the briefing and be prepared to assist, if necessary. This will not usually be necessary because of the relatively nontechnical nature of the briefings and the preliminary stage of the investigation.

3.9.3 Transportation Disaster Assistance Briefings

The TDA representative will coordinate with the IIC to determine the factual information about the investigation that will be released during the evening news media briefing. Simultaneously with the news media release, TDA staff members will provide families with the appropriate synoptic information about the investigation.

The family briefings will occur daily, as necessary, at a location separate from the on-scene Command Post. During these briefings, families will also receive an update on the progress of the victim recovery and identification effort, personal effects process, and other areas of family interest. Every effort will be made to minimize the time the IIC spends in support of these efforts. The assistant IIC may be assigned to these efforts.

3.10 Daily Activities of the IIC

As part of the responsibility for oversight of the investigation, the IIC will serve as a liaison between Safety Board headquarters and the investigative team and between the Command Post and the accident site. Liaison with headquarters is primarily carried out through the daily briefing; however, the IIC should always be available for additional headquarters inquiries.

3.10.1 Headquarters Briefing

The IIC is expected to brief headquarters personnel on a daily basis. These briefings provide headquarters staff with the opportunity to 1) obtain an update of the recent findings 2) assess the progress of the investigation, 3) communicate relevant technical information to the on-scene team, and 4) provide assistance to the IIC as needed. The daily briefings with headquarters are independent of any briefings between group chairmen and their respective supervisors. The Chief of the Major Investigations Division will provide notice to other Division Chiefs and Directors to allow for their participation in the briefings. OAS and RE supervisors should be informed of any details reported during after-hours briefings.

The IIC should schedule the briefing for a time that is mutually convenient for the IIC and headquarters personnel. The IIC should allow at least 1 hour for the briefing and ensure that

he/she will not be needed at the Command Post or other location during that time. The briefing should be held in a location where there will be no disturbances and where sensitive material may be discussed. A hotel room or an office with complete privacy is recommended.

The IIC will review notes carefully before the briefing and be prepared to discuss in detail each group's activities and findings. If any of the reported findings are unclear, contact the appropriate group chairmen before the briefing for clarification. During the briefing, the IIC should note suggestions or questions from the headquarters staff for which answers must be researched. The IIC will also provide headquarters with a written status report every night.

The IIC may be asked to convey messages or specific requests from headquarters staff to group chairmen. This information should be conveyed to group chairmen at the progress meeting or some other appropriate time.

3.10.2 Safety Board Staff Meeting

Meetings will be held on-site daily, or as needed, with all Safety Board staff during the investigation; 7:00 am usually works best. These meetings provide an open forum for Board staff to raise issues that they may be reluctant to raise during the progress meetings. This can also provide the IIC with an informal setting to provide guidance to the group chairmen or convey messages from headquarters. These meetings should be convened before the progress meetings or first thing in the morning to avoid potential conflicts with the group chairmen's plans. More frequent meetings may be necessary depending on the size of the investigative staff, their need for guidance, and the complexities of the issues. The meetings should be used as a way of preventing small problems from becoming disruptive to the investigation.

3.10.3 Party Coordinator Meeting

The IIC will also meet daily with the party coordinators to explain rules and procedures that coordinators may be unfamiliar with and to review and discuss issues that may come up during the on-scene phase; 7:30 am usually works best. The potential exists in any investigation for parties to conflict. The IIC should be aware of this potential and be prepared to assist in the resolution of such conflicts. These meetings should be used as a way of determining the parties' level of satisfaction with the investigation and their ability to cooperate with each other and with Safety Board group chairmen. Guidance and input should be provided to them, as needed, to prevent potential problems from escalating.

3.10.4 IIC Site Visit

The IIC should visit the site regularly to get a good understanding of the nature of the accident; twice a day is preferable. The visits enable the IIC to learn about the progress of the

investigation and any particular problems, to observe working conditions of the team, and to provide supervision, as necessary, to ensure that the investigation is making satisfactory progress.

The structures group chairman or another experienced airworthiness investigator will serve as the on-site commander during the on-scene phase. On larger accidents, another IIC will be sent to act as the on-site commander. The on-site commander will maintain regular contact with the IIC during the investigation by cell phone, if possible, to keep the IIC informed of the investigation's progress and any difficulties encountered on scene.

3.11 Final Progress Meeting

After a several days, the groups will begin to present less information. Some groups will complete their activities and be released by the IIC. When the IIC determines that little new information remains to be obtained from the remaining groups, it is appropriate to end the progress meetings and wrap up the on-site activities. During the final progress meeting, the IIC should update the participants on the status of the investigation, advise them of any proposed followup activities, and approve and distribute field notes to the group members with a complete set of notes to the party coordinators.

3.12 Release of Wreckage

When the IIC and the group chairmen have determined that parts or all of the wreckage is no longer needed for investigative purposes, the IIC (or a group chairman so designated), in consultation with the OAS Director, will be responsible for preparing and signing Part I of the wreckage release form (NTSB form 6120.15). The form shall be executed by the NTSB representative and signed by someone acknowledging his/her receipt of the wreckage (usually, but not necessarily, the aircraft owner or the owner's representative). A copy of the form shall accompany the released wreckage and the original retained by the NTSB.

Part II of the wreckage release form will include a detailed list of any parts or components of the wreckage that will be retained by the NTSB for further examination. After the NTSB has completed any subsequent examination of retained parts, the NTSB designee will sign Part II of the wreckage release form, send the form and the parts to the owner or person responsible for receiving the parts, and have him/her sign the form acknowledging receipt of the parts and return the form to the NTSB. In the event that portions of the wreckage are returned at different times or to different individuals, it will be necessary to send copies of Part II of the form for the appropriate signatures.

The signed wreckage release form constitutes transfer of the wreckage from the NTSB to the owner or representative. The wreckage release form(s) and any related correspondence will be placed in the NTSB public docket for the accident. There should be no pressure to release all of the on-scene wreckage. Often it is better to arrange for wreckage removal and storage and to retain control of the wreckage in case there is a need to examine it later.

3.13 Materials Laboratory Examinations

In the event that a material failure is suspected or that detailed examinations of a part are desired, group chairmen should enlist the assistance of the NTSB Materials Laboratory. Even if an outside laboratory or manufacturer's facility is used for an examination, the Materials Laboratory should be consulted. [Appendix J](#) contains recommended procedures to submit parts, as well as certain steps to preserve their condition.

3.14 Closing the Command Post

The IIC will read and approve all field notes. Group Chairmen and their groups are not to be released from the site until after the IIC approves their field notes. After the field notes are completed, approved, and distributed, the IIC is responsible for closing the Command Post. Arrangements should be made to return rented supplies and equipment and to settle vendor accounts. The IIC should expect to pay or arrange to pay for such things as telephones, photocopy machines, computers and accessories, meeting room, and supplies. Bills should reflect that all charges have been levied at the prearranged rate and only for the services that had been received and agreed to beforehand. The IIC should settle accounts for \$2,500 or less with a purchase card before leaving the site and retain copies of all bills and payment receipts for processing upon return to the office. The IIC should use form SF44 for purchases and accounts that are more than \$2,500.

4. Post-On-Scene Activities

Following the on-scene phase of an investigation, the IIC will schedule a debrief meeting after the go-team's return to headquarters to discuss a tentative schedule of activities based on guidance provided in Board Order 300. These items include meetings to discuss the progress of the investigation, due dates of the group chairmen factual and analysis reports, preparation of the final report, and the possibility of a public hearing.

4.1 Administrative Tasks Upon Return to Headquarters

Once the IIC returns to headquarters, he or she will check to make sure the investigation was entered into the Safety Board's workload management database, NTSBWork, and make sure that the relevant Division Chiefs do the same. The Board's Accident Data Management System (ADMS) and NTSBKeys should also be updated. The IIC should write and distribute a status/progress report and update the Board Member on scene in person about the latest investigation activities, as necessary. A basic summary opening paragraph should be composed for use in factual reports and distributed to group chairman to facilitate consistency in the basic facts recited in all

reports. Other tasks to be performed at this stage in the investigation can be found in the “IIC Advisory Checklist.”

4.2 IIC Duties for Work Planning

The purpose of the work planning meetings is to discuss activities that will follow the on-scene phase of investigation (e.g., component teardowns, followup interviews, etc.). It also allows all involved staff to agree on realistic schedules to complete required work products. Refer to Board Order 70 for detailed requirements.

The IIC shall prepare a memo announcing the meeting, its location, date, and time. The memo should be accompanied by a summary outlining the major issues of the investigation and distributed to each group chairman, his or her supervisor, and the respective Office Directors and Deputy Directors several days before the meeting.

The IIC should anticipate the investigative activities that each group chairman should pursue and suggest avenues for followup investigation, if necessary. By the end of the meeting, the group chairmen and managers should agree to the accident-related issues, the general activities that remain, the type of report to be generated, the recommendation on whether to convene a public hearing, and the deadlines for the factual and analysis reports. Report completion deadlines may need to be negotiated with the group chairmen and their supervisors depending on their workloads and priorities. The Office Directors or their Deputies will resolve any conflicts regarding deadlines.

The IIC will prepare a memo summarizing items of agreement achieved during the meeting, a revised issue outline, and any unresolved issues. All deadlines for report submissions and anticipated milestones should be included. The memo should be distributed to each group chairman, his or her supervisor, the respective Office Directors and Deputy Directors, and the Managing Director.

The IIC will maintain contact with the group chairmen during the course of the investigation and be aware of the progress of their followup activities. The group chairmen will notify the IIC if they can not meet report deadlines and provide a new date for completion of their reports. The IIC will integrate the activities of related investigative groups if it is determined that they are proceeding in similar directions. For example, if maintenance training becomes an issue, the systems, maintenance records, and structures groups might examine maintenance practices together. Likewise, the human performance and the operations groups may work together in carrying out interviews and records examinations. If two group chairmen are working together, the IIC should ensure that each of them will cover a specific area to avoid overlap among the groups. Identical areas of investigation should not appear in the reports of two separate groups.

The IIC should ensure that he or she is informed of all group activities and group findings. The IIC is responsible for ensuring that the appropriate group chairman will cover all relevant issues. The IIC is also responsible for keeping abreast of potential discrepancies, loopholes

and conflicts about the findings of the various group chairmen and either resolve these issues or bring them immediately to the attention of upper management. The IICs should also ensure that the group chairmen's efforts are coordinated and that they are aware of each others' findings.

4.3 Public Hearing Action Memo

The IIC shall draft an action memo to the Board (through the Managing Director) for the signature of the OAS Director recommending whether or not to convene a public hearing within 20 days of returning from the accident site. A signature sheet for the signatures of the General Counsel and the Office Directors of RE, SR, GA, PA, and TDA shall accompany the memo. The memo should present a logical discussion supporting the hearing recommendation based on previous accidents and subsequent followup actions, Board action on these issues, public interest, local and national media attention, and Congressional and local government interest. A summary of the major issues and the key findings of the investigation should be included. The memo should also include the views of the Board Member who was on scene and the parties regarding the need for a public hearing. The Board's administrative practice regarding the conduct of public hearings is to ensure that before opening the accident file to the public, all parties to the investigation are given the opportunity to record in writing whether or not they want a public hearing to be conducted on the accident. Accordingly, the IIC should ask each of the parties to indicate via fax, e-mail, or regular mail whether they believe a public hearing should be conducted for a particular accident.

4.4 Group Chairman Factual, Studies, and Analysis Reports

The IIC will maintain a list of open action items or issues for the investigation and ensure the completion of each item by coordinating with the group chairmen or their division chiefs.

Upon completion of a group's factual documentation, the group chairman will prepare a factual report based on the field notes and subsequent investigation activities, using the standard factual report outline contained in [Appendix K](#). A draft of the factual report should be made available to the group members for comments that can be incorporated into the group chairman's factual report. Incorporation of group member comments is at the discretion of the group chairman. Concurrence of the group members is desired but not required. If a group member is dissatisfied that his/her comments were not included in the factual report, the party should contact the group chairman's supervisor or the Director or Deputy Director OAS to discuss the issue. If the party remains concerned, they may write a letter to the IIC detailing their position. This letter will be entered into the public docket for the accident. The group chairman should ensure the objectivity and accuracy of information in the factual report, with input from the IIC and approval and sign-off by the IIC and his or her supervisor. If a group chairman for a major investigation is a regional investigator, his or her draft factual and analysis reports must be reviewed and approved by the headquarters Division Chief in the appropriate specialty before they are finalized and provided to the IIC.

Each group chairman will submit a PDF version of his or her final factual report to DMS for approval by the supervisor, and subsequent release by the IIC. The group chairman will also submit a signed hardcopy of the report directly to the IIC, along with sufficient paper copies to send to each party coordinator plus three copies for internal use. Once the IIC has received most of the factual reports, he or she will e-mail them to the party coordinators and the report writer before the docket is opened. If there will be a public hearing, the IIC will e-mail the CVR report to coordinators **on the morning of the day** that the public docket is opened. As it is expected that most parties will attend the hearing, the IIC will distribute the CVR transcript to the parties on the morning of the hearing. Subsequent factual reports will be sent to the parties in time for their use in the public hearing if one is held. The IIC is responsible for entering preliminary data and factual information into ADMS and for scanning in the Pilot/Operator Accident Report (NTSB form 6120.1). In addition, the IIC is responsible for ensuring the accuracy of all material and that no information or material is overlooked.

Group chairmen should be aware of 49 CFR Part 831.6, which establishes procedures for handling a company's "trade secrets" (i.e., confidential or proprietary information). Each page of proprietary information must be stamped that it is so or have another indication by the company that it is proprietary. Further, Safety Board staff is obligated not to release unmarked material if staff has substantial reason to believe it is a trade secret or confidential commercial information. Unless the needs of the investigation require including the information in the public docket, group chairmen must honor the party's request to withhold disclosure of the information. If it is determined that the material must be made public, the Safety Board's General Counsel must be consulted so that Part 831.6 notice procedures can be implemented. If the material is not necessary to include in the public docket, and there is no pending Freedom of Information Act (FOIA) request for it, the material should be returned to the party that submitted it.

Each group chairman shall submit an analysis report based on the information contained in his or her factual report. Group chairmen should begin writing their analysis reports as soon as appropriate and should not wait until the entire factual portion of the investigation is complete. The analysis report should review and evaluate all facts documented by the group regarding their relevance to the accident and should state the principal findings and their relevance to a probable cause of the accident. Analysis reports (and any drafts) are NTSB internal products and should be marked "For Official Use Only." They are not to be released to the group members or party coordinators for any reason and are not placed into the public docket. After they have obtained approval and sign-off from their respective supervisors, group chairmen will submit their analysis reports in PDF format to the IIC for use in the production of the Board's final accident report. [Appendix K](#) contains guidance on the format and general content for group chairmen factual and analysis reports.

Before the final report has been placed on notation, the IIC shall submit the group chairmen analysis reports into the Safety Board internal section of the docket marked, "For Official Use Only." Organizing the docket in this way will give the Board Members easy access to the analysis reports when they are considering the final accident report and will also be useful to other

Board staff in their preparation of other documents, such as petitions for reconsideration. The “For Official Use Only” section of the docket might also contain such things as autopsy results or interoffice correspondence concerning the accident. Although this material will be placed in the accident docket, it is restricted to the Safety Board's internal use and is exempt from FOIA requests provided it meets one of the FOIA exemptions.

4.5 FOIA Requests

Following notification of a FOIA request, the IIC should cease discarding any documentation related to the investigation, including paperwork, photographs, videotapes, audiotapes, electronic files and electronic correspondence. Group chairmen, technicians, Board Members, and other appropriate staff should then be notified that they should also cease disposing of documentation. The IIC and Board employees should not attempt to determine which items in their possession are subject to the FOIA request. If Safety Board FOIA personnel request material before an investigation is completed, investigative staff should photocopy all items that may be needed in the future to complete the investigation. The IIC should then deliver the originals of all investigation material to FOIA personnel, except that material that has been placed in the public docket. Be aware that it will be extremely difficult to retrieve items once they have been surrendered, so it is important that investigative staff make copies of whatever they will need. Following the initial delivery of material to FOIA personnel, the IIC should make copies, as necessary, of all material that he or she receives for use during the remainder of the investigation and provide the originals to FOIA personnel immediately thereafter.

4.6 The Public Docket

Title 49 CFR 845.50 states that all factual information, proposed findings that parties have submitted (that is, submissions), petitions for reconsideration, and the Board's rulings will be placed in the public docket, which will be made available to the public. The IIC is responsible for assembling the public docket and will retain the original copy of all docket material for one year from the date that the accident report is adopted. Board Order 700 explicitly outlines the docket's structure and contents. If it is unclear whether to place material into the docket, the Office of the General Counsel will make a determination. The manner in which material is entered into the docket is the same regardless of the circumstances; however, the timeframe for opening the docket is determined by whether a public hearing is convened on the accident (see below). When the docket is opened, the IIC should also update the ADMS record to “Factual” status.

Generally, copies of the following shall be entered into the docket: factual reports, addenda to the factual reports, errata sheets, photographs, and pertinent correspondence from the parties (other than routine requests for information). Photographs are acceptable from either digital cameras or scanned prints, but should meet minimum defined quality standards (see Docket Procedures manual); until further notice, associated negatives should also be provided whenever

they exist. It is NTSB policy to retain materials, such as documents and photographs scanned into the docket, for 1 year after the final report is adopted before their disposal.

After the accident report has been adopted and prepared for printing and subsequent recommendation letters have been completed, any material not needed for the public docket or a pending FOIA request should be discarded. This will ensure that the public docket will contain all pertinent data and that this material will not subsequently be contradicted by unverified or preliminary data.

Dockets are created and managed using the Board's web-based application, Docket Management System (DMS). It is available on the intranet, along with a procedures manual and other user guides at <http://inside/projectlook/docket/description.htm>.

It is important to remember that it is a violation of the Board's regulations to release information that the Board has not already formally released by way of the docket, press releases, or a published report to anyone outside the Board (other than parties to an investigation when their having the information is critical to the investigation). It is also a violation of the Board's rules to release "official-use-only" and any other analytical work to **anyone outside the Board**. Unauthorized release can be prosecuted as a criminal act. Staff should allow Public Inquiries Branch to handle all requests for publicly releasable material; when there is any doubt, consult with the Records Officer or General Counsel advisors.

4.6.1 No Public Hearing

If the Board has voted not to hold a public hearing and a CVR recording tape has been transcribed, the docket can be opened when a majority of the factual reports have been completed and released with the CVR transcript.

When the majority of the factual reports have been completed, the IIC should assemble packages of the factual reports for each of the parties. The IIC should assemble this material in a timely manner and should not succumb to outside or public pressure to gather this material by a date set arbitrarily. The IIC should also make sure that the OAS's electronic docket contains the same factual material that has been assembled for the party packages.

To open the public docket, the IIC will prepare a memo to the MD, Directors, GA, PA, and TDA giving notice that factual material is about to be made available to the public. The memo will include an attached table of contents listing the factual reports and information contained in the docket. Subsequent material that is introduced into the docket does not require such a memo. The IIC, after coordinating with OAS, GA, PA, and TDA, and Public Inquiries, will then select a date for opening the docket.

After the exact date and time for opening the docket have been selected and announced by means of a memo from the IIC to the Members and offices, the IIC will brief the

appropriate PA staff on salient information about the accident that is contained in the factual reports. At this time, the IIC should also e-mail a “warning memo” to the parties notifying them that the docket will likely be opened on the date selected by GA, PA, TDA, and the Office of Public Inquiries. If the IIC has not already done so, he or she should mail the factual reports and the CVR transcript (if there is one) to the parties so that these documents are received on the morning of the day that the docket is opened. If the docket does not contain CVR information, the parties may receive final factual reports at the time of their completion.

4.6.2 Public Hearing

If a public hearing is held, the docket should be released on the morning that the hearing begins. This will ensure that all reports are made available to the public at the same time as they are distributed to the press at the public hearing. The CVR transcript will be among the reports entered into the docket to coincide with the opening of the hearing.

4.7 Conducting Public Hearings

Public hearings allow the Safety Board to gather more facts about an accident and to put on record a substantial amount of information about circumstances relating to the accident. Hearings also allow the public to learn more about the Board's investigation of an accident for which there is substantial interest. For this reason, hearings have historically been held near the location of the accident. However, in May 2000, the Board opened its new Board Room and Conference Center at its headquarters in Washington, D.C. This facility will generally be used for all public Board events, including hearings, unless circumstances or considerations dictate otherwise.

After the Board has voted to convene a public hearing, the first official action is the issuance of the Order of Hearing, which is signed by the NTSB Chairman (see Appendix M). Thereafter, the OAS Director designates a hearing officer, who is typically the IIC but can be a different designee if circumstances warrant. The hearing officer is formally granted the authority to issue subpoenas (typically issued as “friendly subpoenas” to reimburse nonparty witnesses), swear witnesses into the hearing, and to generate the Notice of Hearing, which announces the hearing’s date, time, and location. These powers are not continuing powers vested in the hearing officer but, rather, are conferred for each hearing.

4.7.1 Preparation

Public hearings require extensive preparation to ensure that all necessary details have been addressed and to ensure the success of the hearing. Inadequate preparation in either administrative matters or technical details can be detrimental to the success of the hearing and create unnecessary work later. A complete preparation guide is being developed and will be available on the intranet.

The IIC/hearing officer is responsible for overseeing all preparations for the hearing, both administrative and technical. Often, many of the administrative details, such as hearing site selection, material preparation, supply, equipment and material acquisition, and transportation can be assigned to a hearing assistant. The hearing officer or the IIC (if the functions have been divided) must address technical details.

4.7.1.1 Administrative

Administrative items include selecting the hearing date and location, acquiring necessary supplies and equipment, fulfilling Safety Board documentary requirements, assembling the exhibits from the factual reports and addenda, reproducing exhibits, distributing materials to parties and organizations, and arranging for court reporter services (see [Appendix L](#)).

The hearing officer will select the date for the hearing with the concurrence of the Chairman of the Board of Inquiry by considering workload requirements of the hearing participants, the Board meeting schedule, and the schedule of the Chairman of the Board of Inquiry (i.e., the presiding Board Member). These things considered, hearings are typically held 4 to 8 months after the date of the accident, but they may be held at any time during the investigation. Once the hearing date has been established, the hearing officer and the group chairmen must strictly adhere to an agreed upon schedule to ensure that exhibits will be made available to the parties in time to allow their preparation for the hearing.

The hearing will typically be conducted in the Conference Center at the Safety Board's headquarters. This room can be reserved by submitting a [request form](#) that is available on the Board's intranet site under "Projects." Audio/visual equipment and services can also be requested using this form.

If it is determined that this facility cannot accommodate the needs of the hearing, another site will need to be selected. If this is the case, the hearing will usually be held in a large hotel meeting room that should accommodate the hearing participants, media personnel and equipment, and public seating. The size of the room needed will vary according to the public interest in the accident. The room should have a raised platform with a table to accommodate about 8 people, table(s) for NTSB technical panel members, tables to accommodate around 10 people for each of the parties to the hearing, a table for the witnesses to give testimony, and a small table for the court reporter (see [Appendix L](#)).

The requirements for public address and electronic support systems must be provided to the hotel. PA can provide information to the hotel on audio and video electronics needs. The hearing officer should follow up as necessary with the hotel to ensure that the microphones and electronic support equipment will be in place and operational for the hearing. It may be necessary to indicate where microphones will be needed and how the hearing will be conducted to ensure the proper preparation.

If the hearing is held off site, supplies and services for the hearing room, including a fax machine and photocopy machine, will need to be obtained as they would for the Command Post. All financial agreements should be in writing. At the close of the hearing, all bills will be collected; those that are \$2,500 or less should be paid with a purchase card. Safety Board supplies, such as the Board seal and banner and a gavel and gavel striker, will require transport to the hearing site. Office supplies will also be necessary.

The hearing officer should contact the GA, PA, and TDA, the Chairman of the Board of Inquiry, and the Director of OAS to determine the sufficient copies of factual reports from the group chairmen and ensure that Board procedures are followed in their assembly. Public Inquiries assigns the docket number for the hearing. Every factual report and attachment must also be given a distinct exhibit identification number. Each exhibit must be identified with these numbers on the cover sheet (see [Appendix M](#)). The hearing officer will resolve any conflicts regarding exhibit numbers.

The group chairmen's factual reports are assigned the letter suffix "A" and will be the first exhibit in each group of exhibits. Additional exhibits follow the group chairman's report and are assigned a letter suffix, beginning with "B" and proceeding through the alphabet, until all attachments have been identified. If the number of attachments exceeds the available letters of the alphabet, use double letters, beginning with "AA". Exhibits should only include that information necessary for the interviewer or witness to refer to during the hearing. Therefore, not all factual information in the Public Docket will be identified as an exhibit. Each page of the exhibit will be numbered in the lower right-hand corner.

The first group of exhibits (and the corresponding exhibit identification number "1") is reserved for documents that establish and designate the following:

- Order of Hearing (Exhibit 1A)
- Notice of Designation of Chairman of Board of Inquiry (Exhibit 1B)
- Designation of Hearing Officer (Exhibit 1C)
- Designation of Parties to the Hearing (Exhibit 1D)
- Notice of Hearing (Exhibit 1E)

All of these documents are to be prepared by the IIC/hearing officer for the signature of the official that is noted on each.

Poster-sized charts and photographs (or material that can be presented on audio/visual equipment) enhance the quality of witness testimony during the hearing. Generally, photographs of the overall wreckage documentation, instrument approach charts, and plots of radar tracks of the accident airplane are appropriate. The group chairmen, the hearing officer, and the Board of Inquiry will coordinate exhibit requirements.

Allow sufficient time for reproducing materials and shipping them to the site of the hearing. Do not wait until overnight mail is the only alternative. Typically, sufficient copies of each

exhibit are made and prepared for distribution to the parties. Coordinate with GA, PA, and TDA to determine the number of copies of each exhibit they will need.

The IIC/hearing officer should inform all parties of the details of the hearing and the prehearing conference (see section 4.7.2) well before both are held. Party coordinators should be contacted first by telephone then by written confirmation. Because of the importance of their notification, parties should be provided written notice of the hearing and prehearing conference through air express or registered or certified mail so that the Board receives confirmation of their receipt of this information.

The IIC/hearing officer should allow sufficient time (at least 2 weeks) for the parties to receive and review the items critical to the hearing before the prehearing conference. These include exhibits, issue list, areas of questioning, and relevant exhibits for each witness. Provide any exhibits, corrections, amendments to exhibits, or other relevant material not previously forwarded to parties at the pre-hearing conference.

The IIC/hearing officer should contact the Safety Board's Office of Administrative Law Judges to arrange for a court reporter to transcribe the proceedings (the Board maintains a court reporter service on contract for this purpose). After the request has been forwarded to the service, contact the reporter assigned to the hearing to confirm all details. Ensure that the court reporter is aware of the importance of his or her arrival before the hearing starts (to allow time for setup and briefing about expectations).

4.7.1.2 Technical Matters

The IIC/hearing officer must accomplish the following to coordinate the substantive aspects of a hearing: determine the issues of interest, identify and request witnesses to address the issues, review areas of inquiry with the technical panel, ensure that parties are designated, and notify parties. The Chairman of the Board of Inquiry will approve all major decisions regarding the technical aspects of the hearing. Generally, two or more meetings will be held with the Chairman of the Board of Inquiry to review issues, witnesses, and general staff preparation.

The staff and OAS management, in consultation with the staff and management of other Safety Board offices with interest in the investigation, will draft the safety issues to be raised in the hearing. An "average" hearing will address about five issues although some hearings have addressed as many as 12.

After the issues have been identified, the IIC/hearing officer should obtain the necessary witness expertise to address the issues at the hearing. Usually, Board management or the group chairmen involved with the hearing issues will be able to identify witnesses whose testimony is appropriate. The witnesses may be from the parties to the investigation or can be suggested by one or more of the parties. For example, if issues, such as flight crew training and preparation for the accident flight have been identified, individuals responsible for flight crew training at the airline

or airframe manufacturer may address these issues. Additionally, according to the desired depth of exploration of the issue at the hearing, witnesses from the FAA with responsibility for approving training in that type aircraft could be identified. Depending on the issues to be covered at the public hearing, Board personnel may be called to testify. When these staff members are called, their testimony will be limited to factual findings relating to the accident under investigation.

If a witness with the desired expertise cannot be located or is not available through the parties to the investigation, the IIC/hearing officer should attempt to locate either an individual with the same expertise from a different organization or an individual with similar expertise from the parties. For example, if the chief pilot of the airline is unavailable to address training on that aircraft type, the airline's Director of Training may be available and may be qualified to address the issue.

Once witnesses have been identified, the IIC/hearing officer should arrange either with the witnesses or with their party coordinators for them to appear and testify at the hearing. If necessary, the Board can issue invitational travel orders and fund travel expenses for witnesses who are not members of a party to the investigation to appear at the hearing.

After witnesses and issues have been identified, witnesses will be “assigned” to members of the technical panel. Technical panel members, usually group chairmen assigned to the investigation, are responsible for asking a witness the questions necessary to address a particular issue. The IIC/hearing officer will serve as the head of the technical panel and is responsible for reviewing issues with members of the panel, ensuring that each understands the issues and the witnesses identified to address specific issues. The IIC/hearing officer should also be prepared to question witnesses to balance the workload among the technical panel.

The IIC/hearing officer should meet regularly with technical panel members to ensure that the technical panel is appropriately prepared for the hearing. The technical panel members will be expected to be thoroughly familiar with the relevant exhibits and their relationship to the areas of witness questioning.

Before the hearing, technical panel members should contact the witnesses they have been assigned and review the general areas of inquiry with them. It is neither necessary nor advisable to review specific questions with them. However, witnesses should be advised of the general areas in which they will be questioned to enable them to be well prepared before the hearing.

The IIC/hearing officer is typically responsible for drafting the Chairman of the Board of Inquiry's opening and closing statements for pre-hearing conference and the hearing.

4.7.2 Prehearing Conference

The prehearing conference allows the parties to review plans for the hearing and provides them with a final opportunity to make suggestions on its conduct. Parties may bring legal counsel to the prehearing conference. The prehearing conference is not a fact-finding activity.

Typically, the prehearing conference is held about 1 week before the hearing at the Safety Board's headquarters in Washington, DC. In unusual circumstances, this meeting may be held at the hearing site. Although the meeting should not last all day, the room should be reserved for the entire day.

The IIC/hearing officer will review the items to be distributed with the parties and will allow each party the opportunity to offer comments on the exhibits, hearing objectives, and witnesses and their areas of questioning (see [Appendix N](#)). The parties will be given the opportunity to suggest additional witnesses or exhibits.

The IIC/hearing officer should describe any administrative procedures that need explanation. The Board Member serving as the Chairman of the Board of Inquiry makes the final decisions regarding the conduct of the hearing. The parties should be made aware that questions or concerns not expressed at the prehearing conference will not be entertained at the hearing.

4.7.3 The Public Hearing

The public hearing usually begins with the Chairman of the Board of Inquiry's opening remarks, which are followed by introduction of the Board of Inquiry, the technical panel, and parties and their coordinators (see [Appendix O](#)). The IIC will make an opening statement summarizing the progress of the investigation. The IIC will not be questioned by the parties to the hearing. Each subsequent witness is called, sworn in, and qualified in the order he or she appears on the witness list. Each witness is then questioned by the member or members of the technical panel identified on the list according to the predetermined areas of inquiry. Other technical panel members should refer their questions for a witness to the NTSB panelist assigned to that witness. Other panelists will not typically ask followup questions.

Each party spokesperson is then given the opportunity to ask questions, followed by the members of the Board of Inquiry asking any remaining questions. There will normally be only one round of questioning for each witness. After all witnesses have been called, the Chairman of the Board of Inquiry will read the closing comments and adjourn the hearing.

4.7.4 Techniques for Questioning Witnesses

Asking proper questions at a public hearing requires that the investigator: 1) become thoroughly familiar with the relevant exhibits, 2) demonstrate mastery of the subject matter the witness will be questioned about, 3) ask brief questions that require the witness to effectively address the issues, and 4) listen to the answers and ask followup questions when warranted.

To prepare for these tasks, the investigator should thoroughly read each appropriate exhibit to gain the requisite familiarity and underline or note sections of the exhibits that could generate comments from the witness. Become familiar with the actual or expected expertise of the witness.

There are two ways to prepare and conduct questioning of a witness: 1) write the questions you wish to ask in advance in the order you expect to ask them, or 2) write the areas of questioning you expect the witness to address. Each method has its advantages and disadvantages. The major advantage of the first method is that you will not overlook any one question. On the other hand, this method may limit your ability to ask followup questions in response to a particular answer from the witness. The latter method provides the most flexibility in tailoring questions to the responses of the witness, but it may allow some questions to be overlooked. Prehearing discussions with the assigned witnesses will allow the panelist to more completely outline the questions needed or testimony desired at the hearing.

Questioning each witness should begin with the qualification process, which entails establishing the identity and business address of the witness (if this has not already been done), the expertise of the witness, and his/her relationship to the issues of the accident. The hearing officer will typically perform this task. The panelist will then direct specific questions about issues relevant to the expertise of that witness.

In addition to the wording of the questions, many factors can affect the quality of the hearing. Tone of voice, mannerisms, attitude, and demeanor of the questioner can be communicated to the witness and affect the nature of his or her answers. Because of the public nature of the hearing, it is of utmost importance to maintain a professional demeanor at all times. Each panelist should strive to be fully prepared, ask questions in an objective manner, and treat the witness with respect.

4.8 Subpoenas/Sworn Testimony

Section 304(b)(1) of the National Transportation Safety Board Act of 1974, as recodified at 49 USC paragraph 1113(a), grants authority to issue subpoenas to Board Members, Administrative Law Judges, and any officer or employee duly designated by the Chairman. The law authorizes any duly designated member of the Board to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and to receive evidence at any place in the United States.

Subpoenas shall be issued under the Chairman's signature or his/her delegate and may be served by any person designated by the Chairman or delegate. The power of subpoena must be used judiciously. The information or testimony being sought must be advisable and necessary. There are two basic types of subpoenas: one for the appearance of a person to testify and produce records and one for the production of records only.

The procedure for issuing subpoenas is as follows:

- (1) Each investigator who is likely to serve as an IIC of accident investigations conducted by the Board or any officer or employee of the Safety Board who is

likely to have need for issuing a subpoena should have a supply of blank subpoenas (NTSB forms 6100.1 and 6100.8), which are available on the intranet.

- (2) When there is a clear need to issue and serve a subpoena, the Safety Board investigator, officer, or employee should contact his or her Division Chief and indicate the need. If the Division Chief agrees, he or she will seek the approval of the OAS Director, who will obtain written authority from the Chairman. Any questions should be directed to the Office of General Counsel.
- (3) A form to authorize the issuance and service of subpoenas will require only the:
 - (a) identification of the accident
 - (b) Docket number, if available or applicable
 - (c) name and title of the authorized issuing official
 - (d) signature of the Chairman and date
 - (e) Statutory cite for sub. authority (49 USC paragraph 1113(a))
 - (f) Statement of what office is authorized to do (that is, issue subpoena and administer oaths
- (4) When such authorization is executed, the authorized issuing official should fill out, sign, and serve the subpoena(s).

Although the use of subpoenas is often related to public hearings, there occasionally are situations during the field phase of investigations when sworn testimony (that is, depositions) is required from selected individuals. Such situations include those in which there is conflicting evidence from different sources, reluctant or uncooperative witnesses, or highly controversial and critical information that requires transcribed sworn testimony.

When a situation arises that suggests the need for taking sworn testimony, the IIC shall inform his or her supervisor of the reasons and plans for taking the testimony and obtain the necessary authority to administer the oath. Generally, the IIC would be the person authorized to administer the oath; however, in some cases, the applicable group chairman or other Safety Board investigator could be authorized. The IIC would also contact the Office of Administrative Law Judges to request the services of a court reporter.

In most cases for which sworn testimony would be taken during the field phase of the investigation, the specific group chairman and party group members would participate along with the IIC, who would oversee the proceeding. For example, if the testimony involved a pilot or flight operations manager, the Operations Group and the IIC would conduct the proceeding. The procedures would be very similar to those followed during an informal interview. If the proceeding pertained to an aircraft maintenance issue, the Maintenance Records Group or relevant airworthiness group (Structures, Systems, or Powerplants) would take the testimony.

The provisions of 49 CFR 831.7 for witness representation apply when sworn testimony is taken. The representative may advise the witness, if necessary, when questions are posed; however, the representative may not disrupt the proceeding or address the other members of the group. The senior Safety Board official present will deal with any conflicts or problems that might arise during the proceeding. The General Counsel may be contacted.

4.9 Technical Review

The Technical Review is normally the final step in the factual phase of the investigation and provides the parties with the opportunity to perform a final review of all factual material obtained during the investigation. It allows the parties to raise any investigation problem areas so the issues can be resolved or at least addressed in the report preparation process. In addition, the Technical Review provides a formal review of the accuracy of information contained in the group chairmen's factual reports.

The Technical Review should be held as soon as possible after completion of the public hearing or fact-gathering. The Technical Review will be held after group chairmen have completed their investigative activities, written their factual reports, and collected the documents that will complete the public docket of the Board's investigation. The IIC shall notify the parties of the date, time, and location of the Technical Review in writing. This correspondence should establish the limits of the party review process, noting that discussions will focus on fact-finding only and that no analysis will be discussed.

Group chairmen and their Division and Office managers should be present at the Technical Review. All factual reports should be provided to the party coordinators with sufficient time to allow their thorough review before the date of the Technical Review. The IIC should begin the Technical Review by calling upon each group chairman, as necessary, to discuss the work of his or her group(s) during the investigation. Next, each party coordinator will be asked whether he or she has questions concerning the material presented in the particular factual report. Finally, party coordinators will be given the opportunity to suggest additional avenues of investigation or to submit additional factual information for inclusion into the public docket to ensure that the information is considered by the Board. If necessary, Division or Office managers should advise the group chairmen on how to address questions or suggestions from the parties. Discussions that are not substantive, such as minor wording and grammatical changes, or that do not deal with factual material should be avoided.

The party coordinators should also be encouraged to submit their analysis, conclusions, and/or recommendations that they believe are justified by the facts of the investigation (see section 4.10). All formal correspondence between the parties and Board staff should be retained for possible inclusion in the public docket. After the meeting, the IIC shall write a memo to parties and group chairmen listing agreed upon changes, deletions, or additions to the factual reports.

4.10 Party Submissions

Although the Technical Review provides parties with the opportunity to offer comments on the factual material, parties should be strongly encouraged to submit their proposed conclusions, recommendations, and probable cause under the provisions of 49 CFR 831.14 or, if a hearing has been convened, 49 CFR 845.27. If a hearing is held, closing comments by the Chairman of the Board of Inquiry will contain instructions on submitting proposed findings and conclusions. The IIC will write each party coordinator before the Technical Review, informing him or her of the opportunity to present party submissions. It should be explained that the submissions should contain their proposed conclusions, probable cause, and recommendations relating to the accident. The coordinators should be given 30 days from the day of the Technical Review to provide submissions and be reminded that they are required to send a copy of their submission to each of the other parties.

Parties should submit 1 electronic document and at least 25 hardcopies of their submissions: one for each Board Member, the IIC, OAS, RE, the public docket, and one unbound/unstapled copy. Submissions may be addressed to the Chairman but will receive more prompt distribution if sent directly to the IIC.

The IIC should distribute submissions to the Board Members as soon as they are received. Additional copies should also be sent to Board Members at the same time that the Executive Secretariat distributes the notation draft of the final report. The party submissions will be considered during development of the final report.

4.11 Report Planning Meeting

A report planning meeting should be convened to discuss the report outline and to resolve any outstanding issues identified during the work planning meeting. The IIC shall draft a memo announcing the date, time, and location of the meeting and distribute it (along with a list of major areas of discussion), to the group chairmen and report writer, their supervisors, and relevant Office Directors, including the Director of SR. Coordination between OAS and SR is required throughout the report writing process to ensure SR is aware of all proposed recommendations and review of previous recommendations being used in the draft report. At the conclusion of the meeting, all participants should agree on the major issues to be discussed in the report, recommendation topics, the thrust of the probable cause, and remaining deadlines. The IIC shall draft a memo or e-mail after the meeting that summarizes the major points that were agreed to and distribute it to all participants.

4.12 Preparation of the Final Report

The format of the final report will follow the outline in Annex 13 to the International Civil Aviation Organization (ICAO). Sections 1.1 through 1.17 vary little from one accident to another although certain sections will contain more or less material depending on the circumstances of the investigation. Section 1.18, “Additional Information,” and the analysis sections will be drafted to reflect the major investigative activities of the groups critical to the issues of the particular investigation. Section 1.19, which is not always used in a report, is reserved to highlight new or effective investigative techniques that may have been applied during an investigation. If this section is used, it should briefly indicate the reason for using the techniques and the benefits derived while presenting the results in the appropriate sections (1.1 to 1.18).

4.12.1 Drafting the Report

A report writer from the Writing and Editing Division (AS-70) is generally assigned to write the report soon after the accident. The IIC should provide the report writer with the group chairmen's factual and analysis reports as soon as they become available so that the report writer can begin drafting the final report. The IIC should meet with the report writer to discuss the best method of delivering these reports. All factual material in the draft final report must be supported by material in the docket, and all calculations should be checked for accuracy. Calculations that are culled directly from the group chairmen's factual and analysis reports should be verified by the group chairmen, their supervisors, or the IIC before these reports are given to the report writer. Where possible, the report writer should double check calculations and question the group chairmen or IIC if something does not seem correct. The report writer should check all figures, tables, and photographs for quality of reproduction and, when necessary, will ask the appropriate group chairman or IIC to obtain diagrams, schematics, or photographs that more clearly illustrate a particular concept. Group chairmen should determine whether any figures, tables, or photographs used in their factual or analysis reports require permission for use and obtain permission where necessary. The report writer should ensure that permission from Jeppesen-Sanderson has been obtained if its charts are to be used in the draft final report. If any proprietary information is to be used, the IIC and report writer must coordinate with the Office of General Counsel. This should be done as early as possible in the event the owner of the information objects to its use in the final report.

4.12.2 Report Drafts

The initial drafts of a major report will be circulated to group chairmen and AS management before the Managing Director and other Directors sign off on the report and it is given to the Board Members as a Notation draft (the notation process is the process by which items are sent to the Members of the Safety Board for their consideration and is fully explained in the Board Orders. During the Initial draft stage, several drafts will likely be distributed, sometimes in various states of completion, before the document is ready to progress to the

Directors' draft. At each level of review, reviewers are encouraged to correct any known discrepancies and to suggest textual improvements, which may range from minor changes to substantive revisions. The report writer will evaluate each suggestion and, when necessary, will discuss potential conflicts with the group chairmen or IIC. During this stage, the report writer will internally distribute the report to the group chairmen assigned to the investigation, their supervisors, SR, and other personnel as appropriate. In the early drafting stages, statements of probable cause may not be included.

After comments and corrections from parties' submissions and those who reviewed the Initial draft have been incorporated, the Initial draft becomes the Directors' draft. The report writer then distributes this draft to the Managing Director, the Executive Secretariat, and the Directors of the Offices of Aviation Safety, Research and Engineering, Safety Recommendations and Accomplishments, General Counsel, and relevant Division Chiefs with a memo soliciting their comments and corrections. The Managing Director will then schedule a Directors' Review meeting to discuss the report. After the day, location, and time of the Director's review have been set, the IIC or report writer is responsible for sharing information with the group chairmen, Office Directors, and report writer. Before the Directors' Review meeting, the IIC in coordination with the report writer should identify any dissenting opinions from or between group chairmen and senior staff, keeping in mind that consensus is a goal but not a requirement.

After the accident report has been revised to address issues that may have been identified during the Directors' Review meeting, the Directors' draft becomes the Notation draft. The Notation draft is transmitted to the Board Members via the Managing Director with a Notation memo, which is generally drafted the report writer. The Notation memo summarizes the principal issues of the investigation and the final report and outlines unresolved areas of staff disagreement. It also contains the names of the organizations receiving safety recommendations and the fax numbers of the respective company officials who will most likely be responsible for initiating the recommended action. Please note that the fax recipient may not necessarily be the person to whom the safety recommendation is addressed. The Notation package should include a proposed Board meeting agenda that lists the principal issues discussed in the report and notes the pages in the factual and analysis sections where these issues are discussed. The agenda should also note the corresponding conclusion and recommendation numbers. Twenty copies of all photographs used in the report should accompany the Notation package. The Board Members should receive this package for review at least 2 weeks before the Board Meeting. A longer period is often specified by the MD if the draft report is unusually long. The IIC should ensure that Board Members have copies of all party submissions before the Notation package is delivered to them.

4.12.3 OAS Protocol for Major “Blue Cover” Reports and Safety Recommendation Letters

4.12.3.1 Intended Audience

Reports and recommendation letters (greensheets) should be written so that they are comprehensible to and contain enough explanation to be understood by interested persons who are **not** technical experts.

Safety Board Order 4, (addressing protocol for the preparation, consideration, and adoption of documents by the Board), states the following regarding the Safety Board’s editorial policy:

The primary audience of published Safety Board documents is persons, groups, or organizations who can bring about changes in transportation safety through action on our safety recommendations. The Congress, industry, media, and public, who can influence the actions of the recommendation recipients, are also important audiences. The type of audience and the technical knowledge of the audience vary greatly depending on the document’s subject and the safety issues presented. The Safety Board does not intend its reports and recommendations to be read only by technicians and specialists in the transportation industry....Because Safety Board documents are of interest to a varied audience, the writers, reviewers, and editors are to produce documents that can be read and understood by an educated lay person. Although the reader may not achieve a full understanding of the technical aspects discussed in a document, the reader should be able to follow the discussion and to fully understand the safety issues presented, the Board’s analysis of these issues, and the recommended action.

4.12.3.2 Conclusions and Recommendations

Note in particular the guidelines regarding use of the words “concludes” and “believes”:

Conclusions:

- The words “the Safety Board concludes...” should not be used in the text of a report unless they precede a formal conclusion.
- Do not make a conclusion a statement of fact but, rather, a declaration of what we have drawn from the facts.
- Ensure that each point that is analyzed in the report logically leads to a conclusion that summarizes the Safety Board’s view or position on that issue.

Even if the issue under discussion turns out not to have been a factor in the accident, construct a conclusion indicating that it was not a factor.

Recommendations:

- The words “the Safety Board believes...” should not be used in the text of a report or a greensheet unless they precede a formal recommendation.
- Generally, follow a conclusion with a recommendation. Some conclusions do not call for a recommendation. For example, very innocuous conclusions (“the flight crew was properly certified”) or conclusions that rule something out (“windshear was not a factor in the accident”) do not suggest the need for a recommendation.
- However, when conclusions raise an actual or potential safety issue that requires some sort of follow-up, either propose a recommendation to correct or address the problem or document that some sort of corrective action has already been initiated or completed (by the operator, manufacturer, FAA, etc.)

4.13 Board Meeting

The Board Meeting to consider the draft report, probable cause, and recommendations brings to completion most of the work of the investigation. Because the meeting is held in public and because of the importance of the meeting to the investigative process, the necessity of adequate preparation for the meeting cannot be overstated.

No later than a week before the Board meeting, staff participants will conduct at least two “dry run” rehearsals of their presentations in the Board room. All participants should read the guide “How to Survive a Board Meeting,” which is available from the Safety Board’s intranet site. The IIC and appropriate staff should be prepared to make statements and to use audiovisual equipment and material, as required. Within a day or two of the Board meeting, the OAS Director or the Managing Director may hold a debriefing about the meeting. Regional staff may attend via teleconference.

Board staff should prepare for the meeting by thoroughly reviewing material critical to the key issues of the investigation. It is not necessary to memorize the report or information concerning the finer points of the investigation (e.g., the distance between the takeoff point and main wreckage location). However, good preparation requires anticipating questions that could arise during the meeting and including written notes or other documents to quickly locate key factual material. For example, the IIC should note such information as the flight crew’s total flight hours and their times in type since these questions are often raised during the meeting. If any questions persist during preparation for the meeting, the IIC should locate the person responsible for that area of investigation and review the material with him or her. The IIC should know where key information is in the report for easy reference during the meeting. The IIC should assume that all questions will be directed at him or her and that he or she will be expected to answer them.

Likewise, the group chairmen should fully understand all information relevant to their portion of the investigation.

A Board Meeting begins with the Chairman calling the meeting to order. He or she then describes the agenda items (the particular report or Board items being considered). The Managing Director will be asked to identify the personnel sitting at the staff table. After these actions, the IIC should make an opening statement (see [Appendix P](#)) that summarizes the following facts of the investigation: the launch activities, parties to the investigation, investigative groups, key findings, and major issues.

Graphics may be useful in presenting details of the accident and may include videos of the wreckage scene, poster-sized approach charts, site photos, mechanical parts illustrations, maps, and computer simulations. Assistance with complex graphics should be requested from Information Products Division in RE as soon as the need is identified, using the request form on the intranet. Effective opening statements and staff presentations will demonstrate the depth of the investigation and assist the Board Members and the audience in understanding the issues of the accident.

Answer questions from the Board in a succinct and direct manner. If the IIC does not know the answer and cannot direct the question to someone on the staff, he or she should say so. Staff should avoid sounding defensive in their answers. Facts should be referred to as such, provided that they are addressed in the report. References to staff proposed conclusions or causes of the accident should be stated as such. They do not become final conclusions or causes until after the Board has voted on them.

The Board may adopt the report in its entirety, adopt the report with changes discussed during the meeting, or require further investigation or rewriting before approving the report. After considering the accident report, the Members will discuss and vote on the findings, recommendations, and the probable cause(s) of the accident. Dissenting Members may state their disagreements and include a written dissension for incorporation into the final report. Staff should make note of Members' questions or requests during the Board Meeting to ensure that they are properly addressed in the final report.

Once the report has been adopted, the IIC should coordinate with the editorial staff to update the narrative and probable cause statement in ADMS. The IIC must also ensure that the case appears on the "docketed" list managed in OAS so the ADMS status can be updated to "Final" and released to the public.

4.14 Document Preservation/Archiving

After an accident report has been adopted, the IIC should place original factual and analysis reports in a cardboard box, seal the box, and clearly mark it regarding its contents. The box should be stored in the basement at the Safety Board's headquarters for 1 year from the date of the report's adoption.

4.15 Petition for Reconsideration

After the Board Members have adopted an accident report, recommendations, and probable cause, a party or any other persons with a direct interest in the accident investigation can formally petition the Safety Board to reconsider all or part of the analysis, conclusions, or probable cause under the provisions of 49 CFR 845.41. When petitions for reconsideration are received, their receipt must be promptly acknowledged then assigned to staff for research and evaluation of the issues raised. The petition response will normally be written by a staff member who was not initially involved in the investigation (if staffing and workloads permit). However, that person may consult with those who were involved with the original investigation.

To respond to a petition for reconsideration, determine first whether the petition has met the requirements for consideration by the Board, i.e., whether the petitioner has presented new factual material or has demonstrated that the Board's analysis was faulty. If this has been established, draft a formal response to the petition (see [Appendix Q](#)). The Board's response to a petition consists of three basic elements: a discussion of the Board's original reasoning, a summary of the arguments and/or evidence provided by the petitioner, and the proposed response to the petition.

Staff specialists should be involved in the response to a petition according to its emphasis and content. The staff member who is writing the response should establish deadlines for reports as needed and incorporate specialists' reports into the response. The petition response should begin with a brief summation of the accident followed by the relevant initial Board conclusions, the probable cause, and the areas in which the petitioner has focused the petition. The response should be limited to a point-by-point discussion of the merits of the petitioner's argument and the quality of the evidence he or she has presented. The response to the petitioner should be designed to bring closure to the issues raised in the petition. The Board's response should end with a statement indicating whether and to what degree the petition will be granted, i.e., granted in its entirety or in part or denied in its entirety. Further guidance on handling a petition for reconsideration is contained in Board Order 600A.

5. Other Investigations

5.1 International Investigations

The Safety Board represents the United States in accident investigations involving overseas interests under the provisions of Annex 13 to the Convention on International Aviation. This will typically occur in one of two situations: 1) an overseas manufactured, registered, or operated aircraft is involved in an accident or incident in the United States or its possessions, or 2) a

U.S.-manufactured, registered, or operated aircraft is involved in an accident or incident in the territories of another country.

Annex 13 outlines the entitlements and participation of an Accredited Representative. The ICAO *Manual of Aircraft Accident Investigation* outlines the duties and responsibilities of the Accredited Representative. These duties and responsibilities are contained in [Appendix S](#).

5.1.1 Domestic Accident

If a foreign-manufactured, -designed, -operated, or -registered aircraft is involved in an accident in the United States, the state (country) of manufacture, operations, or registry may send an Accredited Representative and advisors to participate in the investigation. The Accredited Representative is the leader of any officials from another country, such as civil aviation officials or airline and manufacturer advisors. Usually, the investigation will have already begun by the time the Accredited Representative arrives. The IIC should provide the Accredited Representative with all information given to party coordinators and thoroughly brief him or her on the progress of the investigation. Annex 13 provides a list of entitlements to be provided to the Accredited Representatives and their advisors

If necessary, Safety Board rules and procedures should be explained to the Accredited Representative if he or she is unfamiliar with the Board's "open" style of conducting investigations and daily release of information to the press. In addition, explain to the advisors and the Accredited Representative, if present, that the protocol of Annex 13 establishes official interactions between their organizations and the Safety Board through the Accredited Representative. This is true even for situations in which a foreign manufacturer has U.S.-based personnel assisting in the investigation.

ICAO Annex 13 specifies that the draft final report (Director's draft) be sent to the participating states for comment and that 60 days be allowed for receiving any comments. This should be considered when planning the final report schedule.

5.1.2 Foreign Accident

Safety Board personnel sent overseas as technical advisors or an Accredited Representative to assist in foreign investigations are acting as representatives of the U.S. Government. Be aware that, in this capacity, Board investigators are the guests of another country and have been sent to serve as the liaisons between the host country's investigation and the U.S. Government. The U.S. Accredited Representative and his or her advisors should not attempt to direct the investigation or to advise the investigation authority on matters not directly related to the accident. (See [Appendix U](#) for information and procedures on foreign travel).

When working on an overseas investigation, some Safety Board investigators may have difficulty adjusting to the pace of the investigative activities. Be patient and tolerant of an investigation that may appear to be conducted differently than a Safety Board investigation. Most countries to which you would be sent are signatories to Annex 13 and have personnel who should be familiar with its provisions. Offer suggestions when asked or when diplomacy would permit. Offer technical assistance, such as flight recorder readouts or metallurgical laboratory analysis. Contact the FAA, U.S. customs, or U.S. embassy, to coordinate (and airline personnel can facilitate) receipt of the flight recorders or other components into the United States. The FAA will often arrange to have an inspector meet the flight at the gate.

Be sensitive to local customs and be aware of customs, expressions, or gestures that could cause offense. As time permits, the U.S. Accredited Representative should contact the U.S. embassy upon arrival in the host country and maintain contact with embassy representatives during the investigation to facilitate interaction with the host government. Embassy personnel are knowledgeable about local customs and practices and can assist Safety Board personnel overseas.

As in a domestic investigation, communicate regularly with headquarters. However, because communications are sometimes more difficult, there may be no alternative but to telephone when the opportunity presents itself rather than at an arranged time. If possible, establish a time for the call and obtain a private area to make the call. In cases of extreme time zone differences, e-mail exchanges of information between the U.S. Accredited Representative and Board headquarters may be appropriate.

If the host country requests a report about the results of the team's work, reports should be limited to factual documentation only. The host country may be advised as to appropriate conclusions observed by U.S. representatives but should be encouraged to write the report. If asked for conclusions, seek the advice of technical advisors and Safety Board management before advising foreign authorities.

In 1996, U.S. law regarding FOIA was amended as it pertains to releasing information about foreign accident investigations. As amended, the law permits the Board to withhold records or information relating to its participation in a foreign aircraft accident investigation until the country conducting the investigation issues its final report or 2 years following the date of the accident, whichever occurs first. However, the Board may disclose records and information earlier if it has been authorized to do so by the country conducting the investigation.

If the U.S. Accredited Representative receives a FOIA request about a foreign accident, he or she should ask the foreign investigative authority whether the information can be released or whether he or she should wait for the period prescribed in the statute. In the case of sensitive documents or physical evidence, such as a CVR, it may be preferable for the IIC to maintain custody.

ICAO Annex 13 standards require that the country conducting the investigation is to supply participating governments with drafts of the final accident reports for their review and

comment. Expect to comment on the draft after it has been received. Responses to the draft reports of major foreign investigations must be carefully coordinated with Office Directors and staff before release since these comments may be included as an appendix to the final report. After the final report has been released, the Safety Board Accredited representative will enter the report into the public docket using DMS.

Often the government conducting the investigation will issue recommendations on a U.S.-manufactured, -designed or -operated aircraft. If so, the Accredited Representative should encourage the IIC to submit the recommendations to the Safety Board. The Office of Safety Recommendations will then prepare a cover letter (usually to the FAA) for forwarding the recommendations, which will enable the Safety Board to track responses and actions on the recommendations. The U.S. Accredited Representative should maintain contact with the host country's IIC and be prepared to act as liaison with U.S. Government agencies or industry corporations as the final report or recommendations are being drafted. This will allow the U.S. Accredited Representative to collect information that the IIC or report writer will need during the preparation process. Similarly, the Accredited Representative should forward to U.S. Government agencies or corporations the findings of the agency conducting the investigation when the release of the report has been authorized.

5.2 Accidents Involving Known or Suspected Criminal Acts

Aircraft accidents in which criminal activity is suspected may involve the participation of law enforcement officials in the investigation. In such cases, law enforcement agencies are not parties to the investigation; however, the Board should provide the law enforcement agencies with necessary access to evidence. If evidence indicates that a criminal activity was involved, the Board investigation will be conducted to the extent necessary to determine probable cause, address any safety concerns, and, where appropriate, to furnish requested assistance to law enforcement agencies. In the absence of any such evidence, the Board investigation will continue in its normal scope.

In any event, the importance of cooperation and communication cannot be overstated. Because the criminal investigation may overlap the Board's investigation, the IIC should explain Board's procedures and the criticality of preserving and documenting certain forms of evidence. If any problems are encountered in this type of accident investigation, the Board's Office of General Counsel should be consulted. The FBI may provide evidence recovery teams (ERT) to major accidents even when no criminal activity is involved.

5.3 Commercial Space Launch Accidents

The NTSB has a Memorandum of Agreement (MOA) with the Department of Transportation's Office of Commercial Space Transportation (OCST). The OCST is now the FAA Office of the Associate Administrator for Commercial Space Transportation (FAA AST). The MOA

states that the Safety Board would be the lead investigative agency for any commercial space launch accidents that result in 1) certain levels of damage or loss of life or 2) the impact of expendable launch vehicle debris outside the impact limit lines of a launch range facility. The Board would then produce a report on the investigation and include findings, recommendations, and, if required, a probable cause.

Previous Safety Board participation in commercial space launch accident investigations has centered more on the "human" elements involved than possible technical reasons for the accident or incident. Nevertheless, the Board will commit all necessary resources to investigate such an accident and use the same investigative and organizational approach, i.e., party participation and working groups.

5.4 Underwater Recovery of Wreckage

Locating and recovering aircraft wreckage in the water will require a well-coordinated plan. Depending on the circumstances of the accident, locating the wreckage might require that the Safety Board obtain such things as witness statements, weather data, and radar tracking data for the accident aircraft. Trajectory analyses may also be necessary to aid in locating the wreckage.

To assist in quickly and effectively locating and recovering aircraft wreckage in the water, the Safety Board has an MOA with the DoD. The DoD tasks the Navy Office of the Supervisor of Salvage (SUPSALV) with providing assistance in the search and recovery of aircraft in the water. The MOA contains the names and contacts for the SUPSALV personnel.

AS management should immediately contact DoD/SUPSALV personnel to initiate search and recovery planning. They will provide considerable assistance free of charge. For example, they will conduct an initial feasibility and practicality assessment for a potential search and recovery mission. Once they receive the probable coordinates of the accident, they can provide water depth and current information, as well as bottom conditions. They will advise of the best contractors with which to work, and they will provide cost estimates for the mission. The Safety Board should avoid direct contracting with the various companies that perform such work. SUPSALV functions as the Board's contract office, which negotiates the best equipment for the best cost to perform the job.

SUPSALV will not initiate a contract without funding. Once the plan is approved and a contract is agreed upon, a letter from the Chairman to the Chief of Naval Operations (CNO) activates the MOA. Once the CNO approves, funds must be transferred so that work can begin. SUPSALV personnel will oversee the operation; appropriate Safety Board and party specialists will also participate.

For aircraft accidents in which a CVR and/or FDR is installed, the recorders will probably have an ultrasonic underwater locator beacon (ULB) installed. The ULB automatically

activates when submerged and operates on a frequency of 37.5 kHz. The ULB battery is designed to last about 30 days; consequently, a search for the ULB signal must be initiated immediately. SUPSALV personnel can provide advice and on-scene assistance in locating the recorder ULBs. Procedures for handling recorders that have been submerged are contained in [Appendix B](#) of this manual.

Prior to the actual recovery of the aircraft, the respective personnel should be thoroughly briefed on the recommended locations for attaching cables, straps, hooks, etc., to ensure that the structure is properly raised with minimal damage. It is essential to use specialists from the operator or the airframe/engine manufacturer for this task.

Once wreckage is raised to the surface, immediate treatment with the appropriate solvents is necessary to prevent rapid corrosion of parts. Planning for such treatment must be done in advance.

It may be necessary for Safety Board staff to be on the recovery boat(s) for several hours. Therefore, proper attire should be packed.

6. Role of the Office of Transportation Disaster Assistance

The *Aviation Disaster Family Assistance Act of 1996* and the *Foreign Air Carrier Support Act of 1997* gave the Safety Board the additional responsibility of aiding the families of victims of aircraft accidents involving any Part 121 domestic, international, or certificated air carrier. In response, the Safety Board established the Office of Transportation Disaster Assistance. This Office's primary mission is to coordinate the Federal response and provide additional Federal resources to the local community and the affected airline to help aviation disaster victims and their families. The mission has been broadened to support regional aviation investigations and all other modes at the Board.

TDA staff bring diverse backgrounds and experiences to the Safety Board that include law enforcement, commercial aviation, military aviation, licensed mental health services, forensic anthropology, and death investigation. Areas of assistance include family counseling, victim identification and forensic services, communications with foreign governments, and translation services (see [Appendix V](#) for more information about the responsibilities of TDA).

Family support services staff usually accompanies the Go Team to the city of the accident's occurrence. However, family support activities are separate from and should not interfere with aircraft accident investigation activities.

After consulting with the IIC on factual information about the investigation that will be released during the evening news media briefing, family support staff members provide families with the information at the same time or before it is released to the media. The family

briefings will occur daily and will last about 90 minutes. During this time, families will also receive an update on the progress of the victim recovery and identification effort, personal effects process, and other areas of family interest.

Local authorities have the same responsibilities that they had prior to the *Aviation Disaster Family Assistance Act of 1996*, such as accident response, recovery, security, cleanup, and medical examiner operations.

Federal agencies and other organizations that may be involved in the disaster support area are the Department of Health and Human Services (DHHS), Department of Defense (DOD), Department of State (DOS), FEMA, the Department of Justice (DOJ), and the American Red Cross (ARC).

DHHS is primarily responsible for assisting the medical examiner in identifying and returning victims to their families. Upon request of the medical examiner, the Safety Board will ask DHHS to provide a D-MORT team. The team consists of forensic pathologists, odontologists, anthropologists, fingerprint experts, and other technical personnel. DHHS can also provide a fully equipped mobile mortuary to expand the medical examiner's capabilities.

DOD can also support the identification effort by providing military resources, such as personnel from the Armed Forces Institute of Pathology (AFIP) and the use of military facilities.

If any foreign passengers or crew are involved in an aviation accident that occurs in the United States, the DOS will assist the airline in officially notifying the victims' government and in helping affected foreign families travel to the United States. The DOS will also provide translation services to facilitate communication with all interested parties.

The Safety Board can also call upon FEMA to augment the Safety Board's public information efforts with additional staff. FEMA will also provide any communication equipment needed by the Safety Board.

If the accident is the result of a criminal act, the DOJ will provide information to family members about the services and assistance available under the *Victims of Crime Act of 1984*. Such services and assistance may include compensation for loss of support, loss of wages, medical and mental health counseling expenses, and funeral costs. DOJ will also be responsible for keeping family members up-to-date on the progress of the criminal investigation.

The ARC provides crisis and grief counseling to the families. The ARC will activate local, state, and national ARC staff to support the families affected by the disaster. ARC personnel may be found at key locations, such as the airport, the family support operations center, and the morgue.

TITLE 49. TRANSPORTATION
SUBTITLE II. OTHER GOVERNMENT AGENCIES
CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD
SUBCHAPTER II. ORGANIZATION AND ADMINISTRATIVE

49 USCS § 1111

§ 1111. General organization

- (a) Organization. The National Transportation Safety Board is an independent establishment of the United States Government.
- (b) Appointment of members. The Board is composed of 5 members appointed by the President, by and with the advice and consent of the Senate. Not more than 3 members may be appointed from the same political party. At least 3 members shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.
- (c) Terms of office and removal. The term of office of each member is 5 years. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, is appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.
- (d) Chairman and Vice Chairman. The President shall designate, by and with the advice and consent of the Senate, a Chairman of the Board. The President also shall designate a Vice Chairman of the Board. The terms of office of both the Chairman and Vice Chairman are 2 years. When the Chairman is absent or unable to serve or when the position of Chairman is vacant, the Vice Chairman acts as Chairman.
- (e) Duties and powers of Chairman. The Chairman is the chief executive and administrative officer of the Board. Subject to the general policies and decisions of the Board, the Chairman shall--
 - (1) appoint and supervise officers and employees, other than regular and full-time employees in the immediate offices of another member, necessary to carry out this chapter [49 USCS §§ 1101 et seq.];
 - (2) fix the pay of officers and employees necessary to carry out this chapter [49 USCS §§ 1101 et seq.];
 - (3) distribute business among the officers, employees, and administrative units of the Board; and
 - (4) supervise the expenditures of the Board.
- (f) Quorum. Three members of the Board are a quorum in carrying out duties and powers of the Board.
- (g) Offices, bureaus, and divisions. The Board shall establish offices necessary to carry out this chapter [49 USCS §§ 1101 et seq.], including an office to investigate and report on the safe transportation of hazardous material. The Board shall establish distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:
 - (1) aviation.
 - (2) highway and motor vehicle.
 - (3) rail and tracked vehicle.
 - (4) pipeline.
 - (5) marine.

- (h) Chief Financial Officer. The Chairman shall designate an officer or employee of the Board as the Chief Financial Officer. The Chief Financial Officer shall—
- (1) report directly to the Chairman on financial management and budget execution;
 - (2) direct, manage, and provide policy guidance and oversight on financial management and property and inventory control; and
 - (3) review the fees, rents, and other charges imposed by the Board for services and things of value it provides, and suggest appropriate revisions to those charges to reflect costs incurred by the Board in providing those services and things of value.
- (i) Board member staff. Each member of the Board shall select and supervise regular and full-time employees in his or her immediate office as long as any such employee has been approved for employment by the designated agency ethics official under the same guidelines that apply to all employees of the Board. Except for the Chairman, the appointment authority provided by this subsection is limited to the number of full-time equivalent positions, in addition to 1 senior professional staff at a level not to exceed the GS 15 level and 1 administrative staff, allocated to each member through the Board's annual budget and allocation process.
- (j) Seal. The Board shall have a seal that shall be judicially recognized.

HISTORY:

(July 5, 1994, P.L. 103-272, § 1(d), 108 Stat. 746; Nov. 1, 2000, P.L. 106-424, § 10, 114 Stat. 1886.) (As amended Dec. 21, 2006, P.L. 109-443, § 9(a), (d), 120 Stat. 3301.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Source (U.S. Code) Source (Statutes at Large) Section

- | | |
|---------|---|
| 1111(a) | 49 App.:1902(a). Jan. 3, 1975, Pub. L. 93-633, Sec. 303(a), (b) (2)-(c), 88 Stat. 2167,2168 |
| 1111(b) | 49 App.:1902(b)(1) Jan. 3, 1975, Pub. L. 93- (1st sentence words 633, Sec. 303(b)(1), 88 before comma, Stat;2167; Oct. 14, 1982, 2d-last sentences) 97-309 Sec. 1(1st sentence),96 Stat. 1453 |
| 1111(c) | 49 App.:1902(b)(2). |
| 1111(d) | 49 App.:1902(b)(1) (1st sentence words after comma), (3) (1st, 2d,4th sentences). |
| 1111(e) | 49 App.:1902(b)(3) (3d, last sentences), (c)(3) |
| 1111(f) | 49 App.:1902(b)(4). |
| 1111(g) | 49 App.:1902(b)(5), (c)(1). |

In subsection (a), the words "previously established within the Department of Transportation" are omitted as unnecessary. The words "in accordance with this section, on and after April 1, 1975" are omitted as executed.

In subsection (c), the words "except as otherwise provided in this paragraph" are omitted as surplus. The text of 49 App.:1902(b)(2) (4th sentence) is omitted as executed.

In subsection (d), the words "On or before January 1, 1976" are omitted as executed. The words "(and thereafter as required)" and "(hereafter in this chapter referred to as the 'Chairman'))" are omitted as unnecessary.

In subsection (e), before clause (1), the words "is the chief executive and administrative officer of the Board" are substituted for "shall be the chief executive officer of the Board and shall exercise the executive and administrative functions of the Board" for clarity. The words "Subject to the general policies and decisions of the Board, the Chairman shall" are substituted for 49 App.:1902(b)(3) (last sentence) to eliminate unnecessary words. In clause (1), the words "Subject to the civil service and classification laws" are omitted as unnecessary because of title 5, United States Code, especially sections 3301, 5101, and 5331. The words "the Board is authorized" are omitted for consistency because the authority to appoint officers and employees is vested in the Chairman subject to the "general policies and decisions of the Board" as provided in the source provisions. The words "including investigators, attorneys, and administrative law judges" are omitted as covered by "officers and employees". The words "carry out this chapter" are substituted for "carry out its powers and duties under this chapter" to eliminate unnecessary words. In clause (3), the words "expenditures of the Board" are substituted for "the use and expenditure of funds" for clarity.

In subsection (f), the words "duties and powers" are substituted for "function" for consistency in the revised title and with other titles of the Code.

In subsection (g), the text of 49 App.:1902(c)(1) is omitted as unnecessary because of 40:ch. 10.

Amendments:

2000. Act Nov. 1, 2000, redesignated subsec. (h) as subsec. (i), and inserted a new subsec. (h).

2006. Act Dec. 21, 2006, in subsec. (e), substituted para. (1) for one which read: "(1) appoint, supervise, and fix the pay of officers and employees necessary to carry out this chapter;"; redesignated paras. (2) and (3) as paras. (3) and (4), respectively, and inserted new para. (2); in subsec. (g), added para. (5); redesignated subsec. (i) as subsec. (j); and inserted new subsec. (i).

Other provisions:

Improved audit procedures. Act Nov. 1, 2000, P.L. 106-424, § 11, 114 Stat. 1887, provides: "The National Transportation Safety Board, in consultation with the Inspector General of the Department of Transportation, shall develop and implement comprehensive internal audit controls for its financial programs based on the findings and recommendations of the private sector audit firm contract entered into by the Board in March, 2000. The improved internal audit controls shall, at a minimum, address Board asset management systems, including systems for accounting management, debt collection, travel, and property and inventory management and control."

Utilization plan. Act Dec. 21, 2006, P.L. 109-443, § 2(a)(2), 120 Stat. 3297, provides:

(A) Plan. Within 90 days after the date of enactment of this Act, the National Transportation Safety Board shall—

- (i) develop a plan to achieve, to the maximum extent feasible, the self-sufficient operation of the National Transportation Safety Board Academy and utilize the Academy's facilities and resources;
 - (ii) submit a draft of the plan to the Comptroller General for review and comment; and
 - (iii) submit a draft of the plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.
- (B) Plan development considerations. The Board shall—
- (i) give consideration in developing the plan under subparagraph (A)(i) to other revenue-generating measures, including subleasing the facility to another entity; and
 - (ii) include in the plan a detailed financial statement that covers current Academy expenses and revenues and an analysis of the projected impact of the plan on the Academy's expenses and revenues.
- (C) Report. Within 180 days after the date of enactment of this Act, the National Transportation Safety Board shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that includes—
- (i) an updated copy of the plan developed pursuant to subparagraph (A)(i);
 - (ii) any comments and recommendations made by the Comptroller General pursuant to the Government Accountability Office's review of the draft plan; and
 - (iii) a response to the Comptroller General's comments and recommendations, including a description of any modifications made to the plan in response to those comments and recommendations.
- (D) Implementation. The plan developed pursuant to subparagraph (A)(i) shall be implemented within 2 years after the date of enactment of this Act.

Audit procedures. Act Dec. 21, 2006, P.L. 109-443, § 6, 120 Stat. 3300, provides: "The National Transportation Safety Board, in consultation with the Inspector General of the Department of Transportation, shall continue to develop and implement comprehensive internal audit controls for its operations. The audit controls shall address, at a minimum, Board asset management systems, including systems for accounting management, debt collection, travel, and property and inventory management and control.

NOTES:

Code of Federal Regulations:

National Transportation Safety Board--Organization and functions of the Board and delegations of authority, 49 CFR Part 800.

National Transportation Safety Board--Public availability of information, 49 CFR Part 801.

National Transportation Safety Board--Rules of practice in air safety proceedings, 49 CFR Part 821.

National Transportation Safety Board--Notification and reporting of aircraft accidents or incidents and overdue aircraft, and preservation of aircraft wreckage, mail, cargo, and records, 49 CFR Part 830.

National Transportation Safety Board--Accident/incident investigation procedures, 49 CFR Part 831.

Research Guide:

Federal Procedure:

2 Fed Proc L Ed, Administrative Procedure §§ 2:29, 30.

Am Jur:

8A Am Jur 2d, Aviation §§ 13, 17.

Interpretive Notes and Decisions:

Federal Aviation Administration (FAA) is not in a position to "allow" National Transportation Safety Board (NTSB) to do anything, since NTSB is independent agency under Independent Safety Board Act of 1974 (former 49 USCS Appx. §§ 1901 et seq.) with authority under former 49 USCS Appx. § 1429(a) to amend, modify, or reverse if FAA Administrator's order if it finds that safety in air commerce or air transportation and public interest do not require affirmation Administrator's order. *Go Leasing v National Transp. Safety Bd.* (1986, CA9) 800 F2d 1514.

TITLE 49. TRANSPORTATION
SUBTITLE II. OTHER GOVERNMENT AGENCIES
CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD
SUBCHAPTER III. AUTHORITY

49 USCS § 1131

§ 1131. General authority

(a) General.

- (1) The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of--
 - (A) an aircraft accident the Board has authority to investigate under section 1132 of this title [49 USCS § 1132] or an aircraft accident involving a public aircraft as defined by section 40102(a)(37) of this title [49 USCS § 40102(a)(37)] other than an aircraft operated by the Armed Forces or by an intelligence agency of the United States;
 - (B) a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State;
 - (C) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train;
 - (D) a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment;
 - (E) a major marine casualty (except a casualty involving only public vessels) occurring on or under the navigable waters, internal waters, or the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988 [43 USCS § 1331 note], or involving a vessel of the United States (as defined in section 2101(46) of title 46), under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; and
 - (F) any other accident related to the transportation of individuals or property when the Board decides--
 - (i) the accident is catastrophic;
 - (ii) the accident involves problems of a recurring character; or
 - (iii) the investigation of the accident would carry out this chapter [49 USCS §§ 1101 et seq.].

(2)

- (A) Subject to the requirements of this paragraph, 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.
- (B) If the Attorney General, in consultation with the Chairman of the Board, determines and notifies the Board that circumstances reasonably indicate that the accident may have been caused by an intentional criminal act, the Board shall relinquish investigative priority to the Federal Bureau of Investigation. The relinquishment of investigative priority by the Board shall not otherwise affect the authority of the Board to continue its investigation under this section.
- (C) If a Federal law enforcement agency suspects and notifies the Board that an accident being investigated by the Board under subparagraph (A), (B), (C), or (D) of paragraph (1) may have been

caused by an intentional criminal act, the Board, in consultation with the law enforcement agency, shall take necessary actions to ensure that evidence of the criminal act is preserved.

- (3) This section and sections 1113, 1116(b), 1133, and 1134(a) and (c)-(e) of this title [49 USCS §§ 1113, 1116(b), 1133, and 1134(a) and (c)-(e)] do not affect the authority of another department, agency, or instrumentality of the Government to investigate an accident under applicable law or to obtain information directly from the parties involved in, and witnesses to, the accident. The Board and other departments, agencies, and instrumentalities shall ensure that appropriate information developed about the accident is exchanged in a timely manner.
- (b) Accidents involving public vessels.
 - (1) The Board or the head of the department in which the Coast Guard is operating shall investigate and establish the facts, circumstances, and cause or probable cause of a marine accident involving a public vessel and any other vessel. The results of the investigation shall be made available to the public.
 - (2) Paragraph (1) of this subsection and subsection (a)(1)(E) of this section do not affect the responsibility, under another law of the United States, of the head of the department in which the Coast Guard is operating.
- (c) Accidents not involving government misfeasance or nonfeasance.
 - (1) When asked by the Board, the Secretary of Transportation or the Secretary of the department in which the Coast Guard is operating may--
 - (A) investigate an accident described under subsection (a) or (b) of this section in which misfeasance or nonfeasance by the Government has not been alleged; and (B) report the facts and circumstances of the accident to the Board.
 - (2) The Board shall use the report in establishing cause or probable cause of an accident described under subsection (a) or (b) of this section.
- (d) Accidents involving public aircraft. The Board, in furtherance of its investigative duties with respect to public aircraft accidents under subsection (a)(1)(A) of this section, shall have the same duties and powers as are specified for civil aircraft accidents under sections 1132(a), 1132(b), and 1134(a), (b), (d), and (f) of this title [49 USCS §§ 1132(a), 1132(b), and 1134(a), (b), (d), and (f)].
- (e) Accident reports. The Board shall report on the facts and circumstances of each accident investigated by it under subsection (a) or (b) of this section. The Board shall make each report available to the public at reasonable cost.

HISTORY:

(July 5, 1994, P.L. 103-272, § 1(d), 108 Stat. 752; Oct. 25, 1994, P.L. 103-411, § 3(c), 108 Stat. 4237; Nov. 1, 2000, P.L. 106-424, §§ 6(a), 7, 114 Stat. 1885, 1886; Dec. 6, 2003, P.L. 108-168, § 7, 117 Stat. 2034.) (As amended Dec. 21, 2006, P.L. 109-443, § 9(b), (c), 120 Stat. 3301.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Source (U.S. Code) Source (Statutes at Large) Section

- | | |
|------------|---|
| 1131(a)(1) | 49 App.:1903(a) Jan. 3, 1975, Pub. L. 93-633, (1)(A)-(E) (less Sec. 304(a)(1)(A)-(F), 88 Stat. last sentence of 2168; Oct. 24, 1992, Pub. L. (E)), (F). 102-508, Sec. 303, 106 Stat.3307. |
| 1131(a)(2) | 49 App.:1903(a)(1) Jan. 3, 1975, Pub. L. 93-633, (2d, 3d sentences). Sec. 304(a)(1) (less (A)-(F)), |

- 88 Stat. 2168; Nov. 3, 1981,
Pub. L. 97-74, Sec. 3, 95 Stat. 1065.
- 1131(a)(3) 49 App.:1903(a)(1)
(4th, 5th sentences).
- 1131(b) 49 App.:1903(a)(1)(E)
(last sentence).
- 1131(c) 49 App.:1441(f). Aug. 23, 1958, Pub. L. 85-726,
Sec. 701(a)(4), (f), 72 Stat. 781.

49 App.:1655(c)(1). Oct. 15, 1966, Pub. L. 89-670,
Sec. 6(c)(1), 80 Stat. 938;
Jan. 12, 1983, Pub. L. 97-449,
Sec. 7(b), 96 Stat. 2444.

49 App.:1655(d) Oct. 15, 1966, Pub. L. 89-670,
(1st sentence). Sec. 6(d) (1st sentence), 80
Stat. 938.

49 App.:1903(a)(1)(A)
(6th, last sentences).
- 1131(d) 49 App.:1441(a)(4).
49 App.:1655(d)
(1st sentence).

49 App.:1903(a) (1)(A).

49 App.:1903(a)(2). Jan. 3, 1975, Pub. L. 93-633,
Sec. 304(a)(2), 88 Stat. 2168;
July 19, 1988, Pub. L. 100-372,
Sec. 3(a), 102 Stat. 876.
-

In this section, the word "conditions" is omitted as being included in "circumstances". The words "head of the department in which the Coast Guard is operating" are substituted for "Secretary of the department in which the Coast Guard is operating" for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(1)(A), the words "the Board has authority to investigate under section 1132 of this title" are substituted for "which is within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board under section 1655(d) of this Appendix pursuant to title VII of the Federal Aviation Act of 1958, as amended [49 App. U.S.C. 1441 et seq.]" because of the restatement.

In subsection (a)(1)(F), before subclause (i), the word "decides" is substituted for "in the judgment of" for clarity. The word "individuals" is substituted for "people" for consistency in the revised title. In subclause (iii), the words "the investigation of" are added as being more precise.

In subsection (a)(3), the word "developed" is substituted for "obtained or developed" to eliminate unnecessary words.

In subsection (b)(2), the word "affect" is substituted for "eliminate or diminish" for clarity.

In subsection (c), the text of 49 App.:1441(f) is omitted as superseded by 49 App.:1903(a)(1) (6th, last sentences). In subsection (d), the words "in writing" in 49 App.:1903(a)(2) are omitted as surplus. The words "by it" are added for clarity. The text of 49 App.:1441(a)(4) is omitted as superseded by 49 App.:1903(a)(1)(A) and (2).

Amendments:

1994. Act Oct. 25, 1994 (effective 180 days following the date of enactment, as provided by § 3(d) of such Act, which appears as a note to this section), in subsec. (a)(1)(A), inserted "or an aircraft accident involving a public aircraft as defined by section 40102(a)(37) of this title other than an aircraft operated by the Armed Forces or by an intelligence agency of the United States"; redesignated subsec. (d) as subsec. (e); and added new subsec. (d).

2000. Act Nov. 1, 2000, in subsec. (a)(2), designated the existing text as subpara. (A) and, in such subparagraph as so designated, substituted "Subject to the requirements of this paragraph, an investigation" for "An investigation", and added subparas. (B) and (C); and, in subsec. (d), substituted "1134(a), (b), (d), and (f)" for "1134(b)(2)".

2003. Act Dec. 6, 2003, made a technical correction which did not affect the text of this section.

2006. Act Dec. 21, 2006, in subsec. (a)(1)(E), substituted "on or under the navigable waters, internal waters, or the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988," for "on the navigable waters or territorial sea of the United States," and inserted "(as defined in section 2101(46) of title 46)"; and, in subsec. (c)(1), in the introductory matter, inserted "or the Secretary of the department in which the Coast Guard is operating".

Other provisions:

Territorial sea of United States. For extension of the territorial sea of the United States, see Proc. No. 5928, which appears as 43 USCS § 1331 note.

Effective date of Oct. 25, 1994 amendments. Act Oct. 25, 1994, P.L. 103-411, § 3(d), 108 Stat. 4237, provides: "The amendments made by subsections (a) and (c) [amending this section and 49 USCS § 40102(a)(37)] shall take effect on the 180th day following the date of the enactment of this Act."

Revision of 1977 agreement on investigation of accidents. Act Nov. 1, 2000, P.L. 106-424, § 6(b), 114 Stat. 1886, provides: "Not later than 1 year after the date of the enactment of this Act, the National Transportation Safety Board and the Federal Bureau of Investigation shall revise their 1977 agreement on the investigation of accidents to take into account the amendments made by this Act [for full classification of such Act, consult USCS Tables volumes]."

Revision of memorandum of understanding governing major marine accidents. Act Nov. 1, 2000, P.L. 106-424, § 8, 114 Stat. 1886, provides: "Not later than 1 year after the date of the enactment of this Act, the National Transportation Safety Board and the United States Coast Guard shall revise their Memorandum of Understanding governing major marine accidents-- "(1) to redefine or clarify the standards used to determine when the National Transportation Safety Board will lead an investigation; and "(2) to develop new standards to determine when a major marine accident involves significant safety issues relating to Coast Guard safety functions."

Revision of memorandum of understanding. Act Dec. 6, 2003, P.L. 108-168, § 3(b), 117 Stat. 2033, provides: "Not later than 1 year after the date of enactment of this Act, the National Transportation Safety Board and the Federal Bureau of Investigation shall revise their 1977 agreement on the investigation of accidents to take into account the amendments made by this section [adding 49 USCS § 1136(j)] and shall submit a copy of the revised agreement to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate."

NOTES:

Code of Federal Regulations:

Federal Aviation Administration, Department of Transportation--IFR altitudes, 14 CFR Part 95.
Office of the Secretary, Department of Transportation (Aviation Proceedings)--Inspection of accounts and property, 14 CFR

Part 240.

National Transportation Safety Board--Organization and functions of the Board and delegations of authority, 49 CFR Part 800.

National Transportation Safety Board--Public availability of information, 49 CFR Part 801.

National Transportation Safety Board--Rules of practice in air safety proceedings, 49 CFR Part 821.

National Transportation Safety Board--Notification and reporting of aircraft accidents or incidents and overdue aircraft, and preservation of aircraft wreckage, mail, cargo, and records, 49 CFR Part 830.

National Transportation Safety Board--Accident/incident investigation procedures, 49 CFR Part 831.

National Transportation Safety Board--Testimony of Board employees, 49 CFR Part 835.

National Transportation Safety Board--Rules of practice in transportation; accident/incident hearings and reports, 49 CFR Part 845.

Research Guide:

Federal Procedure:

4 Fed Proc L Ed, Aviation and Space § 7:420.

Am Jur:

61 Am Jur 2d, Pipelines § 20.

Interpretive Notes and Decisions:

Court of appeals upheld order of National Transportation Safety Board, on review under 49 USCS §§ 1131 and 1133, reinstating Federal Aviation Administration's revocation of aircraft mechanic's certificate for failing to provide urine sample for random drug test. *King v NTSB* (2004, CA8) 362 F3d 439. NTSB exhibits offered into evidence, which consisted of interviews with various witnesses in connection with two collisions, as well as NTSB hearing transcripts, were inadmissible because they contained statements by persons not represented by counsel, because witnesses had been questioned by persons other than judicial or legal officers of court, and because matters were offered solely for truth of matter asserted, that is, alleged negligence of parties involved in litigation. *In re Am. Milling Co.* (2003, ED Mo) 270 F Supp 2d 1068, 2003 AMC 2645, *affd in part and revd in part* (2005, CA8 Mo) 2005 US App LEXIS 8717, *reh den, reh, en banc, den* (2005, CA8) 2005 US App LEXIS 11903.

**14 CFR Part 120
Post- Accident Drug and Alcohol Testing**

Drug Testing:

§ 120.105 Employees who must be tested.

Each employee, including any assistant, helper, or individual in a training status, who performs a safety-sensitive function listed in this section directly or by contract (including by subcontract at any tier) for an employer as defined in this subpart must be subject to drug testing under a drug testing program implemented in accordance with this subpart. This includes full-time, part-time, temporary, and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

- (a) Flight crewmember duties.
- (b) Flight attendant duties.
- (c) Flight instruction duties.
- (d) Aircraft dispatcher duties.
- (e) Aircraft maintenance and preventive maintenance duties.
- (f) Ground security coordinator duties.
- (g) Aviation screening duties.
- (h) Air traffic control duties.

§ 120.109 Types of drug testing required.

- (c) Post-accident drug testing. Each employer shall test each employee who performs a safety-sensitive function for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the employee's system if that employee's performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The employee shall be tested as soon as possible but not later than 32 hours after the accident. The decision not to administer a test under this section must be based on a determination, using the best information available at the time of the determination, that the employee's performance could not have contributed to the accident. The employee shall submit to post-accident testing under this section.

Alcohol Testing:

§ 120.215 Covered employees.

- (a) Each employee, including any assistant, helper, or individual in a training status, who performs a safety sensitive function listed in this section directly or by contract (including by subcontract at any tier) for an employer as defined in this subpart must be subject to alcohol testing under an alcohol testing program implemented in accordance with this subpart. This includes fulltime, part-time, temporary, and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:
 - (1) Flight crewmember duties.
 - (2) Flight attendant duties.
 - (3) Flight instruction duties.
 - (4) Aircraft dispatcher duties.

- (5) Aircraft maintenance or preventive maintenance duties.
- (6) Ground security coordinator duties.
- (7) Aviation screening duties.
- (8) Air traffic control duties.

Prior to conducting any alcohol test on a covered employee subject to the alcohol testing regulations of more than one DOT agency, the employer must determine which DOT agency authorizes or requires the test.

§ 120.217 Tests required.

(b) Post-accident alcohol testing .

- (1) As soon as practicable following an accident, each employer shall test each surviving covered employee for alcohol if that employee's performance of a safety-sensitive function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the employer's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.
- (2) If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon request of the Administrator or his or her designee.
- (3) A covered employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

8/5/2009 Appendix A. FAA Drug Abatement Program 9120.1A Checklist of Inspection Elements Appendix A 1.0 Employer Administrative and Quality Assurance Activities A-13 1.07 Types of Testing – Post-Accident

1.07.01 Do you conduct post-accident testing when the employee's performance either contributes to the accident or cannot be completely discounted as a contributing factor? (14 CFR §120.109(c) and §120.217(b))

Yes ☐ No ☐ N/A ☐

1.07.02 Do you make the decision not to conduct post-accident testing based on a determination, using the best information available at the time of the determination, that the employee's performance has not contributed to the accident? (14 CFR §120.109(c) and §120.217(b)(1))

Yes ☐ No ☐ N/A ☐

1.07.03 Do you conduct post-accident drug testing as soon as possible, but no later than 32 hours after the accident? (14 CFR §120.109(c))

Yes ☐ No ☐ N/A ☐

1.07.04 Reserved for Future Use

1.07.05 Do you conduct post-accident alcohol testing as soon as practicable, but no later than 8 hours after the accident? (14 CFR §120.217(b)(2))

Yes ☐ No ☐ N/A ☐

1.07.06 Do you prepare and maintain a report stating the reasons the post-accident alcohol test is not conducted within 2 hours of the accident? (14 CFR §120.217(b)(2))

Yes ☐ No ☐ N/A ☐

1.07.07 Do you cease attempts to conduct post-accident alcohol testing 8 hours after the accident and do you prepare and maintain a report stating the reasons the post-accident alcohol test is not conducted within 8 hours of the accident? (14 CFR §120.217(b)(2))

Yes ☐ No ☐ N/A ☐

1.07.08 Do you submit post-accident alcohol testing reports to the FAA when requested? (14 CFR §120.217(b)(2))

Yes ☐ No ☐ N/A ☐

1.07.09 Do you make the determination that an employee refused to submit to post accident testing after the employee is identified for testing and does not remain readily available? (14 CFR §120.217(b)(3))

Yes ☐ No ☐ N/A ☐

1.07.10 Do you ensure that a covered employee is allowed to leave the scene of an accident for a period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care?

Yes ☐ No ☐ N/A ☐

(14 CFR §120.217(b)(3))

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U.S. Department of State Foreign Affairs Manual**

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2 FAM 912 AIRCRAFT ACCIDENTS

2 FAM 912.1 Scope, Authority, and Responsibilities

(CT:GEN-396; 07-24-2012)

- a. While the responsibility for civil aviation accident investigation rests primarily with the National Transportation Safety Board (NTSB), it is Department policy that State Department personnel at posts abroad will provide certain reporting as outlined in this subchapter.
- b. The Office of Transportation Policy (EB/TRA/OTP) coordinates these activities for the Department of State.

2 FAM 912.2 Definitions

(CT:GEN-356; 04-07-2009)

Accident: An aircraft related occurrence in which a person is fatally or seriously injured, the aircraft is substantially damaged or the aircraft is missing.

Annex 13 to the Chicago Convention: An Annex to the Convention on International Civil Aviation (the "Chicago Convention"), which provides the international requirements (known as "Standards and Recommended Practices") for the investigation of aircraft accidents and incidents.

Chicago Convention: Term for the Convention on International Civil Aviation (Chicago, 1944), the founding document of the International Civil Aviation Organization (ICAO).

Incident: An occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation.

State of Design: The State having jurisdiction over the organization responsible for the type certificate (design) of an aircraft.

State of Manufacture: The State having jurisdiction over the organization responsible for the final assembly of the aircraft.

State of Occurrence: The State in the territory of which an accident or incident occurs.

State of Registry: The State in which an aircraft is registered.

State of the Operator: The State in which the aircraft operator's principal place of business is located, or, if there is no such place of business, the operator's permanent residence.

2 FAM 912.3 U.S. Participation in Civil Aircraft Accident *and* Serious Incident Investigation

(CT: GEN-396; 07-24-2012)

- a. The National Transportation Safety Board (NTSB) is established by Congress as the independent accident investigation agency of the United States (Independent Safety Board Act of 1974). The Safety Board is responsible for the investigation and determination of probable cause of every domestic civil aviation accident and significant accidents in other modes of transportation. It also participates, when entitled under Annex 13 to the Chicago Convention, in foreign governments' investigations of aviation accidents and serious incidents involving U.S. citizens, operators, or aircraft. The NTSB consists of five members appointed by the President and is supported by a technical investigation staff in Washington, D.C. and by investigators in regional offices throughout the United States.
- b. When a civil aviation accident or serious incident occurs in a foreign country that is a party to the Chicago Convention, Annex 13 to the Convention requires that the host government designate an Investigator-in-Charge and to institute an investigation immediately into the circumstances of the accident or serious incident. Although the State of Occurrence of the accident is responsible for and in most cases conducts the investigation, the State of Occurrence, with mutual arrangement, may delegate the whole or any part of the conduct of the investigation to another State.

- c. In the case of accidents or serious incidents occurring outside the territory of any state (international waters), the State of Registry is responsible to conduct the investigation. However it, too, with mutual arrangement, may delegate the whole or any part of the conduct of the investigation to another State.
- d. The States of Registry, Operator, Design and Manufacture have the right to name an accredited representative to participate in investigations as specified in Annex 13 to the Convention. NTSB designates the accredited representatives from the technical investigator staff.
- e. The right of a State to send an accredited representative also includes the right to appoint technical advisers. Advisers may include representatives of the carrier, the Federal Aviation Administration (FAA), the manufacturer of the aircraft and/or its major components, the professional aviation associations, and others. Advisers will remain under the supervision and control of the accredited representative. Their participation in the investigation is limited to the extent necessary to enable the accredited representative to provide beneficial service.
- f. Consistent with available resources, mission personnel should provide requested assistance to the U.S.-accredited representative and his or her technical advisers. The Department, acting upon advice received from NTSB or the host country, will make every effort to define by appropriate communications the assistance required prior to the arrival of the accredited representative and advisers.

2 FAM 912.4 Notifying the Department of Aviation Accidents and Serious Incidents

2 FAM 912.4-1 Types of Reports

(CT:GEN-396; 07-24-2012)

Posts filing reports on aviation accidents or serious incidents should send via cable, or electronic mail when appropriate, all available information immediately to the Office of Transportation Policy (EB/TRA/OTP). Reports are required if the accident involves:

- (1) U.S.-registered, -operated, -designed and/or -manufactured aircraft; and/or
- (2) Foreign-registered, -operated, -designed and/or -manufactured aircraft with U.S. citizens on board.

2 FAM 912.4-2 Notification Formats

(CT:GEN-396; 07-24-2012)

In transmitting notifications of aviation accidents and incidents to the Department for distribution to the NTSB, the FAA, and other U.S. agencies, as appropriate, use the standard format shown in the numbered subparagraphs of this section below.

The initial notification should include the following information (if the information pertinent to a particular entry is not available initially, that entry should read "Not Available"):

- (1) The identifying abbreviation "ACCID" (for accident);
- (2) Aircraft type, make and model;
- (3) State of manufacture and registration information (i.e., country of registration and registration marks);
- (4) Name and nationality of the pilot-in-command, owner, operator, and charterer, if any;
- (5) Date and time (GMT) of the accident;
- (6) Last point of departure and point of intended landing;
- (7) Position of the aircraft with reference to some easily defined geographical point and to latitude and longitude;
- (8) Numbers of crew and passengers; numbers of those killed or seriously injured;

- (9) Nature of the accident (observable facts, e.g., aircraft overran runway during take-off or landing, Crashlanded following a bird strike, hard landing after landing gear collapsed, engine failure or fire during flight, collision while taxiing, etc.) and the extent of damage to the aircraft, so far as is known, e.g., cracked fuselage, total loss, destroyed;
- (10) Whether the State of Occurrence intends to conduct an accident inquiry; and whether there are any concerns with NTSB participation in the accident inquiry in the case of a U.S.-Registered, - Operated, - Designed, or -Manufactured aircraft;
- (11) Physical characteristics of the accident location; and
- (12) Any additional information as required by Department interests to be included as "Remarks" in the notification message.

2 FAM 912.5 Foreign Government Accident Reports

(CT: GEN-371; 07-21-2010)

If appropriate, post should assist with communications regarding preliminary, interim and final accident reports to ensure that queries are directed to the appropriate and responsible accident investigation authorities of the State responsible for the investigation. If requested, post should assist as necessary to ensure required reports are delivered to the NTSB in a timely manner.

2 FAM 913 VIOLATION OF FOREIGN AVIATION REGULATIONS

(CT:GEN-396; 07-24-2012)

Alleged violations of foreign aviation laws or regulations reported by foreign authorities and which involve U.S.-registered aircraft and/or U.S. FAA-certified pilots and crew should be transmitted to the FAA field or regional office with information copies to the appropriate FAA region and Department of State, Attn: EB/TRA/OTP. You must report alleged violations that involve non-U.S. aircraft/airmen to the Department and to FAA headquarters.

To facilitate the investigation, it is important that the allegation include as much of the following information as possible:

- (1) Aircraft registration;
- (2) Aircraft type, make, and model;
- (3) Aircraft operator (name and nationality of pilot and air carrier);
- (4) Date, time, and location of incident;
- (5) Airport arrival/departure data;
- (6) Purpose of flight;
- (7) Narrative account; and
- (8) Quotation of the foreign law(s) or regulation(s) violated.

7 FAM 220 APPENDIX A DEATH ON AN AIRCRAFT

(CT; CON-165; 04-18-2007)

- a. **Certification of a Death:** A death occurring on an aircraft while in flight usually cannot be certified until the aircraft lands and competent medical personnel can certify the death. In such cases, death is deemed to have occurred in the territory of the country where the aircraft has next landed, and the appropriate authorities of that country will issue a death.
- b. **Aircraft Proceeding to Foreign Airports:** A consular officer must issue Form DS-2060 when an aircraft bearing the remains of a U.S. citizen who died during the flight, lands at an airport within the consular district.

- c. **Aircraft Proceeding to U.S. Airports:** Consular officers are not responsible for preparing a Report of Death when a U.S. citizen dies during a flight from an airport in their consular district to an airport in the United States. The death certificate in such case is issued by the civil authorities in the U.S. state in which the airport is located.
- d. 7 FAM 1830 provides guidance about aviation disasters.

7 FAM 230 APPENDIX A PERSONAL EFFECTS AND DEATHS ON THE HIGH SEAS

(CT: CON-165; 04-18-2007)

- a. **Death on the High Seas:** There is no express provision of law authorizing the consular officer to take possession and dispose of the personal estate of a U.S. citizen, other than a seaman, who dies on the high seas.
- b. **Death Aboard A Vessel of American Registry:** If the death of a U.S. citizen, other than a seaman, occurs on board an American vessel, the consular officer should request the master of the vessel, in the absence of an authorized person, to take custody of and return the personal estate to the shipping company in the United States for forwarding to the legal representative or other authorized person.
- c. **Death Aboard A Vessel of Foreign Registry:** In the absence of a legal representative or other authorized person, the consular officer should take possession and dispose of the personal estate of a U.S. citizen who dies aboard a foreign vessel. The procedure in such cases is identical with that followed in the disposition of the estate of any United States citizen who may have died within the consular district with personal estate located within the consular district.
- d. **Seamen:** 7 FAM 760 provides guidance regarding death of seamen.

7 FAM 1830 AVIATION AND OTHER TRANSPORTATION DISASTERS

(CT:CON-407; 06-29-2012)
(Office of Origin CA/OCS/L)

7 FAM 1831 INTRODUCTION

(CT:CON-212; 11-20-2007)

- a. The U.S. Department of State is responsible for coordinating and managing the federal response to aviation disasters involving U.S. citizens abroad. In recent years the Department has made significant changes to the way that it handles aviation disasters that involve U.S. citizens outside the United States. These changes are highlighted in this subchapter and include:
 - (1) Closer Coordination by CA with Air Carriers: The CA Memorandum of Understanding (MOU) with Domestic Air Carriers (see 7 FAM Exhibit 1830C) is the foundation for closer coordination. Now CA/OCS;
 - (a) Participates in U.S. air carrier disaster exercise training;
 - (b) Can exchange personnel during actual disasters so there is an airline representative working with us in the Operations Center's Consular Task Force room (CA/OCS Crisis Management coordinates with Diplomatic Security (DS) in obtaining security clearances and Department badges for designated airline personnel); and
 - (c) CA representative may serve as liaison at the Airlines crisis operation center.
 - (2) Family Assistance by Air Carriers: Most U.S. air carriers and their foreign code shares have retained private companies to provide assistance to families of victims of aviation disasters. The private

companies implement airline family assistance plans mandated by U.S. law for carriers landing or taking off in the United States. (See 7 FAM 1832 b).

- (3) Consular Role in Aviation Disasters Abroad: CA/OCS and posts abroad play a vital role in assistance to families of victims of aviation disasters. This is particularly true when the crash involves a foreign local carrier, which would not be bound by the requirements of the Foreign Air Carrier Family Assistance Act explained below.
 - (4) Consular Role in Domestic Aviation Disasters: The State Department memorandum of understanding (MOU) with the National Transportation Safety Board (NTSB) on domestic aviation disasters requires specific assistance when an aviation disaster occurs in the United States involving foreign nationals. (See 7 FAM Exhibit 1830B). Our posts abroad also are involved, issuing visas to family members of victims and notifying U.S. citizens abroad with family members on the domestic flight. (See 7 FAM 1839).
 - (5) Passenger Manifests: On February 18, 1998, the FAA published a Final Rule Requiring Enhanced Passenger Manifests (14 CFR 243). (See 7 FAM 1832 b(4) and 7 FAM 1834.1.)
- b. Notify and Coordinate Through the Operations Center: In the event of an aviation or other transportation disaster in the consular district, post(s) should coordinate through the Department of State Operations Center (202-647-1512). Posts should also advise the Operations Center and CA/OCS when there is confirmation that there were no U.S. citizens (passengers or crew) involved in the disaster.
- (1) The Operations Center will alert the CA/OCS Duty Officer and CA/OCS Duty Director as appropriate as well as other Department stakeholders.
 - (2) The Operations Center will alert other appropriate U.S. federal agencies, including, but not limited to the National Transportation Safety Board (NTSB).
 - (3) The OCS Duty Director will coordinate with the OCS Crisis Team on call, the OCS Call Center, the Passport Services Duty Officer and the Visa Office Duty Officer as needed.
 - (4) An incident requiring the sustained, close attention of the Department may require the formation of a task force or monitoring group. (See 12 FAH-1 H-023.1-3).
 - (5) Consular Aviation Disaster Checklist: A checklist on consular responsibilities in an aviation disaster is provided at 7 FAM Exhibit 1830A.
- c. Inter-Agency Liaison with Government and Private Sector: Coordination is a key aspect of the Department's response to aviation and other transportation disasters. (See 12 FAH-1 H-020 U.S. Government Organization for Crisis Management, and 7 FAM Exhibit 1830G).
- d. Criminal Investigation: The cause of the disaster may not be immediately clear. Until determined otherwise, the scene of the disaster may be treated as a crime scene and, thus the subject of a criminal investigation (for example, relating to possible terrorism, sabotage, or suicide). Accordingly, evidentiary considerations would apply and the Department would coordinate closely with U.S. and foreign law enforcement.
- e. Responsibilities of Department of State in an Aviation Disaster: When a large-scale aviation disaster occurs, several Department of State bureaus and offices play significant roles in responding to the crisis.
- (1) CA: The Bureau of Consular Affairs (CA) is responsible for providing assistance and services to U.S. citizen victims and their families. It also coordinates provision of family assistance with the airlines, National Transportation Safety Board (NTSB), the FBI, the Department of Justice Office for Victims of Crime, and foreign governments as appropriate. 1 FAM 251; The Deputy Assistant Secretary for Overseas Citizens Services (CA/OCS) formulates policy and directs, coordinates, monitors, and provides emergency and services to U.S. citizens residing or traveling abroad, and coordinates the return and identification of remains of U.S. citizen disaster victims. (See 1 FAM 255).
 - (2) EB/TRA: The Bureau of Economic and Business Affairs, Office of Transportation Affairs provides the fullest possible support to the U.S. global transportation industry, vital to the prosperity and security of Americans and citizens of every nation around the world. In the event of an aviation disaster, EB/TRA

plays a significant role in coordination with the Department of Transportation, National Transportation Safety Board (NTSB), FAA (Federal Aviation Administration), the International Civil Aviation Organization (ICAO), the Airline Pilots Association (ALPA) and the airline industry. (See 1 FAM 426).

- (3) L/CA: Provides general legal advice on the performance of consular functions by foreign consular officers in the United States and on U.S. obligations relating to the performance of such functions
- (4) L/EB: The Office of the Legal Adviser for Economic and Business Affairs provides legal advice on civil aviation. (See 1 FAM 246.5).
- (5) DS: The Bureau of Diplomatic Security provides coordination with U.S. and foreign law enforcement authorities.
- (6) S/ES-O/CMS: Crisis Management Support (CMS) in the Executive Secretariat is the crisis advisor for the Executive Secretariat of the Department of State. In fulfilling that role, CMS gathers, assesses and disseminates information to Department principals about events that threaten the security of U.S. missions, their personnel and U.S. citizens overseas. It also directly supports any task force or working group convened by the Executive Secretary in the wake of a disaster.
- (7) S/CT: If the cause of the disaster is suspected or determined to be related to terrorism, the Office of the Coordinator for Counter Terrorism would also play an important role.

See:

- 12 FAH-1 Annex H – Hijacking
 - 12 FAH-1 Annex I - Assistance to U.S. Citizens in a Major Accident or Disaster
 - 12 FAH-1 Annex J - Assistance to the Host Country in a Major Accident or Disaster
- f. Responsibilities of Other U.S. Government Agencies. NTSB - National Transportation Safety Board is an independent Federal agency charged by Congress with investigating every civil aviation accident in the United States and significant accidents in the other modes of transportation -- railroad, highway, marine and pipeline --and issuing safety recommendations aimed at preventing future accidents. 49 U.S.C. 1136 addresses the role of the NTSB in providing assistance to families of passengers involved in aircraft accidents.
- (1) Twelve Mile Limit: On December 27, 1988, President Reagan by proclamation extended the territorial seas of the United States to 12 miles from the coast. Jurisdiction to the 12 mile limit is consistent with the limit exercised by many nations and is based on international law. National Transportation Safety Board marine jurisdiction is expressed as jurisdiction over accidents on the navigable waters or territorial seas of the United States. NTSB jurisdiction to 12 miles would, therefore, appear to have been established by the 1988 proclamation.

Note: In actual practice, it would be extremely difficult for the NTSB not to be involved in any crash involving a U.S. carrier or any plane crashing on its way to or from the United States.
 - (2) The NTSB also participates in the investigation of aviation accidents and serious incidents outside the United States in accordance with the Chicago Convention of the International Civil Aviation Organization (ICAO) and the Standards and Recommended Practices (SARPS) provided in Annex 13 to the Convention.
 - (3) Aviation Disaster in a Foreign State: When an accident or serious incident occurs in a foreign state involving a civil aircraft of U.S. Registry, a U.S. operator, or an aircraft of U.S. design or U.S. manufacture, where the foreign state is a signatory to the ICAO Convention, that state is responsible for the investigation. In accord with the ICAO Annex 13 SARPS, upon receipt of ICAO Notification of the accident or serious incident, the NTSB designates a U.S. Accredited Representative and appoints advisors to carry out the obligations, receive the entitlements, provide consultation, and receive safety recommendations from the investigating state. Should an accident or serious incident occur in a foreign state not bound by the provisions of Annex 13 to the ICAO Convention, or if a foreign state delegates all or part of an investigation by mutual consent to the NTSB, or if the accident or serious incident involves a public

aircraft, the conduct of the investigation shall be in consonance with any agreement entered into between and the United States and the foreign state.

- (4) International Waters: The provisions of Annex 13 to the Convention on International Civil Aviation, the investigation of an airplane crash occurring in international waters falls under the jurisdiction of the airplane's country of registry. That country may request NTSB assistance with the investigation.

See:

- NTSB Transportation Disaster Assistance
 - NTSB foreign investigations
- g. 7 FAM Exhibit 1830F provides reference and resources about crisis management and aviation and other transportation disasters.
- h. 7 FAM Exhibit 1830G provides hyperlinks to Internet resources about aviation disasters.
- i. 7 FAM Exhibit 1830H provides a summary of inter-agency liaison and aviation disasters.

7 FAM 1832 AUTHORITIES

(CT:CON-407; 06-29-2012)

- a. The Aviation Security Act of 1990, Public Law 101-604. Section 321(f) of the Aviation Security Improvement Act of 1990, Public Law 101-604 (49 U.S.C. 44905), prohibits the notification of a civil aviation threat to "only selective potential travelers unless such threat applies only to them." This is the basis for the "no double standard" policy (7 FAM 052). This statute also mandates a series of responsibilities pertaining to the treatment of victims and their families following an aviation disaster abroad. In addition to linking to the statute, this section provides a summary of the responsibilities for the sake of clarify and to offer an historical perspective.
- (1) 22 U.S.C. 5501(b)(1)(C) International Negotiations Concerning Aviation Security (Passenger Manifests) provides that the Departments of State and Transportation will negotiate agreements to achieve improved availability of passenger manifest information;
- (2) 22 U.S.C. 5503 Department of State Notification of Families of Victims (of Aviation Disasters) provides that "it is the policy of the Department of State, pursuant to section 2715 of this title (22 U.S.C. 2715), to directly and promptly notify the families of victims of aviation disasters abroad concerning citizens of the United States directly affected by such a disaster, including timely written notice. The Secretary of State shall ensure that such notification by the Department of State is carried out notwithstanding notification by any other person"; and
- (3) 22 U.S.C. 5504 Designation of State Department Family Liaison and Toll-Free Family Communications System provides that.
- (a) In the event of an aviation disaster directly involving United States citizens abroad, if possible, the Department of State will assign a specific individual, and an alternate, as the Department of State liaison for the family of each such citizen; and
- (b) In the establishment of the Department of State toll-free communications system to facilitate inquiries concerning the affect of any disaster abroad on United States citizens residing or traveling abroad, the Secretary of State shall ensure that a toll-free telephone number is reserved for the exclusive use of the families of citizens who have been determined to be directly involved in any such disaster.
- (4) 22 U.S.C. 5505 Disaster Training for State Department Personnel. This statute provides that the Secretary of State shall institute a supplemental program of training in disaster management for all consular officers. It further provides:

- (a) In expanding the training program under subsection (a) of this section, the Secretary of State shall consult with death and bereavement counselors concerning the particular demands posed by aviation tragedies and terrorist activities.
 - (b) In providing such additional training under subsection (a) of this section the Secretary of State shall consider supplementing the current training program through—
 - (c) Providing specialized training to create a team of "disaster specialists" to deploy immediately in a crisis; or
 - (d) Securing outside experts to be brought in during the initial phases to assist consular personnel.
- (5) 22 U.S.C. 5506 Department of State Responsibilities and Procedures at International Disaster Site. This statute provides that not less than one senior officer from the Bureau of Consular Affairs of the Department of State (or a post abroad) shall be dispatched to the site of an international disaster involving significant numbers of U.S. citizens abroad. (The statute does not define how senior or what constitutes a significant number). It also provides for deployment of crisis response teams to provide on-site assistance to families who may visit the site and to act as an ombudsman in matters involving the foreign local government authorities and social service agencies. Crisis teams may include public affairs, forensic, and bereavement experts, and are to be sent to the site of any international disaster involving United States citizens abroad to augment in-country Embassy and consulate staff.
- (6) 22 U.S.C. 5507 Recovery and Disposition of Remains and Personal Effects. This statute provides that it is the policy of the Department of State to provide liaison with foreign governments and persons, and with United States air carriers, concerning arrangements for the preparation and transport to the United States of the remains of citizens who die abroad, as well as the disposition of personal effects.
- (7) 22 U.S.C. 5509 Official Department of State Recognition of Private U.S. Citizen Victims. This statute provides that the Secretary of State shall promulgate guidelines for appropriate ceremonies or other official expressions of respect and support for the families of United States citizens who are killed through acts of terrorism abroad. Traditionally, a senior diplomatic or consular officer or a senior official from the Bureau of Consular Affairs participates in appropriate ceremonies for victims of large-scale disasters. In addition, appropriate expressions of sympathy may be provided to individual families.
- b. Other Legislation Relating to Transportation Disaster Assistance:
- (1) On October 9, 1996, Public Law 104-264, Title VII, Aviation Disaster Family Assistance Act established the basis for assistance to families of victims of domestic aviation disasters. This plan relates to domestic aviation disasters and includes Department of State responsibilities with respect to coordination with foreign governments.
 - (2) On April 9, 1997, the NTSB issued a Federal Family Assistance Plan for Aviation Disasters, as mandated by the Aviation Disaster Family Assistance Act of 1996. This was updated in the Federal Family Assistance Plan for Aviation Disasters of August 1, 2000 (FFAP) and FFAP Index. The current 2008 Federal Family Assistance Plan for Aviation Disasters is now available on the NTSB Internet web page. In addition to some changes to the basic format of the plan as well as some updating of content and language, please note the following additions:
 - Table of contents.
 - Victim Support Tasks (VST) checklists. The items in the checklists are extracted directly from the full content VSTs.
 - A series of manifest FAQs.
 - An acronym list.
 - (3) On December 16, 1997, Public Law 105-148, the Foreign Air Carrier Family Support Act, required foreign air carriers with flights to, from, or transiting the United States, to transmit a plan to the NTSB addressing the needs of the families of passengers involved in aircraft accidents that involve an aircraft under the

control of the foreign air carrier.

NTSB Note: The NTSB has compiled the Act plus the three amendments into a document.

- (4) On February 18, 1998, the FAA published a Final Rule Requiring Enhanced Passenger Manifests (14 CFR 243) U.S. air carriers flying abroad, and foreign air carriers operating flights to or from the United States, must provide passenger manifests listing U.S. citizens to the Department of State, Operations Center not later than 1 hour after the carrier is notified of the aviation disaster, or if not technologically feasible, then as expeditiously as possible, but not later than 3 hours after the aviation disaster. See the Department of Transportation Assistance to Families of Aviation Disasters documents.
- c. Regulations: As of the publication of this subchapter, the Department (CA/OCS/L, EB and the Office of the Legal Adviser (L)) is in the process of revising 22 CFR 102 regarding civil aviation accidents.

7 FAM 1833 NOTIFICATION AND ALERTS

(CT: CON-170; 05-30-2007)

- a. A post may be the first to know of an aviation crisis in its district. Sometimes, however, the Department's Operations Center will get the first alert, and advise the post. Assuming you are the first to learn of the crash, you should immediately notify the Operations Center (202-647-1512) and attempt to obtain the following information which will form the basis for initial talking points, press guidance and public announcements:
 - (1) Place of incident (or general vicinity of incident), number of passengers and crew based on preliminary departure information and number of injured and fatalities (if known).
 - (2) Flight number, origination, connection points and final destination (if known), and whether the flight was domestic or international.

SAMPLE NOTIFICATION TO THE DEPARTMENT TO BE INCORPORATED IN DEPARTMENT'S INITIAL TALKING POINTS WHEN CONFIRMED

(Name of Authority (foreign government or airline)) confirms that on (date) at (hour: minutes) local (city/country) time,

(Name of Airlines) Flight (number), (type of aircraft) crashed (Details; Where? On take off? On landing?) at (place).

The flight departed (city of departure) at (time) bound for (intervening destinations, final destination).

The aircraft is reported to have (number of passengers) and a crew of (number of crew). The U.S. Department of State has requested a copy of the passenger manifest.

(Any known survivors?)

(It is unknown at the present time whether there were any U.S. citizens onboard)

(There are no confirmed reports of any U.S. citizens injured or killed at this time.)

(We are unable to publicly release the names of U.S. citizen victims at this time pending notification of the families.)

(The U.S. Department of State has convened a (task force/working group) to assist U.S. citizen victims and their families. Families may contact the U.S. Department of State at (insert phone number). The U.S. Embassy in (city, country) may be reached at (insert phone number).

(The U.S. Department of State crisis task force may be reached at 202-647-1512.

(NOTE: this is the number for the State Department Operations Center. A dedicated number will be established for the individual task force and will be provided to posts as soon as possible.)

(Insert CA Call Center Number as soon as it is operational for 24/7 calls in the event of a task force. The standard CA Call Center numbers are 01-888-407-4747 and toll from overseas: 202-501-4444.)

NTSB Note: NTSB Communications Center 202-314-6290.

b. The U.S. embassy or consulate should contact

- (1) Department of State Operations Center: You must immediately notify the Operations Center (202-647-1512).
- (2) Post Emergency Action Committee (EAC): Using established telephone tree, notify members of post's Emergency Action Committee.
- (3) Post's Management Officer: A disaster of any magnitude will require post to support additional Department and other U.S. Government agency personnel sent in to help post manage the disaster. It may be critically important to secure a large number of hotel rooms, rental cars or vans (with drivers), rental cell phones, and even coffins. If these items are not reserved quickly, they may be difficult or impossible to obtain at a later date.
- (4) Airline: CA/OCS/ACS Crisis Management maintains a list of emergency contacts for U.S. airline carriers. We will be contacting those persons from Washington. Posts should contact the local airline representative if there is one, and determine how the airline company plans to configure for crisis. Your post Emergency Action Plan should include pointers as to who at post may have the best contacts — the consular section, the management section, the economic section, the regional security officer (RSO) or the military attaché. Your range of contacts may include:
 - (a) Local representative on scene;
 - (b) Contract representative (See Airline Responsibilities below);
 - (c) Command center at home office; and
 - (d) Command center at international airport.
- (5) Foreign Officials: Contact host government officials who are responsible for that government's response to the disaster (aviation officials, crisis managers, military, police, etc.)
- (6) Other Posts: Posts other than the one in whose consular district the disaster occurred will often have a significant role. You should notify those posts that may fill one of the following roles:
 - (a) Departure Point: Post can assist with securing manifest, locating family members, communicating with airline, etc;
 - (b) Arrival Point: Also assist with waiting family members, airline officials; and
 - (c) Intermediate Stops: If the flight has international stops en route to the final destination, posts there can help verify enplaning and deplaning passengers.
- (7) Other Contacts: 7 FAM 1880 provides further suggestions on persons to contact.

7 FAM 1834 OBTAIN THE MANIFEST

(CT: CON-170; 05-30-2007)

The flight manifest listing passengers and crew is an essential tool in dealing with the early stages of an aviation disaster. In some cases, the U.S. Department of State Operations Center, the U.S. Department of State crisis Task Force, or CA/OCS may be the first to obtain the manifest, particularly from U.S. based commercial carriers.

In other cases, it may be your responsibility as consular officer to deal directly with the carrier on this important issue. In the event of an aviation disaster abroad involving a U.S. carrier or a foreign carrier flying into or out of the United States, authorities in Washington (NTSB, FAA, Department of Transportation, and the Department of State) will be attempting to obtain the passenger manifest. We will also enlist the help of posts abroad to coordinate with local airline authorities.

7 FAM 1834.1 The Passenger Manifest Final Rule of 1998

(CT:CON-144; 09-13-2006)

On February 18, 1998, the FAA published a Final Rule Requiring Enhanced Passenger Manifests (14 CFR 243).

This applies to any aviation disaster involving an airline (U.S. or foreign) that operates to, from or within the United States. Under this rule:

- (1) In the event of a disaster outside the United States, the airline must provide a passenger manifest to "appropriate representatives of the United States Department of State" (Operations Center) "Not later than one hour after any such carrier is notified of an aviation disaster, ...or" "If it is not technologically feasible or reasonable to fulfill the requirement within 1 hour, then as expeditiously as possible, but not later than 3 hours after such notification."
- (2) The rules provides, "For the purposes of this section, a passenger manifest should include the following information: The full name of each passenger, the passport number for each passenger, if one is required for travel; and the name and telephone number of a contact for each passenger."

7 FAM 1834.2 Getting the Manifest from other Carriers

(CT:CON-144; 09-13-2006)

Disasters involving non-U.S. carriers that serve the foreign domestic market are not subject to the above rule. Often in the immediate aftermath of a crash, the carrier is reluctant to release any information fearing legal or public relations consequences. You may have to overcome this reluctance to cooperate in order to secure the manifest directly from the carrier. The following arguments may be useful:

- (1) Explain that your immediate role is to identify U.S. citizens or nationals, and notify the next of kin.
- (2) Point out that this need not conflict with what airline representatives may feel is their responsibility to notify next of kin (NOK), and suggest you and the airline company work together to provide early, simultaneous notification.
- (3) Take the opportunity to explain that there are no "American names." A U.S. citizen or national may bear a name from any ethnicity or region of the world.
- (4) Assure the company that it is not your intent to release any information from the manifest to the media.

Note: For some foreign carriers, particularly national (versus international) carriers, a manifest may not be available or exist at all, but the point of departure for the flight may still have the boarding passes/ticket stubs.

7 FAM 1835 FAMILY ASSISTANCE

(CT: CON-407; 06-29-2012)

- a. Calling on all your Skills and Compassion: While any death or injury of a U.S. citizen abroad from non-natural causes is tragic and significant, aviation disasters, whether caused by accident or deliberate act (terrorism, sabotage, etc.), can be among the most difficult and challenging of all crisis work for consular officers. The guidance provided in this subchapter is the culmination of more than 30 years of experience in the Bureau of Consular Affairs. When CA conducts training for consular officers to prepare them to work on aviation disasters or other tragedies, it is not unusual for us to try to put the magnitude of this work into perspective by showing filmed interviews with families of victims. During the training, instructors ask participants how they would like their family to be informed of their death in similar circumstances and treated thereafter. It is impossible to understate the depth of the suffering of these families or to overestimate how important your role is in diminishing the possibility of inflicting more wounds on the families and lightening the burdens on them.

Read More About Aviation Disasters and Family Assistance:

- NTSB Remarks
 - NTSB: The Evolution and Future of Family Assistance
- b. U.S. law requires that U.S. air carriers and most foreign air carriers flying to and from the United States provide specific assistance to families of aviation disasters.
- (1) The Aviation Disaster Family Assistance Act of 1996; and
 - (2) The Foreign Air Carrier Family Support Act of 1997 provided that, no later than June 15, 1998, foreign air carriers providing air transportation in the United States must file with the Department of Transportation and NTSB a plan to address the needs of families of passengers involved in an accident that involves an aircraft under the foreign carrier's control and results in a significant loss of life. See Frequently Asked Questions about the Foreign Air Carrier Family Support Act.
- c. Remembering the Victims and Lessons Learned in Training: Specialized Aviation Disaster, Victim Assistance and Bereavement Training: 22 U.S.C. 5505 provides that the Department shall develop disaster training for consular officers, including training by death and bereavement counselors and consider providing specialized training to teams dispatched to the scene of aviation disasters and family assistance centers. As explained in 7 FAM 1837, CA/OCS provides this additional training to OCS employees and CA fly-away team members through specialized training at the NTSB Academy and training exchanges with U.S. air carriers. This is in addition to our general victim assistance training (see 7 FAM 1900).
- (1) Crisis Management Training: In addition to crisis training available at the Foreign Service Institute and inhouse training in CA/OCS, we frequently include crisis management and family assistance in CA's consular leadership training.
 - (2) Sensitivity Training from the Family Perspective: We work with families of victims of aviation disasters, such as the National Air Disaster Alliance, in our sensitivity training for consular officers, to try to ensure that families receive the consular assistance they need and that the assistance is provided with compassion for the families and respect for the victims. We are grateful to all the families with whom we have worked for their generosity of spirit in sharing their personal tragedies with us to assist us help other families and victims.
 - (3) Cultural Sensitivity: CA/OCS has also worked with the National Funeral Directors Association (U.S.) to endeavor to develop reference material about funeral customs. Local chapters of the Red Cross and Red Crescent Societies can also be helpful in this regard. If posts are able to obtain sources of information about foreign funeral and mourning customs and bereavement, please provide them to CA/OCS/L (Ask-OCS-LDom-Post@state.gov).
 - (4) Understanding the Magnitude: This subchapter provides guidance to both posts abroad and to CA/OCS employees. While a post will hopefully experience few aviation disasters, OCS employees generally have decades of experience in this work. CA/OCS maintains a list of significant aviation disasters (this does not include crashes of private planes) we have handled since 1977, including the number of U.S. citizen fatalities and injuries in each incident. It is available on the CA/OCS shared drive OCSDOCS/AVIATION/statistics as part of our efforts to document deaths of U.S. citizens abroad from non-natural causes, as required by law.
 - (5) Lessons Learned: We also maintain lessons learned material prepared by dedicated consular officers in the aftermath of aviation disaster tragedies and other disasters on the CA/OCS Intranet Crisis Management Lessons Learned feature.
- d. Coordination on Death Notification: The Department of State, NTSB, other federal agencies and airlines have developed family assistance plans to maximize assistance to families and to try to avoid duplication and confusion. One aspect of this approach is that we do not dispute who should notify the family first about the tragedy. This is reflected in our memorandum of understanding (MOU)s with the NTSB and the air carriers.

What is important is not who makes the initial call, but that the family be notified of the tragedy in a timely manner, with compassion, authority, and without confusion.

- e. **Caseworker Approach:** The Bureau of Consular Affairs recognizes that proactive consular assistance for families is imperative. To that end, we take a "caseworker" approach to aviation disasters, which often involve long term contact with families over many months or more. This means that we designate a particular officer in CA/OCS, and a specific contact at the U.S. embassy or consulate, for each family or victim, in accordance with 22 U.S.C. 5504(a). We also provide families with a toll-free number for their use in contacting the Department, in accordance with 22 U.S.C. 5504(b).
- f. **Assistance to Family Members Who Wish to Travel to the Disaster Site:**
 - (1) **Department Assistance:** CA/OCS works with CA/PPT to provide expeditious U.S. passport assistance to families who wish to travel to the disaster site. If foreign visas are required, CA/OCS will work with the Department of State country desks or regional bureaus to convey the urgency to foreign embassies and consulates in the United States.
 - (2) **Airline Assistance:** The airline may offer tickets and/or meal vouchers to family members to cover expenditures incurred in traveling to the site.

Note:

Appendix A, Inter-Agency Task Force on Assistance to Families of Aviation Disasters, Recommendations:

1.1 Definition of "family member" for purposes of notification and provision of airline services.

1.1.1 The airlines, in choosing its definition of "family member" for the purposes of notification and assistance for travel to and accommodations at the site of crash or memorial services, should recognize that today's families may not have traditional boundaries.

Appendix B, Definition of Family Member of the Federal Plan for Aviation Accidents Involving Aircraft Operated or Chartered by Federal Agencies issued by the NTSB on October 7, 1999 provides:

"The person that would normally be the next of kin for initial notification purposes. Generally, this means spouse, children, parents, and/or siblings. For family assistance purposes, a family member may also include close members of the family such as a grandparent, aunt, uncle, or other relative. It might also include a fiancée, step-children, cousins, companions, or other person outside the traditional definition of family. The definition is left to the sponsoring agency."

The Frequently Asked Questions for the Federal Family Assistance Plan for Aviation Disasters — August 1, 2000 also includes this language.

Appendix E, Question 1 of the Federal Plan for Aviation Accidents Involving Aircraft Operated or Chartered by Federal Agencies issued by the NTSB on October 7, 1999 provides:

1. Is there a specific definition of who constitutes a family member?

Answer: U.S. federal and state laws define who constitutes a family member from a legal point of view. These legal definitions may also vary from state to state. The traditional view included spouse, children, mother, father, brother and sister. Terms such as stepparents, stepsiblings and life partners have become more common in recent years in defining some family environments. It is suggested that the sponsoring agency should plan on dealing with a variety of family member scenarios and to take each one on a case-by-case basis."

- (3) **Other U.S. Government Assistance - Crime victim assistance programs** may be available to assist victims and their families if the aviation disaster is the result of a criminal act. (See 7 FAM 1900). CA/OCS's crime victim assistance specialists will coordinate with the Department of Justice Office for Victims of Crime and the FBI Office of Victim Assistance and keep posts and families advised of services available.

See:

- Responding to Victims of Terrorism and Mass Violence Crimes

- Providing Relief to Families After a Mass Fatality (PRFAMF) (pdf) or PRFAMF (html)
- (4) Post Assistance: Posts should anticipate the arrival of family members at the scene. In part because of the long delays in identification often connected with air disasters, and in part because commercial air carriers generally provide free transportation and support for family members, you should prepare for a large number of family members arriving at the scene. Although the airline may have representatives accompanying family members and meeting them on arrival, post should also meet incoming flights with personnel capable of briefing and assisting family members. You should also make sure the family members know how to reach the embassy during working hours and after hours in an emergency. Remember that these families are vulnerable.
- g. Crisis or Control Room: The air carrier will often try to place all family members in the same hotel, and to set up a control or crisis room at that location. Depending on the circumstances and the working relationship, post should either participate with the carrier in staffing the control room, or establish a separate room.
- h. Briefings: Keeping family members fully informed on a regular basis is one of your most important functions. Briefings should take place in a comfortable, private environment (hotel meeting rooms are ideal) on a regular basis. Briefings for families should be distinct from media briefings. If NTSB or a similar investigative agency is providing daily briefings to the media and family members of all nationalities, you should try to schedule your briefings as an adjunct, either before or after the larger meeting, and with the same frequency. The Ambassador or other ranking embassy official (DCM, Consul General) should attend the first meeting and periodically appear at the scheduled daily briefings as often as possible. Keep the Department (CA/OCS) advised of what transpires at these briefings so we can be sure to provide the same information to families in the United States. It may be possible to arrange for video teleconference to the United States to locations where families can receive these briefings first hand. Explore this possibility with the airlines and local authorities and advise the Department (CA/OCS).
- i. Media Relations and Rumor Control: Families will soon discover that in the aftermath of an air disaster, there is an overwhelming amount of information produced by the media, host government officials, the airlines, etc. At times this information will seem to conflict. You should explain to families early on that this is not an uncommon phenomenon. Clarify that, while you may be a little behind the media and other sources that are free to report unsubstantiated information; our role is to provide accurate, confirmed information. Use the daily briefings as a forum to separate rumors and speculation from established fact. Consular officers should work closely with post public affairs officers who will be dealing directly with the media. The primary source of information may be the airlines and the host government, unless U.S. investigators are invited to participate. (See 12 FAH-1 H-400 Public Affairs).

See:

Appendix A, Task Force Recommendations (These recommendations pertain to a domestic aviation disaster in the United States or other disaster being investigated by the NTSB.)

8. Recommendations on methods to ensure that representatives of media organizations do not intrude on the privacy of families of passengers involved in an aviation disaster.

8.1 The men and women of the media are in the best position to address instances of insensitive treatment that family members have received following an aviation disaster. The Task Force calls upon members of the media to respect the privacy of family members after an air crash. The Task Force also calls upon each media organization, as well as professional trade associations, to establish standards respecting the rights of families.

8.2 The NTSB should serve as a liaison between family members and the press during the initial days following an aviation disaster.

8.3 The NTSB should work with the families and the media to appropriately limit media contact with the families so that families can decide in advance whether they wish to speak with the media. The NTSB should inform families that it is their choice if they want to interact with the media.

8.4 Family members of the victim should have time to cope with the tragedy prior to having the family member's name publicly released, and should be provided an opportunity to personally notify other loved ones of their family member's involvement in an aviation disaster.

See NTSB Press Releases:

- NTSB Resources for Journalists
 - NTSB Public Affairs Office Contacts
 - NTSB Academy
 - Airports Council International Media Relations and Crisis Communications Seminar
 - NTSB Managing Communications During and Aircraft Disaster
 - NTSB Media Training for NTSB Investigators
 - American Red Cross — Standardization of Disaster Messages
 - Task Force on Assistance to Families of Aviation Disasters Recommendation 8 — The Media
 - National Center for Victims of Crime Tips for Families Interviews with the Media
- j. **Morgue or Crash Site Visits:** Often arriving family members believe they can visually identify remains. Unfortunately, air crash victims are often not visually identifiable. Explain that the host government controls access to the morgue and access may not be allowed, particularly if it is a makeshift facility. The crash site is the scene of the investigation; access, if granted, may only be at some distance from the actual site. If a visit is allowed, carefully explain to family members, without actually discouraging the visit, the circumstances they would encounter. Encourage families to identify only one member to make the visit, and brief and prepare that individual in advance. An officer should accompany the family member on the morgue visit. If the scope of the disaster warrants, you should consider establishing a control officer at the morgue and/or crash site, not only to assist families but also to liaise with forensic and mortuary personnel there.
- k. **Identification and Return of Remains:** Consult with the families regarding identification and return of remains.
- l. **Disposition of Unidentified Remains:** The practices of the host country may dictate procedures on disposition of unidentified remains of victims. It is important for the post to convey to the host country authorities the sensitivities of families of U.S. citizen victims. In particular, if at all possible, knowledge and consent by next-of-kin should be obtained prior to burial or disposition.
- m. **Personal Effects:** We recognize that the identification and association of personal effects is a difficult and often time consuming process. Nevertheless, families frequently have an emotional need to recover some item - a wedding ring, purse, wallet or article of clothing - as such effects are the last association or connection with their loved one. It is critical that U.S. Government authorities consult with the families about the personal effects of the victims, and that they return the personal effects to the families unless there is a need or a requirement that they be retained for accident or criminal investigation. Urge responsible authorities to retain any unclaimed possessions for a minimum of 18 months. The process for the return of unassociated personal effects is deliberate and potentially lengthy. To do this correctly, all items are first cleaned as needed, inventoried, numbered, and photographed. Once these steps are completed, authorities may choose to produce a photo catalogue and send to all survivors and/or families of the victims. Because there can be a wide range of emotional reactions upon receipt of this catalogue, it is advisable to notify families before mailing, or to clearly identify the mailing container as to its contents. Provide instructions on how to claim an item. Once all victims or families have responded, sole-claimant items should be returned according to instructions received from the family. Multiple claims to items would require additional evidence of entitlement, such as photographs, invoices, etc.. The item is returned once ownership is determined. There are a growing number of commercial firms that specialize in catastrophe assistance, which may also include the proper preparation and return of personal effects. The NTSB can provide the firms' names for consideration.

For example:

- Kenyon International
- Family Enterprises Inc (FEI)

Note: FEI does not handle personal effects - they handle call center-type activities

- BMS Catastrophe

NOTE: DISCLAIMER: The Department of State assumes no responsibility or liability for the professional ability or reputation of, or the quality of services provided by these organizations.

- n. Memorials: The erection of memorials and the holding of services are recognized as key elements in healing the grief that family members experience. Should services be held and/or a monument built, it is advisable to involve interested family members early and keep them involved as appropriate. Some important factors are: notification of all families, due consideration to the diversity of backgrounds and beliefs, easy accessibility to the monument by visiting family members, and public and private sources of funding.

7 FAM 1836 WORKING WITH THE HOST GOVERNMENT

(CT: CON-144; 09-13-2006)

- a. The host government has the primary responsibility for managing the crisis. You should be familiar with the host government authorities responsible for investigating and providing family assistance in transportation disasters.

For Example:

U.K. Department of Transport Accident Investigation

New Zealand - Transportation Accident Investigation Commission

Canada - Transportation Safety Board

- b. You should immediately develop contacts and maintain them through the life of the crisis.
- c. Some issues particularly pertinent to aviation disasters include:

7 FAM 1836.1 Site Security

(CT: CON-144; 09-13-2006)

Stress to local officials the need for crowd control at the site. Families of victims and survivors, the media, local on-lookers, even looters could arrive unexpectedly at the crash site. Uncontrolled access could impair identification of remains and property, result in damage to, or theft of, personal effects, and impede any investigation into the cause of the crash. Host country authorities may also wish to take into account the importance of security at the hotel where the families are staying to protect them from aggressive media.

7 FAM 1836.2 Investigation Assistance

(CT: CON-170; 05-30-2007)

Determine if local authorities want assistance from the National Transportation Safety Board (NTSB). Ensure that local officials are aware of the potential assistance available from the United States, particularly in cases where you are not confident that the host government has the resources and technology needed. You must have a formal request from local authorities before the U.S. Government can consider making such assistance available. Post should relay the request through the Department task force, which will communicate directly with NTSB and FAA. (See 12 FAH-1 Annex J, Assistance to Host Country in a Major Accident or Disaster). (NTSB cannot assist in all cases - so any questions posed to the host country should be couched in careful terms so as to not promise assistance before the NTSB agrees).

NOTE: U.S. interests do have the right, under the Chicago Convention, to participate in an investigation involving a U.S. manufactured aircraft, although the official invitation must still be made by the host government.

7 FAM 1836.3 Identification of Victims

(CT:CON-144; 09-13-2006)

Determine whether local authorities need forensic assistance to identify the victims' remains. Local officials must make a formal request through the mission before the United States will consider sending FBI and/or U.S. military forensic experts. Post should relay requests through the Department task force, which will communicate directly with FBI and the Department of Defense/USAF. (See 12 FAH-1 Annex J, Assistance to Host Country in a Major Accident or Disaster, 7 FAM 1870, and 7 FAM 200).

7 FAM 1837 WORKING WITH NTSB, AIRLINES AND AIRLINE FAMILY ASSISTANCE CONTRACTORS

(CT:CON-144; 09-13-2006)

- a. Working with the NTSB: In the event of an aviation, or other major transportation disaster, CA/OCS coordinates with the NTSB - Office of Transportation Disaster Assistance as appropriate.
- b. Training: CA/OCS also participates in aviation disaster training provided by the NTSB Academy. The NTSB offers several helpful courses including:
 - NTSB Academy
 - Transportation Disaster Response - Family Assistance
 - Managing Communications During and Aircraft Disaster
 - Mass Fatality Incidents for Medicolegal Professionals
 - Transportation Disaster Response Airport Preparedness Program
 - FBI Federal Family and Victim Assistance Operations (FBI ONLY)

Note: Please check the NTSB Academy website for new links, descriptions, etc.

- c. Publications: The NTSB has developed some helpful publications to explain transportation incident investigations for families of victims.

See NTSB Publications ...

- Information for Friends and Family Major Accident Investigations
 - Information for Family and Friends Regional Accident Investigations
 - APPENDIX F - Final Report, Task Force On Assistance To Families Of Aviation Disasters (1997)
 - Information For Survivors And Families Of Persons Involved In An Aviation Disaster
- d. Working with Airlines: Under the terms of the Bureau of Consular Affairs MOU with U.S. air carriers, CA works closely with DS to obtain security clearances for designated airline personnel who will then be able to work as liaison officers with the consular segment of a Department of State task force or working group. Similarly, CA provides a liaison to work in the U.S. carrier's crisis operation. In addition, CA/OCS personnel participate in airline disaster training conducted by U.S. air carriers. We encourage posts to develop similar relationships locally and to participate in disaster exercises.
 - e. Working with Airline Family Assistance Contractors: Many air carriers, including most U.S.-based commercial airlines, have ongoing contracts with specialized firms, (for example, with Kenyon International) to perform the above duties on behalf of the airline. Their representatives are generally well trained and capable. A good working relationship with them may be of major assistance to you in fulfilling your own obligations.

See:

- Kenyon International
- Family Enterprises Inc (FEI)
- BMS Catastrophe

NOTE: DISCLAIMER: The Department of State assumes no responsibility or liability for the professional ability or reputation of, or the quality of services provided by these organizations.

**7 FAM EXHIBIT 1830(A)
CHECKLIST OF POST'S RESPONSIBILITIES
IN AN AVIATION CRISIS**

(CT:CON-291; 04-07-2009)

Summary of Post's Responsibilities in an Aviation Crisis

1. Post's Initial Responsibilities: Post will usually be the first to know of a crisis in its area. Initial responsibilities include but are not limited to:
 - a. Post notifies the Department via the Operations Center 202-647-1512.
 - b. Post convenes post's Emergency Action Committee (EAC).
 - c. Post sends a consular officer or team to the scene or to a nearby location. (See 7 FAM 1880 At the Focal Point of the Disaster). This officer/team will:
 - (1) Establish contact with local officials.
 - (2) Determine the status of U.S. citizens involved.
 - (3) Help facilitate identification of victims and survivors, and their property.
 - (4) Help to set up medical evacuation and return of remains.
 - (5) Provide current information to the post's EAC.
 - (6) Ensure team is briefed on what to expect.
 - (7) On-Site progress meetings should be held daily to disseminate information obtained during the day's activities and discuss plans for subsequent activities.

NOTE: Aircraft wreckage sites may expose investigators to certain risks, including biohazards, airborne hazards, adverse terrain and adverse climatic conditions. Personnel involved in the recovery, examination and documentation of wreckage may be exposed to physical hazards from such things as hazardous cargo, flammable or toxic materials, vapors, sharp or heavy objects, pressurized equipment, and disease. Authorities responsible for the investigation should conduct on-scene safety assessments and provide protective equipment to participants. Consular officers do not perform these functions. See NTSB Aviation Investigation Manual (pages16-17), Major Team Investigations Appendix G On-Site Safety.

- d. Consular Fly Away Team Needs and NTSB Go Team Requests:
 - (1) After gauging the size of the crisis and assessing post resources, the EAC will decide whether to request a Consular Flyaway Team or TDY (temporary duty) support, and will keep the Department advised of events via frequent situation reports and phone conversations.
 - (2) If the host country requests assistance from the NTSB, one of the key requests the EAC may receive is for assistance in coordinating arrangements for accommodation and meeting rooms.
 - (3) It is preferred that the press briefing room not be adjacent to the Command Center or Family Assistance Center.

2. Establish Information Links with Foreign Authorities and Air Carrier
 - a. Establish communication with airlines.
 - b. Establish contacts with local civil aviation authorities government officials, hospitals, medical examiners, etc.
 - c. Establish contact with CA, EB, the Desk, etc. (more information may be available, including manifest, etc.).
 - d. Set up regular communication schedule with Department.
3. Key Issues
 - a. Manifest: For some foreign carriers, a manifest may not be available or exist at all, but the point of departure for the flight may still have the boarding passes/ticket stubs. Post at departure point may be able to assist. This post should email/fax all available information to the Department.

NOTE: In many instances (foreign and domestic), a manifest does not exist in the immediate aftermath of an aviation disaster but is something that must be compiled. Who took an earlier flight? Who missed an en route connection? Were there infants (children under 2) on board who were not listed? In other words, there is almost always a difference between (1) who was scheduled to be on the plane and (2) who actually boarded.
 - b. Consular Fly Away Team: Make contact with Fly Away/TDY Response Team upon arrival.
 - c. U.S. Investigation Team: Will local authorities need assistance from the National Transportation Safety Board (NTSB) and Federal Aviation Administration (FAA) to investigate cause of accident and/or identification of remains? Post must have request from local authorities before United States can consider making such assistance available.

NOTE: U.S. interests do have the right, under the Chicago Convention, to participate in an investigation involving a U.S. manufactured aircraft, although the official invitation must still be made by the host government. Request should be relayed through Department task force which will communicate directly with NTSB and FAA. (See 12 FAH-1 Annex J Assistance to Host Country in a Major Accident or Disaster).
 - d. Crowd Control: Arrangements should be made by local authorities or crowd control. Families of victims and survivors will be arriving unexpectedly and curious local people will also come simply to look at the crash site. This could impair identification of remains and property and impede any investigation into the cause of the crash.
 - e. Death Certificates: Local authorities should consider what arrangements will be made for issuance of death certificates. Many families of victims will want the certificates as soon as possible, though positive identification of remains may be problematic, and almost always time consuming. One possible solution is to set up a temporary civil registry office at the morgue and issue the certificates as the remains are identified. Review local law regarding issuance of presumptive death certificate when identification is not possible.
 - f. Morgue/Storage of Remains: Ascertain if adequate equipment is available for shipment/storage of remains.
4. Establish Post Site Command Center. (See 7 FAM 1880)
 - a. Be Prepared for a Massive Record Keeping Effort. There is an enormous amount of paperwork that post will need to generate or track following a disaster. Post should request additional staffing to focus solely on this responsibility; maintaining lists of victims, NOK (next-of-kin) names and contact information, status of identification, disposition of effects, etc. We cannot stress this point too strongly. Start documentation as early as possible following the crisis, or you will not be able to recover. Assistance from systems staff will be critical in this regard. Establish an action/information log and assign someone

to maintain it. Keep a central list of contact names, phone numbers, and fax numbers. Department can also e-mail access and excel prototypes to Post.

b. Prepare To Receive and Brief Families of U.S. Citizen Victims and Media Representatives at Site.

- (1) Your briefing team should include officers assigned to meet incoming flights of family members, as well as officers who can provide information at the families' temporary quarters.
- (2) A ranking officer (Ambassador, DCM, Consul General) should be present, if possible, for the initial meeting with families.
- (3) There should be separate briefings for families and the media.

5. Immediate Action of Post Consular Team.

a. Locating Victims

- (1) Check local hospitals, morgues for victims (injured and uninjured survivors, and fatalities). Identify yourself to hospital/morgue officials, let them know that you are attempting to locate any U.S. citizens involved in the disaster, leave them your contact information, and ask that they alert you when they encounter a victim or survivor who may be a U.S. citizen.
- (2) Remember that U.S. citizens include a wide variety of racial and ethnic groups. If you ask local authorities if there are any Americans involved, they may say no, thinking that all Americans are blond and blue-eyed. It may be necessary to go from bed to bed asking if anyone is a U.S. citizen.

b. Survivors

- (1) Personally interview survivors and make sure they are receiving adequate care and support. Make sure their NOK have been notified.
- (2) Assess need for medical evacuation in consultation with local physicians and post medical team. (See 7 FAM 360).

c. Injured Survivors

- (1) All medical cases should receive primary attention.
- (2) Advise Department whether survivors can be cared for adequately by local medical facilities.
- (3) If not, what options are available for alternate care?
- (4) Will the airline carrier pay for private air ambulance if needed?
- (5) Is U.S. Air Force MEDEVAC necessary and possible? (The Department (CA) will coordinate on this issue. (See 7 FAM 360 and 7 FAM 364.5).
- (6) Keep Department and family informed of diagnosis/prognosis.

d. Uninjured Survivors

- (1) Be aware that uninjured survivors will need support and attention, including psychological care.
- (2) Community liaison officer or medical personnel at post may be helpful in locating clothing, lodging, etc., for uninjured survivors and coordinating counseling through local community.

e. Deceased Victims

- (1) Track the progress of remains removal for identification, disposition/shipment of remains, death certificate issuance, and identification and disposition of effects.
- (2) Keep Department (CA/OCS) informed of progress.
- (3) No Mass Burial: Convey to local authorities concern that no mass burial should take place until efforts to identify remains are completed, including DNA testing if necessary, and that families should be consulted before any disposition of unidentified remains.

NTSB Note: See ...

- Pan American Health Organization Publications
- Disaster Myths That Won't Die
- Infectious Disease Risk From Dead Bodies Following Natural Disasters
- Public Library of Science
- After the Tsunami: Legal Implications of Mass Burials of Unidentified Victims in Sri Lanka

f. Notification/Condolence Letters/Family Action Taskers

- (1) Notification of death should be done by telephone by Department or post task force depending on the disaster. Roles should be clearly established at the beginning of the task force. The airline may conduct the initial death notification. (See 7 FAM 200).
- (2) Condolence Letters: Death notification/condolence letters should be sent via express mail, as soon as possible. In a major incident, condolence letters should be signed by appropriate senior Embassy or Department official (Ambassador or CA Assistant Secretary). Again, this should be agreed upon between post and Department at the beginning of the task force. The Department (CA or post) should make every effort to provide this service, which will include the name, address and phone number of the case officer assigned to assist that family. This should be done even if the initial death notification was made by the airline. Sample letters are available on the CA/OCS Intranet page.

g. Coordination with Families, Airline and Local Authorities on Identification of Remains, Disposition of Personal Effects and Local Death Certificates/Consular Reports of Death:

- (1) Airline Family Assistance Plan: If the airline and/or its contractor (e.g., Kenyon International, BMS Catastrophe, etc.) will be facilitating identification of remains and disposition of personal effects not being controlled by local authorities as part of the accident investigation or any criminal investigation, the role of the post and the Department may be limited. CA will coordinate with post and families regarding issuance of the Consular Report of Death and Consular Mortuary Certificate. CA, in consultation with the Office of the Legal Adviser, will also coordinate with local authorities regarding issuance of presumptive death certificates and consular Reports of Presumptive Death. (See 7 FAM 200).
- (2) Criminal Investigation: If the aviation disaster involves a criminal investigation, procedures for identification of remains and disposition of personal effects may be defined by the criminal investigation team, or by local law. The Department and post(s) will coordinate closely to clarify the course of action we will take collectively to keep families informed in an effort to avoid duplication of effort. Even when the host government has a well-organized plan for this type of situation, it is important the U.S. Government provide appropriate assistance to our own citizens. CA will coordinate with the U.S. Department of Justice Office for Victims of Crime and the FBI Office of Victim Assistance and provide clear instructions to post(s). (See 7 FAM 1900).
- (3) No Airline Family Assistance Plan: In an aviation disaster involving a non U.S. air carrier serving the foreign domestic market or non-international flight, the post and the Department may have to play a major role. (Airlines departing from or landing in the United States are required by law to file Family Assistance Plans with the NTSB.) If there is no such plan, immediately after death notification, Department (CA) and/or post can provide families with the Family Assistance Brochure and Checklist along with supporting documents. The host country may have its own materials for the family to complete, or it may rely on consuls from countries whose citizens were aboard the flight to disseminate information to families.

h. Identifying Remains (See 7 FAM 1870 and 7 FAM 240)

Note: For countries that are part of Interpol, a Disaster Victim Identification team from Interpol is available.

- (1) The identification process is very deliberate and time-consuming. Consequently, you may have to caution family members and the media not to expect immediate identification of remains. In some cases, unfortunately, not all victims may be recovered or identified. From common sense to the technically complicated, there are many techniques involved with identification.
- (2) The process may start with documents found on the victim, as well as descriptions of clothing, jewelry, and other characteristics provided by family members. The forensic odontologist may ask family members to send in any available dental records and/or Xrays. FBI, Interpol, or local authorities may be able to confirm identity on the basis of fingerprint comparisons. Forensic pathologists and anthropologists can also assist by providing information on general age, gender, physical size, color of hair, color of eyes, and race of the victim. The medical examiner may be able to determine the identity of a victim based upon past medical information collected from family members, such as a previously broken bone or a surgical procedure. Collectively, all these findings must support one another before the medical examiner can make a positive identification.
- (3) Forensic authorities will probably need dental records, dental X-rays, fingerprints, photographs, physical description, description of jewelry usually worn. Remember that dental records may be useless for identification of people who never had any cavities. DNA tests based in comparison with blood samples provided by surviving family members may be recommended. It may be necessary to have the FBI obtain latent fingerprints from the victim's home to be compared against the fingerprints of all the victims.
- (4) Are local facilities capable of dealing with large number of remains? If not, one temporary solution may be to use freezer trucks to preserve the remains.
- (5) Do local authorities have the forensic capabilities to identify remains?
- (6) An officer from the Embassy/Consulate should be assigned to the morgue for liaison with local authorities. The officer can be helpful in coordinating requests for any technical assistance the local officials may require. A liaison officer stationed at the morgue can also be useful in dealing with families who arrive there and may want to help identify the remains of their loved one. A decision to allow access to the morgue rests with the local authorities. In any event, the family (or just one candidate of the family) should be briefed and prepared before viewing the remains.

i. Shipment of Remains

- (1) Who will pay? In an airline disaster, the carrier usually pays all costs for preparation and shipment of remains of victims.
- (2) Establish an early rapport with local funeral directors to ensure cooperation and timely disposition of remains.
- (3) Try to make official paperwork as simple as possible. Avoid creating complex questionnaires. Much of the information needed to complete consular documentation is available from PIERS (Passport Information Electronic Records System) records.
- (4) Ensure that Department knows exactly when and where the remains will arrive in the United States. It is particularly important that the airlines understand the sensitivity of the issue and that the family not be required to pick up the remains at the airport freight reception area in the United States. The Department may have offices in the city of the reception area (DS (Diplomatic Security), OFM (Office of Foreign Missions), or PPT (Passport Services) or send officers from Washington to be present.
- (5) Have an officer at the airport when the remains are shipped. In some cases confirmed reservations may not yet be available for remains being shipped to destinations beyond the U.S. port of entry.

An officer stationed at the airport's outbound cargo area will be able to obtain flight information and copies of the airway bills, which can then be forwarded to funeral homes in the United States. Also, when multiple caskets are being shipped to different destinations, this officer may be very useful in reducing or eliminating the possibility that a coffin is shipped to the wrong city.

- j. Reports of Death: Provide family members and other appropriate persons with as many gratis copies of Report of Death as they want. (See 7 FAM 200).
- k. Personal Effects:
 - (1) In an effort to prevent looting of property, discuss crash site control with Airline representatives and host government security as soon as possible after the event.
 - (2) Send a diplomatic note to the host government making clear the statutory consular responsibility in estate cases and the responsibility of the host government to prevent looting.
 - (3) The Department/post can obtain descriptions of personal belongings from families of victims.
 - (4) Families may arrive in the host country and wish to search for personal effects. The host country and/or airline family assistance service provider may establish procedures for identification of personal effects.
- l. Proof of Legal Entitlement to Personal Effects of Decedent
 - (1) If the host country or airline family assistance service provider is handling identification and distribution of personal effects, there may be limited or no consular role in establishing legal entitlement to personal effects.
 - (2) Local authorities may take the position that they will release to post, for subsequent distribution to families, only those personal effects that are positively identified or for which ownership is confirmed. For the sake of flexibility, and to speed the process of returning effects, post will be allowed to accept faxed copies, rather than originals, of affidavits from the NOK. The NOK should be instructed to send the original signed and notarized copies of affidavits to the Department (CA/OCS/ACS) for record-keeping purposes. The Department will then fax copies to post for inclusion with the file.
 - (3) If effects are extremely valuable, consult with Department regarding the need for letters testamentary or letters of administration.
 - (4) Establish a database for personal effects that will allow you to track their location, receipt of proof of entitlement, etc.
- m. Disposition of Personal Effects Instructions
 - (1) NOK should provide written confirmation of verbal instructions relating to the destruction or the return of any personal effects.
 - (2) The clothing and other personal effects may be damaged as a result of the disaster, and it may be very disturbing for the NOK to see them without close family or other support. In such cases, it may be prudent for post to offer to send the effects to a third party, such as an attorney or family friend, rather than directly to the family.
- n. Cleaning/ Decontaminating Effects:
 - (1) Are local authorities equipped to clean/decontaminate the personal effects?
 - (2) Are local authorities willing to release all effects, or do they propose to destroy contaminated property?
 - (3) Posts should request that families be consulted.

- o. Inventories of Personal Effects:
 - (1) If the personal effects are in the hands of local authorities, it is a good idea to assign one member of your staff permanently to the place where the effects are being identified and prepared for release to U.S. consular officials.
 - (2) If preliminary inventories are prepared by foreign authorities, unfamiliar with U.S. terms for articles of clothing, etc., be prepared for questions from families.
- p. Retention of Personal Effects by Authorities for Evidence: Local authorities will sometimes hold as evidence all baggage and personal effects, including items of jewelry, found on the remains of the deceased. Survivors and family members of the victims should be made aware that it may be several months before such items will be released. Host government laws relating to the retention of evidence in an on-going criminal case may prevent the immediate release of some of the personal effects to families. In some countries, the law may require that evidence in a criminal case be retained until the case is brought to trial and a verdict is issued. Post should liaise with local law enforcement officials in such cases, stress the importance of returning to the families the personal effects that are not critical to the investigation, and obtain a copy of the pertinent law for use by the Department/post in explaining to families why certain personal effects must be retained by host government investigators.
- q. Shipment of Property
 - (1) Decide on a dependable and safe system for shipping effects to the proper recipients, one which will enable you to track where the effects have gone. Try to use the fastest available method of shipment. Be prepared to send out the effects in several phases; identification and release of effects by local authorities can be an extended process.
 - (2) If you have to pack the personal effects for shipment, you will need to have a sufficient supply of boxes, gloves, coveralls and cleaning materials, and a secure place to store everything. If you need strong boxes which are not locally available, ask the Department for help.
 - (3) Post should include a letter from the Consul General conveying condolences. Do not enclose a "with the compliments of" card with effects returned to families.
 - (4) Local authorities may prefer to deliver personal effects to family members directly.
- r. Meeting and Briefing Families of Victims
 - (1) Meet and assist all known arriving U.S. citizens at the airport.
 - (2) Have a large sign that identifies the embassy/consulate representative and wear a name tag. If people don't know who you are, they will complain that you were "not there" in our experience.
 - (3) Advise persons acting on behalf of family members to have with them a notarized power of attorney.
 - (4) The officer assigned to the airport should be fully briefed about the current situation and capable of briefing families.
 - (5) A ranking embassy/ consulate official should meet families periodically at regularly scheduled times and locations (e.g. at the noon briefing at the hotel where the families are staying).
 - (6) A crisis room should also be available at the hotel, if appropriate depending on the size and scope of disaster, where family members can meet one another, pose questions to post officers, etc.
 - (7) It is helpful to have a separate room available should there be a need to convey information in a sensitive or private manner.

7 FAM EXHIBIT 1830(B)
DEPARTMENT OF STATE – NATIONAL TRANSPORTATION SAFETY BOARD (NTSB)
MEMORANDUM OF UNDERSTANDING (MOU)

(CT:CON-407; 06-29-2012)

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE DEPARTMENT OF STATE AND THE NATIONAL TRANSPORTATION SAFETY BOARD

This MOU was signed by Secretary of State Albright and NTSB Chairman Hall in June 1997. Copies of the signed document are available in CA/OCS/L.

PREAMBLE: This Memorandum of Understanding defines and establishes guidelines for mutual cooperation and assistance by, and between, the Department of State and the National Transportation Safety Board (NTSB). Noting the distinction between air disasters occurring within the United States, and those occurring outside the United States, this Memorandum encompasses activities of each organization, primarily relating to assistance to families of victims, following an aviation disaster.

AUTHORITIES: This Memorandum is entered into in furtherance of the authority granted the NTSB under 49 USC 1113(b)(1)(C) to use, when appropriate, available services, equipment, personnel and facilities of a department, agency, or instrumentality of the United States Government on a reimbursable or other basis. This Memorandum also is entered in furtherance of the Aviation Disaster Family Assistance Act of 1996, Pub. L. 104-264, Title VII, 110 Stat. 3264-3269 (Oct. 9, 1996), and the Presidential Memorandum of September 9, 1996 designating the NTSB as the agency to coordinate the provision of Federal services to the families of victims. Additional authority is provided by the Economy Act, 31 USC 1535.

OBLIGATIONS, ROLES, AND RESPONSIBILITIES:

- (1) The NTSB is recognized as the lead federal agency in all instances involving an aviation disaster within the United States ("domestic crashes"), regardless of the nationality of airline, crew, passenger or the nationality of the aircraft manufacturer.
- (2) The Department is recognized as the lead federal agency with respect to assistance to families of U.S. citizen victims in all instances involving an aviation disaster outside the United States ("foreign crashes").
- (3) In all circumstances involving an air disaster, the two parties shall maintain close liaison and coordination. Both parties shall ensure full and free access to their respective crises centers to the other when necessary to facilitate fulfillment of the liaison function. All necessary credentials and security clearances will be granted on an expeditious basis.
- (4) All public statements to any party, including the press, airlines and victims' families in a domestic accident are to be made solely by NTSB representative(s).
- (5) All public statements by either NTSB or Department of State following a foreign crash for which NTSB does not have primary investigative authority will be coordinated between NTSB and Department of State, which will coordinate as appropriate with the government in charge of the investigation.
- (6) The NTSB and the Department of State shall undertake to advise the other concerning the content and timing of such public statements, to the extent practicable.
- (7) In the event of a domestic accident, the Department of State agrees to assist the NTSB, upon request, subject to reimbursement for direct expenses incurred by the Department of State, when applicable, with services which include, but are not limited to, the following:
 - (a) Officially notifying any foreign government deemed to be involved by the Department of State.
 - (b) Promptly providing a liaison officer upon request by NTSB to assist with on-scene matters involving the responsibilities referenced in this Memorandum. Such a request would be made at the earliest opportunity to an official of the Department of State Operations Center.

- (c) Providing on a reimbursable basis interpreting and Translating assistance, subject to the availability of interpreters and translators and other demands as determined by the Department of State, to the NTSB when needed to facilitate communication with any interested parties.
 - (d) Assisting the entry into the U. S. of families of foreign victims through the issuance of visas, if necessary, to eligible applicants.
 - (e) Advising the appropriate parties, when necessary, of requirements pertinent to the transport of remains and personal effects, including associated and unassociated articles, into the country of destination.
 - (f) Assisting, as necessary, foreign government officials in obtaining death certificates for families of foreign victims.
 - (g) Providing logistical and communications support, to the extent practicable, in establishing contact with foreign authorities and individuals abroad to aid the NTSB in fulfilling its duties under the laws referenced above.
 - (h) Assisting NTSB in its oversight role as it relates to the responsibility of the airline in contacting next of kin not currently in the U. S.
- (8) In the event of a foreign crash, the Department of State agrees to assist the NTSB, upon request, subject to reimbursement for direct expenses incurred by the Department of State when applicable, by providing services which include, but are not limited to, the following:
- (a) Securing country clearance, as necessary, for NTSB entry to foreign countries to pursue investigations or, when requested by the Department of State, to assist the Department of State in providing assistance to victims' families.
 - (b) Making available consular and other personnel, consistent with other priorities as determined by the Department of State, to support the NTSB as necessary.
 - (c) Providing, consistent with usual practice, appropriate reports of death of U.S. citizens killed abroad in an air crash.
 - (d) Inviting, when judged appropriate by the Department of State, NTSB officials to participate as observers in any the Department of State response team sent to a foreign crash to augment efforts of the local U. S. embassy or

For the Department of State:
 //s//
 Madeline Albright

For the National Transportation Safety Board:
 //s// 6-2-97
 James S. Hall, Ch. 6-19-97

7 FAM EXHIBIT 1830(C)
BUREAU OF CONSULAR AFFAIRS
MEMORANDUM OF UNDERSTANDING (MOU)
OF BEST PRACTICES WITH AIRLINES

(CT:CON-291; 04-07-2009)

MEMORANDUM OF UNDERSTANDING REFLECTING BEST PRACTICES AND PROCEDURES

Note: MOU signed by CA Assistant Secretary and U.S. Air Certain Carriers November 18, 1996. For original signed copies, see CA/OCS/ACS Crisis Management files.

Recognizing the need for cooperation and mutual assistance following aviation disasters outside the United States involving United States citizens, and mindful of the provisions of the Aviation Security Improvement Act of 1990 (Public Law 101-604); and with a view to addressing these important concerns, the signatory air carrier ("the Airline"), and the United States Department of State ("the Department"), also hereinafter referred to as "a Party" or "the Parties," will achieve the following:

1. Designation of Points of Contact

- A. Within two weeks of when this Memorandum has been signed by the Parties, the Parties will exchange information concerning their respective key personnel within each entity who would have decision-making, policy, operational, and implementing roles in the event of an aviation disaster outside the United States.
- B. The information exchanged should include an initial point of contact office, available 24-hours a day, seven days a week, which would be in a position to alert key operational officers to an incident.
- C. In addition to names and telephone numbers of key personnel, the Parties shall designate respective primary and alternate facsimile numbers available for the immediate receipt of important information.
- D. Each Party will provide the other with any toll-free number(s) it intends to make available for use by next-of-kin in a crisis situation.
- E. The Parties will exercise diligent efforts to continuously up-date, as necessary, the information specified in this segment.

2. Information Sharing

- A. Upon learning of a situation outside the United States that has affected the health and safety of U.S. citizen passengers, the Party receiving such information will alert the other Party at the earliest opportunity to allow both the Airline and the Department to begin preliminary actions to meet their responsibilities. A Party should exercise its good judgment in deciding whether the matter warrants advising the other. This provision creates no obligation to transmit information that has not been judged specific and credible.
- B. This alert should include the following information, if known:
 - (1) The air carrier and flight number;
 - (2) The flight's point of origin, destination, and any intermediate stops;
 - (3) The time, location, and nature of the incident; and
 - (4) The number of U. S. citizens passengers and any information on their condition.
- C. The Department will advise any U.S. embassy or consulate affected, unless it is the source of the information.

3. Exchange of Liaison Officers

- A. Within two hours of the initial notification of an aviation incident abroad, the Parties will confer regarding the feasibility and desirability of exchanging liaison officers between their respective crisis centers, in both the United States and at the site of the incident, to facilitate communications between them.
- B. The advisability of such an exchange will depend upon the nature, duration, and severity of the aviation incident abroad.
- C. In instances when the Parties agree that it is not necessary to physically locate liaison officers in each other's crisis centers, each nonetheless should assign one of its employees on-site in its crisis center to serve as liaison officer with the other.
- D. Within thirty days after this Memorandum has been signed by both Parties, the Parties will advise each other of the names of the persons designated to serve in the role of liaison officer so that efforts can be made to provide these individuals with information and training to familiarize them with the internal procedures of the other Party's organization.

4. Duties of Liaison Officers

- A. The general duties of respective liaison officers are: (1) to apprise the Party to whom he/she is liaison of significant actions being taken by the Party whom he/she represents; (2) to keep the Party whom he/she

represents informed of steps being taken by the Party to whom he/she is liaison; and (3) to ensure adequate prior consultation between both Parties regarding decisions which have the potential to affect both.

- B. The liaison officer at all times should be provided sufficient information from the Party whom he/she represents to be able to brief key personnel of the Party to whom he/she is liaison.
- C. The liaison officer should serve as the main conduit from whom and to whom all information is passed between the Parties.
- D. When the Parties confer directly concerning matters of mutual interest, the liaison officer should participate in, or at least be aware of, the content of those discussions.
- E. The liaison officer should provide the Party to whom he/she is liaison with copies of all statements issued publicly by the Party whom he/she represents so that both Parties are familiar with information being provided to the media. When at all possible, such statements should be made available prior to their public dissemination.
- F. The liaison officers should exchange information enabling both Parties to provide consistent and accurate updates to affected family members.
- G. The liaison officer should provide the Party whom he/she represents with summaries prepared by the Party to whom he/she is liaison describing the current state of affairs as it pertains to the Party's efforts to deal with the situation. The Department liaison officer will provide reports consistent with applicable security regulations governing classified material and laws and regulations on personal privacy.
- H. The liaison officer immediately should establish procedures to identify and handle high priority calls, e.g., those received from persons apparently related to passengers on the flight in question.
- I. The liaison officers should work with the Parties' respective on-site representatives to promote effective consultations at the site on matters such as (1) coordination with foreign officials; (2) the recovery and transport of remains; and (3) the handling of personal effects.

5. Cross-Training

- A. (a) Each Party will conduct sessions to familiarize the other with its crisis management procedures and facilities, including simulation exercises to assess the practicality of the steps outlined above.
- B. (b) Each Party will make efforts to participate in each other's training exercises to gain an appreciation of the other methods and procedures.

6. Passenger Manifests

- A. Consistent with the purposes of Sec. 203 of the Aviation Security Improvement Act, the Parties will work for the exchange of timely and accurate passenger manifest information.
- B. Accordingly, the Airline shall transmit to the Department the names of passengers and any additional information consistent with that outlined in Sec. 203 of the Aviation Security Improvement Act of 1990 to assist in identifying a point of contact for each passenger. The Airline will provide an unverified manifest within three hours of the Airline's (should this be Airline?) being notified of an event.
- C. The Airline will update the information referred to above as it becomes available.
- D. Each page of a manifest transmitted should bear the notation: "Manifest of (Date/Time) - Subject to Refinement - Not for Public Dissemination."
- E. The Department shall treat passenger manifest information it receives from the Airline as privacy protected under the relevant statutory authority and not disclose such information by any method (written, oral, or electronic) unless such disclosure is authorized by law. Information provided to the Airline by the Department will be shared within the Airline only on a need-to-know basis and will not be disclosed otherwise without Department approval.

- F. Upon receipt of passenger manifests, if necessary, the Department will initiate an internal review of the passport records of the individuals listed to attempt to gather information identifying next-of-kin or other representatives. As stated in the Notice published in the Federal Register of August 2, 1995, such information can and will be made available to the Airline, upon request, to assist in identifying next-of-kin should this become necessary.
 - G. In consultation with the liaison officer of the Airline, the passenger manifest may be used to assist in identifying high priority incoming calls, i.e., those calls from persons who appear related to a passenger whose name is listed on the passenger manifest.
 - H. The Department will fulfill the responsibility assigned to it by Sec.204 of the Aviation Security Improvement Act "to directly and promptly notify the families of victims of aviation disasters abroad concerning citizens of the United States directly affected by such a disaster, including timely written notice, notwithstanding notification by any other person." The Department will ensure that such notification occurs notwithstanding best efforts by the Airline to make prior notification.
7. General Provisions:
- A. Nothing in this Memorandum is intended to alter or supersede the provisions of any current or subsequent regulations implementing the provisions of the Aviation Security Improvement Act of 1990 (Public Law 101-604).
 - B. This Memorandum may be amended by agreement of the Parties. It shall remain in force until terminated by 30 days written notice.

For more information on Fox Rothschild LLP's Aviation practice, please visit
<https://www.foxrothschild.com/aviation-industries/>

For immediate assistance with aviation-related incidents or concerns, please contact
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