



# What to Do When the Feds Come Knocking

2024 Aviation Symposium  
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# National Transportation Safety Board

49 U.S.C. § 1101– 1155

# Why Is the NTSB Here?

- Independent Safety Board Act (49 U.S.C. § 1101– 1155)

49 U.S.C. § 1134(a)

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, including an electronic record, process, control, or facility related to an accident investigation under this chapter.

- 49 C.F.R. § 831.2: The NTSB is required to investigate accidents involving ...

# What Can the NTSB Investigate – 49 U.S.C. § 1131

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 ...;
- 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 ...; 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.

# Plane-ly Spoken - What Is NTSB Authorized To Do?

- Investigate highway, marine, rail, pipeline, aircraft accidents and accidents involving transport of hazmat
- Determine facts and probable cause
- Conduct safety studies
- Assist families and survivors
- Safety Advocacy – recommendations/most wanted list

# The Party System, 49 C.F.R. § 831.11

- NTSB conducts investigations under its party system
- Leverages technical expertise
- Each participant must sign a Certification of Party Representative

*“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.” 49 CFR § 831.11(d)*

# What Is a Party Coordinator?

- 49 CFR §831.11
- Responds to NTSB
- Coordinates company resources
- Ensures compliance with NTSB rules and procedures
- Cannot be an attorney or claim rep

# What Is the Party Certification?

- Participants must sign statement agreeing:
  - Not to share info with co-workers, management or anyone outside the investigation (but note safety exception of 49 CFR § 831.13(c)(3))
  - Not to prejudice the investigation or violate NTSB policies or instructions
  - Not to withhold pertinent information
  - He/she does not occupy a legal position
  - He/she does not represent claimants/insurers

[https://www.nts.gov/legal/Documents/NTSB\\_Investigation\\_Party\\_Form.pdf](https://www.nts.gov/legal/Documents/NTSB_Investigation_Party_Form.pdf)

# Summary:

# NTSB Investigation of a Major Accident

## On-Scene ~ 1 week or less

- Fact gathering and evidence collection
- Witness interviews
- Investigator-in-Charge (IIC) issues subpoenas and designates Parties to the investigation
- Organizational meeting
- Establish Investigative Groups (e.g., engineering, human performance, survival factors, recorders, weather, emergency response)

## After On-Scene Work is Completed

- Additional fact-gathering continues
- Modal Safety Office issues a public preliminary report within several weeks after the accident

**The Company, through its party representative, should provide comments to the IIC**

- Modal Safety Office recommends whether or not an investigative hearing is needed
- Modal Safety Office shares final drafts of Group Chairmen's factual reports with opportunity for Parties to submit comments (Technical Review)

# Participating in the Factual Investigation Phase

- Select a highly qualified employee with technical expertise to serve as party representatives
- Keep a log of all submitted documents
- Identify proprietary or trade secret information and protect it is from FOIA disclosure
- Participate fully in the investigation:
  - Group chairmen meetings
  - Witness interviews
  - Field notes and draft factual reports
  - Raise any concerns to the group chairman
  - Ensure all relevant documentation is included in the Docket

# Can Counsel Assist Me? YES!

- Can represent employees in interviews 49 C.F.R. § 831.7(a)

(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).

- Given criminal/civil consequence, interviewees must be ready/represented
- Confidentiality issues
- Information/document requests

# NTSB Document Requests

- "... an NTSB investigator may—
  - [i]nspect, photograph, or copy any records or information ... and correspondence regardless of the date of their creation or modification, for the purpose of investigating an accident"  
49 C.F.R. § 831.9(a)(5)
- Retain the original records

# Mark Confidential

- Documents produced to NTSB should be stamped “Trade Secret and/or Confidential Commercial Information” to ensure that proprietary information is protected
- The confidential designation can be retracted later. See 49 CFR§ 831.6(c):  
*“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.”*

# It Is Never Over

- NTSB investigations are technically never closed
- Petitions for Reconsideration (PfR): A party or other person having a direct interest in the investigation may submit a PfR based on the discovery of new evidence or on a showing that the Board's findings are erroneous (See 49 C.F.R. §845.32)



# Federal Aviation Administration, Department of Transportation

14 C.F.R. Part 13

# Why is the FAA here?

## 14 C.F.R. § 13.3 Investigations (general)

- a) The Administrator may conduct investigations; hold hearings; issue subpoenas; require the production of relevant documents, records, and property; and take evidence and depositions.
- b) The Administrator has delegated the authority to conduct investigations to the various services and offices for matters within their respective areas.
- c) The Administrator delegates to the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement the authority to....

# FAA – Office of Investigations and Professional Responsibility

On April 11, 2023, FAA announced the establishment of the “Office of Investigations and Professional Responsibility”:

“We protect the national airspace system (NAS) and the flying public by initiating and conducting administrative investigations and special inquiries on FAA employees and contractors suspected of violating various FAA orders, regulations and policy. We also research, coordinate and establish policy and standards for investigations, as well as conduct technical investigations and manage the Agency's Insider Threat, Defensive Counter-Intelligence, International Travel Security, Cyber Counter-Intelligence, e-Discovery and the Digital Forensics programs.”

See Federal Aviation Administration, <https://www.faa.gov/newsroom/faa-establishes-office-investigations-and-professional-responsibility>;

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/ash/ash\\_offices#Office%20of%20Investigations](https://www.faa.gov/about/office_org/headquarters_offices/ash/ash_offices#Office%20of%20Investigations).

# What Can the FAA Investigate?

**The FAA may conduct investigations to determine involvement in the following examples** (See FAA Order 8020.11D):

- (1) Performance of FAA facilities or functions
- (2) Performance of non-FAA owned and operated air traffic control (ATC) facilities or navigational aids
- (3) Airworthiness of FAA-certificated aircraft
- (4) Competency of FAA-certificated airmen, air agencies, commercial operators, or air carriers
- (5) Adequacy of Federal Aviation Regulations
- (6) Airport certification safety standards or operations
- (7) Security standards or operations and/or hazardous materials
- (8) Airman medical qualifications
- (9) Violation of Federal Aviation Regulations

# What Can the FAA Investigate?

## **14 C.F.R. § 13.7 Records, documents, and reports.**

Each record, document, and report that FAA regulations require to be maintained, exhibited, or submitted to the Administrator may be used in any investigation conducted by the Administrator; and, except to the extent the use may be specifically limited or prohibited by the section which imposes the requirement, the records, documents, and reports may be used in any civil penalty action, certificate action, or other legal proceeding.

# Questions?

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