



NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Chapter VIII

Retrospective Analysis of Existing Rules; Notification

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

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

ACTION: Notification.

SUMMARY: On June 25, 2012, the NTSB published a request for information stating it was undertaking a review of all its regulations. 77 FR 37865. The NTSB indicated this review would occur as a result of Executive Order 13579, "Regulation and Independent Regulatory Agencies," issued July 11, 2011, (76 FR 41587, July 14, 2011), which directs agencies to review all regulations to ensure they are up-to-date and comply with the principles articulated in Executive Order 13579. The NTSB stated it would specifically analyze all regulations within 49 CFR part 831, concerning accident investigation procedures, and publish a document setting forth its plan for proceeding with updates to its regulations. The NTSB collected comments from the public concerning its regulations, and herein notifies the public of its plan to update all NTSB regulations.

ADDRESSES: Copies of this notification, published in the *Federal Register* (FR), are available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza, SW, Washington, D.C. 20594-2003. Alternatively,

documents related to this comprehensive review of NTSB regulations are available on the government-wide website on regulations at <http://www.regulations.gov> (Docket ID Number NTSB-GC-2012-0002).

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

SUPPLEMENTARY INFORMATION:

I. Requirement to Review Regulations

In accordance with Executive Order 13579, the NTSB published a request for information stating it would undertake a comprehensive review of its regulations. Executive Order 13579 requests independent agencies issue public plans for periodic retrospective analysis of their existing "significant regulations." The executive order states such analyses should identify any significant regulations that may be outmoded, ineffective, insufficient, or excessively burdensome. Then, the agency's plan should describe how it will modify, streamline, expand, or repeal those regulations in order to achieve the agency's regulatory objective. The President ordered 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. The NTSB is committed to fulfilling the requirements set forth in this follow-up order.

As described in the NTSB's June 25, 2012 request for information, 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 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 modern regulatory review structure.¹ The NTSB then determined that a very limited number of its regulatory actions are "major rules," because they do not have a "significant economic impact upon a substantial number of small entities." The NTSB's request for information, therefore, described only the NTSB regulations that could, when

¹ 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.

viewed in the broadest sense, have a significant economic impact upon a substantial number of small entities.

The NTSB's request for information set forth a 6-month timeframe in which the NTSB indicated it would specifically review all provisions within part 831. In particular, the request for information states the NTSB would:

[R]eview 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.

77 FR at 37867.

As explained more fully below, the NTSB has reviewed part 831 and anticipates publishing a notice of proposed rulemaking (NPRM) to suggest various changes to part 831.

II. The NTSB's Review and Upcoming Changes

Since publishing its June 25, 2012 request for information, the NTSB has reviewed all parts of its regulations: 49 CFR Parts 800-850. The NTSB has determined to update certain parts in the near future, in accordance with the standard informal rulemaking procedure of soliciting comments from the public (Phase I). The NTSB then plans to publish a document indicating its changes to rules applicable only to internal agency matters (Phase II).

Finally, the NTSB also plans to update other parts at a later date, as these parts require coordination with other agencies, and therefore should appear on a different timeline (Phase III).

Phase I: Review of Parts Requiring Comment

The NTSB has carefully reviewed the following regulatory parts, and plans to publish a notice of proposed rulemaking updating these parts within three months of the date of this notification: parts 801, 802, 803, 804, 806, 807, 825, 830, 831, 835, 837, 840, and 845. The NTSB has also drafted an additional part, to set forth requirements of notification applicable to certain highway accidents.

As discussed in the June 25, 2012 request for information, the NTSB identified one part of its regulations 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," which 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 role of party representatives is to support the NTSB's investigation at the direction of the NTSB, all with the ultimate goal of improving transportation safety. These parties could be small

entities, which the NTSB may request 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.

The NTSB has undertaken a comprehensive review of part 831, and carefully considered the five comments the NTSB received as a result of its June 25, 2012 announcement indicating the plan to update NTSB regulations. The NTSB posted these comments in the public rulemaking docket, available at www.regulations.gov, Docket No. NTSB-GC-2012-0002. The NTSB plans to publish an NPRM that responds to all comments and sets forth proposed changes to part 831.

In addition, the NTSB has undertaken a review of its other regulatory parts, and also plans to issue an NPRM proposing changes to the other parts listed above. Within this NPRM, the NTSB will most likely propose a new part to address notification of certain highway accidents.

The NTSB may publish its proposed changes to part 831 in the same NPRM as its changes to the other parts. In this

regard, Phase I of the NTSB's comprehensive review of its regulations may consist of two tiers.

Phase II: Changes Not Requiring Public Comment

In Phase II, the NTSB will issue changes to 49 CFR part 800. The NTSB has identified several sections of part 800 that are outdated. In addition, the NTSB recognizes several additional duties should be included in certain sections within part 800. Part 800 solely consists of internal agency procedures that are not relevant to the NTSB's work with the public, its parties, or any other agency. As a result, the NTSB does not plan to seek comments from the public concerning changes to part 800. 5 U.S.C. 553(b)(3)(A) (exempting from the public comment requirement "rules of agency organization, procedure, or practice"). The NTSB plans to publish its changes to part 800 in conjunction with, or shortly after, its publication of the final NPRM described in the plan for Phase I.

Phase III: Changes Requiring Consultation with Other Agencies

The NTSB, at this time, is not prepared to alter part 850 of its regulations, which set forth procedures applicable to marine accident investigations. The NTSB maintains a close working relationship with the United States Coast Guard in accordance with 49 U.S.C. 1131, part 850 and a Memorandum of Understanding. The NTSB plans to address with the Coast Guard any changes to part 850, and prepare such changes on a distinct

timeline, rather than contemporaneously with all other updates from Phases I and II of this project.

In the event the NTSB identifies the need for additional regulatory changes or additions it believes would benefit the agency, but require collaborating with other Federal agencies, the NTSB will also attempt to include such changes in Phase III of this project.

III. Biennial Review

As stated in its June 25, 2012 request for information, the NTSB has not overseen any investigations that come within the definition of "significant regulatory actions." Nevertheless, the NTSB indicated it 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, "Regulation and Independent Regulatory Agencies," issued January 18, 2011 (76 FR 3821, January 21, 2011) and 13579. As a result, following the comprehensive review and publication of the NPRM and final rule documents discussed in this notification, the NTSB will undertake a biennial review of part 831 to ensure no regulations are outmoded, ineffective, insufficient, or excessively burdensome. Following each biennial review, the NTSB will make its findings available for public comment.

IV. Cultural Change

The NTSB's June 25, 2012 request for information also stated it was committed to encouraging and fostering a culture at the NTSB that ensures agency employees are aware NTSB regulations must remain up-to-date. The NTSB believes it has begun to achieve this goal, as almost all offices at the NTSB have been involved in the comprehensive review of regulations the NTSB recently concluded. Offices are aware of the importance of ensuring regulations are not outdated or difficult to comprehend.

Deborah A.P. Hersman
Chairman

[FR Doc. 2012-31623 Filed 01/07/2013 at 8:45 am; Publication Date: 01/08/2013]