



7533-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 845

RIN 3147-AA02

Rules of Practice in Transportation: Investigative Hearings; Meetings; Reports; and Petitions for Reconsideration

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

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The NTSB is proposing to amend provisions within its regulations, which contains the NTSB's procedures for holding investigative hearings, various types of meetings, issuing reports, and responding to petitions for reconsideration. This notice proposes a number of substantive and technical changes. In particular, the NTSB proposes to reorganize parts of its regulations into different subparts to ensure the part is easy to follow.

DATES: Comments must be received by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION]. Comments received after the deadline will be considered to the extent possible.

ADDRESSES: A copy of this NPRM, published in the *Federal Register* (FR), is 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, a copy is available on the government-wide website on regulations at <http://www.regulations.gov> (Docket ID Number NTSB-GC-2012-0002).

You may send comments identified by Docket ID Number NTSB-GC-2012-0002 using any of the following methods:

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

Mail: Send comments to NTSB Office of General Counsel, 490 L'Enfant Plaza SW, Washington, D.C. 20594-2003.

Facsimile: Fax comments to 202-314-6090.

Hand Delivery: Bring comments to 490 L'Enfant Plaza East, SW, 6th Floor, Washington, D.C., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information provided.

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

SUPPLEMENTARY INFORMATION:

I. Background

On June 25, 2012, the NTSB published a notice indicating its intent to undertake a review of all NTSB regulations to ensure they are updated. 77 FR 37865. The NTSB initiated this review in accordance with Executive Order 13579, "Regulation and Independent Regulatory Agencies" (76 FR 41587, July 14, 2011). 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" (76 FR 3821, January 21, 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 explained in its June 25, 2012, notice that it is committed to ensuring its regulations remain updated and comply with these principles.

The NTSB's notice concerning its plan for reviewing all NTSB regulations indicated the NTSB would specifically conduct a comprehensive review of 49 CFR part 831, which describes the NTSB's investigative process. The NTSB completed this review and published an NPRM proposing various changes to part 831 on August 12, 2014. 79 FR 47064.

The NTSB published an additional notice in the *Federal Register* on January 8, 2013, describing the NTSB's plan for updating all regulations. 78 FR 1193. In accordance with these two notices published in the *Federal Register*, the NTSB reviewed all sections within 49 CFR part 845, in the interest of ensuring they accomplish the objectives stated in Executive Order 13563. The NTSB publishes this NPRM in accordance with the NTSB's plan.

II. Description of Changes

The NTSB proposes reorganizing 49 CFR part 845 and adding two new sections to describe Board meetings concerning NTSB products. The current version of part 845 consists of three general sections (titled "Applicability," "Nature of hearing," and "Sessions open to the public") followed by four subparts (titled "Initial procedure," "Conduct of hearing," "Board reports," and "Public record"). The NTSB carefully has reviewed part 845 and determined the current format could be improved for clarity and ease of understanding. In addition, part 845 does not discuss Board meetings concerning investigations and NTSB products, even though meetings concerning such topics are a key component of the Board's work and provide transparency in agency activities and operations. Therefore, the NTSB proposes organizing part 845 into three subparts, titled "Investigative hearings," "Meetings," and "Reports."

Subject to a number of proposed changes, this NPRM would maintain most of the text from the existing sections addressing investigative hearings, which are currently codified at sections 845.2 ("Nature of hearing"), 845.3 ("Sessions open to the public"), 845.10 ("Determination to hold hearing"), 845.11 ("Board of inquiry"), 845.12 ("Notice of hearing"), 845.13 ("Designation of parties"), 845.20 ("Powers of chairman of board of inquiry"), 845.21 ("Hearing officer"), 845.22 ("Technical panel"), 845.23 ("Prehearing conference"), 845.24 ("Right of representation"), 845.25 ("Examination of witnesses"), 845.26 ("Evidence"), 845.27 ("Proposed findings"), 845.28 ("Stenographic transcript"), and 845.29 ("Payment of witnesses"). The NTSB suggests changes to the text of these sections, which include changing terminology to describe transportation events and substituting "NTSB" in place of the term "Board," unless the term "Board" refers to the statutorily appointed members of the Board. The NTSB also proposes numbering these sections sequentially within the proposed subpart addressing investigative hearings.

In order to ensure the initial sections of part 845 are clear, the NTSB proposes removing the term "formal issues" from § 845.2, which currently states (in part), "[s]uch hearings are fact-finding proceedings with no formal issues and no adverse parties..." The term "formal issues" is not a legal term of art,

and is not defined in NTSB regulations. The NTSB does not believe the inclusion of this term in § 845.2 is necessary. In addition, the NTSB proposes reorganizing the text of § 845.2 to explain the purpose of an investigative hearing is to develop further the facts, conditions, and circumstances of the transportation event. The NTSB also proposes including text stating investigative hearings are not conducted for the purpose of determining the rights or liabilities of any person. The NTSB proposes this language because, in recent years, witnesses and parties who attend investigative hearings have been involved in ongoing litigation relating to the subject of a hearing with greater frequency or may become involved in litigation. In this section, the NTSB seeks to emphasize the purpose of investigative hearings is to obtain accurate, complete, and well-documented factual information related to NTSB investigations.¹

In addition, the NTSB proposes removing a sentence from the existing version of 845.11 ("Board of inquiry"), which currently states, "[a]ssignment of a Member to serve as the chairman of each board of inquiry shall be determined by the Board." The NTSB believes such assignments are internal agency procedures. As a result, the agency does not believe it is necessary to

¹ Part 845 does not apply to oral arguments before the Board under 49 CFR part 821, which governs appeals of aviation certificate enforcement actions.

codify a procedure specifying how the Board might assign a Member to serve as the chairman of each board of inquiry. The NTSB will handle such assignments via Board policies.

As a point of clarification, the NTSB notes it does not suggest changes to the text of proposed section § 845.15 ("Payment of witnesses"); this text is duplicative of the existing text of § 845.29. However, the NTSB notes its practice is to pay witnesses who would not attend if the agency did not pay the travel expenses associated with attendance. In addition, we note the Invitational Travel statute, codified at 5 U.S.C. § 5703, allows the NTSB to reimburse a speaker or witness if the person is providing a direct service to the agency for which he or she is not receiving any compensation.

Regarding the proposed new subpart addressing Board meetings, the NTSB proposes two new sections. The first section, to be codified at 845.20 ("Meetings"), states the Board may hold a meeting when the Board determines such a meeting is in the public interest.

The NTSB also proposes adding § 845.21 ("Symposiums, forums, and conferences") to apply some of the provisions of § 845.20 to symposiums, forums, and conferences. The NTSB proposes three paragraphs within the new § 845.21, the first of which will provide definitions for these three types of proceedings. The NTSB proposes adding within paragraph (a) of

§ 845.21 the statement, **"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."** This proposed version of paragraph (a)(2) will also state the **"goals of the proceeding will be clearly articulated and outlined, and will be consistent with the mission of the NTSB."** The NTSB also proposes adding paragraph (b) within § 845.21, to clarify a quorum of the Board is not required to participate in symposiums, forums, or conferences.

Also in paragraph (b), the NTSB proposes adding a statement that symposiums, forums, and conferences are not intended to be used as a means to obtain evidence or establish facts for a particular NTSB investigation. The NTSB expects this language will provide clarity to potential participants or people who are interested in attending an NTSB symposium, forum, or conference. The proposed language also provides the proceedings may have a relationship to previous, ongoing, or future investigative activities, the purpose of which is to provide supporting and collaborative information, but not to obtain direct evidence for a specific investigation.

Following paragraph (b), the NTSB proposes paragraph (c), which simply states participation in a symposium, forum, or

conference is voluntary. This statement will clarify the NTSB will not issue a subpoena for attendance at such proceedings. The paragraphs within § 845.21 will function to educate the public and the transportation community that the NTSB may hold forums, symposiums, and conferences, to fulfill Congress's intent of ensuring NTSB staff and Board Members remain educated and adhere to a well-rounded approach for improving transportation safety in a variety of ways.

In the new subpart C of part 845 ("Reports"), the NTSB proposes keeping the text of existing §§ 845.40 (currently titled "Accident report"), 845.41 ("Petitions for reconsideration or modification"), 845.50 ("Public dockets"), and 845.51 ("Investigation to remain open") largely unchanged, but updating the terminology in these sections, and re-codifying them with sequential numbers beginning at § 845.30.

In § 845.30, to be titled, "Board products," the NTSB proposes maintaining essentially unchanged within paragraph (a) the text currently in § 845.40(a), which describes reports. The NTSB proposes adding language to § 845.30(a)(2) pointing out the Board, consistent with longstanding agency process and procedure, allows the appropriate office director to issue a brief, which will include the probable cause and relevant facts, conditions, and circumstances concerning the event investigated. The Board has delegated to office directors the authority to

issue such determinations in 49 CFR § 800.25. Section 845.30(a)(2), as proposed, includes a description of "brief" as a document that includes the probable cause and relevant facts, conditions, and circumstances. The proposed language includes a citation to § 800.25, which provides office directors the authority to determine the probable cause by issuing such briefs. In addition, the NTSB proposes adding a new paragraph to § 845.30 to describe safety recommendations, which the Board may adopt and issue as a stand-alone Board product outside the context of a specific report or other type of Board product.

The NTSB proposes including the section discussing public dockets immediately following the section describing reports and briefs, as NTSB public dockets contain information supporting the statements in reports and briefs. Within § 845.31, the NTSB proposes only a few minor changes, such as including a reference to the definition of "public docket" in § 801.3 of this chapter, and removing the term "accident," to ensure consistency with the NTSB's Notice of Proposed Rulemaking for changes to 49 CFR part 831.² The NTSB also proposes updating paragraph (c), which advises the public of how it might access material in the public docket. The NTSB places public dockets on its webpage at

² 79 FR 47064 (Aug. 12, 2014). The NPRM concerning proposed changes to 49 CFR part 831 explained the NTSB's proposal to modify its terminology within its regulations by utilizing the term "event," and, in some sections, other descriptive terms. Id. at 47065.

www.nts.gov, to allow the public to download them free of charge. Therefore, the NTSB proposes adding its website link to § 845.31(c).

The NTSB proposes moving the section currently located at 49 CFR § 845.41 ("Petitions for reconsideration or modification") to § 845.32. The NTSB also proposes organizing this section with headings for each paragraph, to ensure the public and interested parties can easily follow it. The first proposed heading will be titled "requirements," and will state the requirements applicable to submissions of petitions for reconsideration or modification currently listed in scattered places within § 845.41. Therefore, the "requirements" paragraph (§ 845.32(a)) will state only individuals or entities having a "direct interest" in the investigation may submit petitions. The paragraph will also require petitions be in writing and be based on the discovery of new evidence or a showing the Board's findings were erroneous.

The NTSB proposes titling the second paragraph as "acceptance of petitions," which will include some of the same text as is currently located in § 845.41. The NTSB, however, proposes to delete the statement the Board will not consider petitions filed by an individual or entity who could have submitted proposed findings, as described in the current version of § 845.27. Individuals and entities have interpreted § 845.41

to mean they cannot submit a petition for reconsideration. Under the current text, if the individual or entity failed to submit a comment, the individual or entity would ostensibly waive the right to petition the Board for reconsideration. However, the NTSB is unlikely to prohibit such an individual or entity from later filing a petition for reconsideration. As a result, in the proposed version of § 845.13, the NTSB removes the statement that it will not consider petitions for reconsideration from an individual or entity who could have submitted proposed findings.

The NTSB also proposes retaining the requirement that any individual or entity filing a petition for reconsideration or modification submit with its petition proof it served the petition on all parties to the investigation or investigative hearing. The paragraph will also include the deadline of 90 days, within which interested individuals or entities may file comments to the petition. These provisions within the "proof of service" paragraph are currently located at 49 CFR § 845.41(b) of the NTSB's regulations.

Lastly, the NTSB proposes titling § 845.32(d) "oral presentation." The current version of § 845.41(c) includes the same provisions as this new paragraph, but dividing it into two portions, the first of which states oral presentation will not normally be a part of the proceedings within part 845, and the second of which states the Board, upon granting a request for an

oral presentation, will specify which issues will be addressed at the presentation. The NTSB believes dividing this paragraph into two numbered sentences, as well as using the term "party or interested person," will provide greater clarity.

The NTSB proposes moving § 845.51 ("Investigation to remain open") to § 845.33. The NTSB plans to retain the title "investigation to remain open," with the addition of the word "event."

III. Regulatory Analysis

This NPRM 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 has not reviewed this proposed rule under Executive Order 12866. Likewise, this proposed rule does not require an analysis under the Unfunded Mandates Reform Act, 2 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 NPRM 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 NPRM would not have a significant economic impact on a substantial number of small entities. Moreover, 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. Moreover, the NTSB does not anticipate this NPRM will have a substantial, direct effect on state or local governments or will preempt state law; as such, this NPRM does not have implications for federalism under Executive Order 13132, Federalism. This NPRM 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 NPRM 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 NPRM does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this NPRM prompt further consideration with regard to such requirements.

The NTSB invites comments relating to any of the foregoing determinations and notes the most helpful comments reference a

specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

List of subjects in 49 CFR part 845

Administrative practice and procedure, Investigations, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the NTSB proposes to amend 49 CFR part 845 as follows:

1. The authority citation for 49 CFR part 845 is revised to read as follows:

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.

Title 49—Transportation

PART 845—RULES OF PRACTICE IN TRANSPORTATION: INVESTIGATIVE HEARINGS; MEETINGS; AND REPORTS; PETITIONS FOR RECONSIDERATION

2. Revise part 845 to read as follows:

845.1 Applicability of part.

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.
845.8 Technical panel.
845.9 Prehearing conference.
845.10 Right of representation.
845.11 Examination of witnesses.
845.12 Evidence.
845.13 Proposed findings.
845.14 Transcript.
845.15 Payment of witnesses.

Subpart B—Meetings

845.20 Meetings.
845.21 Symposiums, forums, and conferences.

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.

**Part 845—RULES OF PRACTICE IN TRANSPORTATION: INVESTIGATIVE
HEARINGS; MEETINGS; AND REPORTS; PETITIONS FOR RECONSIDERATION**

§ 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 event, which will ultimately assist the Board in determining the cause or probable cause of the event, and in ascertaining measures that will tend to prevent such events 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, 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 event 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.*

(1) The NTSB will provide notice of the time and place of the investigative hearing to all known interested persons.

(2) The chairman of the board of inquiry, or his or her designee, shall have the following powers:

(A) To designate parties to the investigative hearing and revoke such designations;

- (B) To open, continue, or adjourn the investigative hearing;
- (C) To determine the admissibility of and to receive evidence and to regulate the course of the investigative hearing;
- (D) To dispose of procedural requests or similar matters; and
- (E) 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, 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 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 event 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 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 areas in 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) *Expedited hearings.* 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.

(2) 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 event. 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 events. 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 event 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 events 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 event. In particular circumstances, the Board in

its discretion may choose to approve a brief. Such briefs do not include recommendations.

(b) *NTSB studies and reports.* (1) The NTSB may issue reports describing investigations of more than one event that share commonalities. Such reports are similar to event 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 events 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 event. 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 event, 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 e-mail 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, 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.

Christopher A. Hart,
Acting Chairman

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