



NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Chapter VIII

[Docket No. NTSB-GC-2012-001]

Plan for Retrospective Analysis of Existing Rules

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Request for information.

SUMMARY: Pursuant to Executive Order 13579, "Regulation and Independent Regulatory Agencies," issued July 11, 2011, the NTSB is announcing it is undertaking a review of all NTSB regulations. The purpose of Executive Order 13579 is to ensure all agencies adhere to the key principles found in Executive Order 13563, "Improving Regulation and Regulatory Review," issued January 18, 2011, which include promoting public participation in rulemaking, improving integration and innovation, promoting flexibility and freedom of choice, and ensuring scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation. The NTSB is committed to ensuring its regulations remain updated and comply with these principles, and in accordance with Executive Order 13579, will review all NTSB

regulations to ensure adherence to the principles. This notice describes the plan of review the NTSB will undertake.

DATES: Comments should be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit written comments to Docket NTSB-GC-2012-001 by any of the following methods:

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

Mail, Hand Delivery or Courier: NTSB Office of General Counsel, 490 L'Enfant Plaza, Washington, DC 20594.

Fax: (202) 314-6090.

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

SUPPLEMENTARY INFORMATION:

I. Executive Order 13579

In order to ensure independent agencies' regulations are consistent with the key principles articulated in Executive Order 13563 (76 FR 3821, January 21, 2011), Executive Order 13579 (76 FR 41587, July 14, 2011) requests independent agencies issue public plans for periodic retrospective analysis of their existing "significant regulations." The executive order further advises agencies to undertake such

analyses to identify any significant regulations that may be outmoded, ineffective, insufficient, or excessively burdensome, and subsequently plan to modify, streamline, expand, or repeal them in order to achieve regulatory objective. Executive Order 13563 also emphasized the importance of maintaining a consistent culture of retrospective review and analysis by agencies of their regulatory programs. In this regard, the executive order included a "look-back" requirement for agencies to develop preliminary plans under which they will periodically review existing significant regulations to determine whether any should be modified, streamlined, expanded or repealed in order to make the agency's regulations more effective and less burdensome.

In a more recent Executive Order, the President directed Executive departments and agencies to allow for public participation in retrospective reviews; prioritize their reviews by first addressing the regulations that will provide the most significant monetary savings or in reductions in paperwork burdens; and regularly report the status of retrospective reviews to OIRA. Executive Order 13610, "Identifying and Reducing Regulatory Burdens," issued May 10, 2012, (77 FR 28469, May 14, 2012).

As described above, Executive Order 13579 encourages independent agencies to review "significant regulations"; however, the executive order does not define what agencies should consider to be "significant regulations." The NTSB has therefore decided to utilize the definition of a "significant regulatory action" provided in Executive Order 12866 ("Regulatory Planning and Review"), which is the executive order that established the current regulatory review structure.¹ Consistent with the approach other independent agencies have taken, the NTSB also considered the definition of "major rules" in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, 5 U.S.C. 801(e)(2)) to guide our review of what regulations might be "significant" under the executive order. In this regard, 5 U.S.C. 610(a) provides for a 10-

¹ 58 FR 51735, October 4, 1993. Section 3(f) of Executive Order 12866 defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel, legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

year review of rules that have a "significant economic impact upon a substantial number of small entities." The NTSB, however, has determined that a very limited number of the NTSB's rules are "major rules," because they do not have a "significant economic impact upon a substantial number of small entities." In addition, the NTSB is not primarily a regulatory agency; as a result, its regulations typically address procedures to further the agency's statutory responsibilities to investigate the facts, circumstances, and cause of transportation accidents or implement governmentwide statutes, such as the Freedom of Information Act and the Privacy Act. This plan, therefore, describes only the NTSB regulations that could, when viewed in the broadest sense, have a significant economic impact upon a substantial number of small entities.

II. The NTSB's Plan

The NTSB has recently taken action on some parts of its regulations. For example, the NTSB finalized a new version of 49 CFR part 801 (Public Availability of Information) in 2007 (72 FR 18915, April 16, 2007); rescinded out-of-date regulations in 49 CFR part 805 (Employee Responsibilities and Conduct) in 2011 (76 FR 71910, November 21, 2011); issued some changes and additions to two sections within 49 CFR part 830 (notification and reporting of aircraft

incidents and accidents) (75 FR 927, January 7, 2010; 75 FR 35330, June 22, 2010); and, most recently, issued a Notice of Proposed Rulemaking subsequent to an Advance Notice of Proposed Rulemaking suggesting several changes to 49 CFR parts 821 (Rules of Practice in Air Safety Proceedings) and 826 (Rules Implementing the Equal Access to Justice Act of 1980) (77 FR 6760, February 9, 2012). The NTSB undertook these rulemaking activities after noting many of the rules in the parts described above were out-of-date. None of these aforementioned parts, however, contain regulations that are "significant" under Executive Order 12866.

Review of 49 CFR part 831

The NTSB has identified one regulatory portion that may contain "significant regulations" pursuant to the definition contemplated above: 49 CFR part 831. This part, entitled "Accident/Incident Investigation Procedures," contains a set of 14 sections describing the NTSB's "party process." This process involves the NTSB's invitation to outside entities to assist with an investigation as a "party." The NTSB typically extends party status to those organizations that can provide the necessary technical assistance to the investigation. The investigator-in-charge (IIC), for example, often confers party status to the operator, aircraft, systems, and powerplant

manufacturers, and labor organizations involved because of the accident circumstances. The IIC designates all other parties as participants, subject to the discretion of the IIC, with the exception of the Federal Aviation Administration (FAA). By statute, the FAA is automatically a participant in Safety Board investigations. 49 U.S.C. 1132(c). 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. The NTSB directs FAA representatives to refrain from using their participation to develop information for punitive actions or issuing violations.

The parties involved in NTSB investigations could be small entities, and, depending on the scope and circumstances of the investigation, the NTSB could request these small entities to be available for the on-scene portion of an investigation, as well as follow-up meetings and/or tasks. The NTSB does not reimburse investigation participants for the amount of time expended for an NTSB investigation, nor does the NTSB pay for any travel costs that arise out of such participation. As a result, it is remotely possible that a combination of NTSB investigations could result in costs that exceed \$100 million.

Biennial Review

Although this interpretation of 49 CFR part 831 as containing "significant regulatory actions" is based on a broad reading of "significant," and the NTSB has not yet overseen any investigations that singly or in combination exceed the aforementioned threshold, the NTSB nevertheless is committed to reviewing its regulations within 49 CFR part 831, in the interest of ensuring none are "outmoded, ineffective, insufficient, or excessively burdensome" under Executive Orders 13563 and 13579. In this regard, the NTSB herein proposes to review 49 CFR part 831 within the next 6 months to determine if any sections within part 831 could be modified, streamlined, expanded, or repealed, pursuant to the direction of Executive Order 13579. The NTSB's findings will form the basis for the NTSB's decision concerning whether the NTSB should make any changes to part 831. The NTSB is committed to issuing a Notice of Proposed Rulemaking within 6 months of the published findings, should the findings counsel in favor of changing any sections of part 831.

After the conclusion of any rulemaking activity, the NTSB will undertake a biennial review of part 831 to ensure no regulations are outmoded, ineffective, insufficient, or excessively burdensome. If the NTSB determines no changes to part 831 are necessary, the NTSB will begin computing

time for its biennial review following the date of its publication of findings. The NTSB believes review on a biennial basis is appropriate for the subject matter contained in part 831, as the NTSB's party process is familiar to regular party participants, and party participants have not articulated concerns with the process that would warrant a change in regulations.

Following each biennial review, the NTSB will make its findings available for public comment, providing an opportunity for public input as to which of the regulations that are ripe for evaluation warrant a formal public review. This input, in addition to the NTSB's recommendation, will inform the NTSB's decision as to which regulations will be the subject of a formal public review. This public review could be initiated by a notice seeking public comment on whether the regulations continue to meet their original objectives or by a proposal of specific changes to the regulations.

Cultural Change

As indicated by the number of recent rulemaking activities, the NTSB is committed to developing a strong culture of retrospective analysis of its existing regulations. The NTSB currently is undertaking a review of other regulations that would not be considered

"significant," in which it is examining regulations to ensure they continue to be appropriate to meet the goal of the regulations without imposing an undue burden. In addition, the NTSB will seek to expand its effort to conduct regulatory reform and to make suggestions to modify, improve, or repeal regulations that may further the purpose of Executive Orders 13563, 13579, and 13610. The NTSB also encourages public comment on any of its regulations in title 49, Code of Federal Regulations, chapter VIII, in addition to 49 CFR part 831, consistent with the objectives of these Executive Orders. The NTSB will also consider the spirit of these Executive Orders when evaluating possible new regulations. With this change in the overall outlook concerning its regulations, the NTSB believes it will achieve the general objectives of these Executive Orders with regard to every part of its regulations, notwithstanding the fact that the vast majority of them are not "significant" under Executive Order 12866.

Deborah A.P. Hersman

Chairman

Dated June 19, 2012

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