



7533-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The NTSB is proposing to amend its regulations concerning notification and reporting requirements with regard to aircraft accidents or incidents, found at paragraph (a)(10) of section 830.5, entitled, "Immediate notification." Currently, 49 CFR 830.5(a)(10) requires reports of Airborne Collision and Avoidance System (ACAS) advisories issued under certain specific circumstances. The NTSB now proposes to narrow the ACAS reporting requirement in section 830.5(a)(10).

DATES: Submit comments on or before [insert DATE 60 DAYS FROM DATE OF PUBLICATION], 2012.

ADDRESSES: You may send comments using any of the following methods:

1. Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

2. Mail: Mail comments concerning this proposed rule to Scott Dunham, AS-30, National Transportation Safety Board, 490 L'Enfant Plaza, SW, Washington, D.C. 20594-2000.
3. Fax: (202) 314-6308, Attention: Scott Dunham
4. Hand Delivery: 6th Floor, 490 L'Enfant Plaza, SW, Washington, D.C., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott Dunham, National Resource Specialist - ATC, Office of Aviation Safety, (202) 314-6387.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 7, 2010, the NTSB published a final rule entitled, "Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records," in the Federal Register (75 FR 922). The final rule implemented several changes to section 830.5, requiring immediate notification of a variety of specific incidents, one of which was certain ACAS advisories. In accordance with the Administrative Procedure Act, prior to issuing the final rule, the NTSB published a notice of proposed rulemaking (NPRM) in the Federal Register to invite comments

concerning the proposed changes. (73 FR 58520; October 7, 2008). Several commenters stated they believed the language of section 830.5(a)(10), concerning ACAS advisories, would require reports of all ACAS advisories. In issuing the final rule, the NTSB attempted to clarify section 830.5(a)(10) by assuring commenters—in the preamble published in the Federal Register—that the NTSB only sought ACAS advisories in the following circumstances: “(1) 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; or (2) to an aircraft operating in class A airspace.” 75 FR at 923.

Although the NTSB believed the language of the final rule adequately conveyed the limited circumstances in which the NTSB would require notification of ACAS advisories, the NTSB has since determined it would achieve the same safety objective by receiving reports under a more specific set of circumstances. Therefore, the NTSB now proposes to amend the language of the rule to eliminate notifications of events where the only resolution advisory received by the flight crew is “monitor vertical speed.” Review of numerous TCAS events by Safety Board investigators has shown “monitor vertical speed” advisories typically occur

in situations where there is no collision risk, and in encounters where separation between aircraft deteriorates TCAS will generate additional resolution advisories containing instructions to climb or descend. As notification of those advisories will continue to be required under the modified rule, the effect of this change will be to eliminate the need for operators to notify the NTSB of events which present no actual or potential hazard. The intent of the notification requirement is to allow the NTSB to review potentially hazardous encounters. We conclude this change will not significantly reduce our ability to do so.

Statutory and Regulatory Evaluation

This proposed rule would amend the requirements for providing immediate notification to the NTSB of certain ACAS advisories, reducing the number of required notifications by aircraft operators.

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget (OMB) has not reviewed this proposed rule under Executive Order 12866. In addition, on July 11,

2011, the President issued Executive Order 13579, "Regulation and Independent Regulatory Agencies," 76 FR 41587, July 14, 2011). Section 2(a) of the Executive Order states:

independent regulatory agencies "should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."

76 FR at 41587.

Consistent with Executive Order 13579, the NTSB's proposed amendments to section 830(a)(10) reflect its judgment that certain types of ACAS notifications are unnecessary and, therefore, the notification and reporting requirements should be streamlined. This proposed rule does not require an analysis under the Unfunded Mandates Reform Act, 2 United States Code (U.S.C.) 1501-1571, or the National Environmental Policy Act, 42 U.S.C. 4321-4347.

In addition, the NTSB has considered whether this proposed rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601-612). The NTSB certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. In accordance with 5 U.S.C. 605(b), the

NTSB will submit this certification to the Chief Counsel for Advocacy at the Small Business Administration.

This proposed rule would not require collection of new information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Operators have the option of notifying the NTSB of an ACAS advisory that fulfills the requirements of this rule via telephone, email, or web-based form. The NTSB is working with the Office of Information and Regulatory Affairs, OMB, to obtain an OMB control number under the Paperwork Reduction Act to display on the web-based form.

The NTSB does not anticipate that this proposed rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this proposed rule does not have implications for federalism under Executive Order 13132, Federalism. This proposed rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this proposed rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children from Environmental Health Risks and

Safety Risks; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded that this proposed rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this proposal prompt further consideration with regard to such requirements. The NTSB invites comments relating to any of the foregoing determinations and notes that the most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

Discussion of Proposed Revision

As noted above, the NTSB proposes to amend section 830.5(a)(10) to require the reporting of:

Airborne Collision and Avoidance System (ACAS)

advisories issued either:

- i. 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; or

ii. to an aircraft operating in class A airspace, unless the advisory received only instructs the pilot to "monitor vertical speed."

The NTSB believes such an update will sufficiently clarify the types of reports of ACAS advisories the NTSB seeks, and adequately narrow the reporting requirement.

In addition, as the NTSB pointed out in the October 2008 NPRM proposing this requirement, the International Civil Aviation Organization (ICAO) had noted the NTSB's regulations did not previously require the notification of any air proximity events. The amendment the NTSB now proposes to section 830.5(a)(10) continues to require reports of ACAS advisories, but narrows the requirement to exclude advisories that merely instruct pilots to monitor their vertical speed.

The NTSB believes the proposed change to section 830.5(a)(10) will continue to assist in achieving the NTSB's purpose of improving aviation safety, while ensuring the language of the rule only requires notifications regarding specific ACAS advisories that the NTSB may seek to investigate.

List of Subjects in 49 CFR Part 830

Aircraft accidents, Aircraft incidents, Aviation safety, Overdue aircraft notification and reporting, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the NTSB proposes to amend 49 CFR Part 830 as follows:

1. The authority citation for 49 CFR Part 830 should continue to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 - 1155); Federal Aviation Act of 1958, Pub. L. 85-726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101).

2. Section 830.5 is amended as follows:

§ 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:

¹ NTSB regional offices are located in the following cities: Anchorage, Alaska; Atlanta, Georgia; West Chicago, Illinois; Denver, Colorado; Arlington, Texas; Gardena (Los Angeles), California; Miami, Florida; Parsippany, New Jersey (metropolitan New York City); Seattle, Washington; and Ashburn, Virginia. In addition, NTSB headquarters is located at 490 L'Enfant Plaza, SW, Washington, D.C. 20594. Contact information for these offices is available at <http://www.nts.gov>.

(a) An aircraft accident or any of the following listed serious incidents occur:

* * * * *

(10) Airborne Collision and Avoidance System (ACAS) resolution advisories issued either:

(i) 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; or

(ii) to an aircraft operating in class A airspace, unless the only advisory received is to "monitor vertical speed";

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Dated: _December 1, 2011

Deborah A.P. Hersman
Chairman

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12/08/2011]