

National Transportation Safety Board

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§ 831.13 Flow and dissemination of accident information.

(a) Release of information during the field investigation, particularly at the accident scene, shall be limited to factual developments, and shall be made only through the Board Member present at the accident scene, the representative of the Board's Office of Public Affairs, or the investigator-in-charge.

(b) All information concerning the accident or incident obtained by any personnel participating in the field investigation shall be passed to the investigator-in-charge, through appropriate channels. Upon approval of the investigator-in-charge, parties to the investigation may relay to their respective organization information which is necessary for purposes of prevention or remedial action. Under no circumstances shall accident information be released to, or discussed with, unauthorized persons whose knowledge thereof might adversely affect the investigation.

§ 831.14 Proposed findings.

Any person, Government agency, company, or association whose employees, functions, activities, or products were involved in an accident under investigation may submit to the Board, prior to its consideration of probable cause, proposed findings to be drawn from the evidence produced during the course of the accident investigation, a proposed probable cause, and proposed safety recommendations designed to prevent future accidents.

PART 835—TESTIMONY OF BOARD EMPLOYEES

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AUTHORITY: 5 U.S.C. 301; 49 U.S.C. 1441; and 49 U.S.C. 1901 *et seq.*

SOURCE: 55 FR 41541, Oct. 12, 1990, unless otherwise noted.

§ 835.1 Purpose.

This part prescribes the policies and procedures regarding the testimony of employees of the National Transportation Safety Board (Board) in suits or actions for damages and criminal proceedings arising out of transportation accidents. The purpose of this part is to ensure that the time of Board employees is used only for official purposes, to avoid embroiling the Board in controversial issues that are not related to its duties, to avoid spending public funds for non-Board purposes, to preserve the impartiality of the Board, and to prohibit the discovery of opinion testimony.

§ 835.2 Definitions.

Accident for purposes of this part includes "incident."

Board's accident report means the report containing the Board's determinations, including the probable cause of an accident, issued either as a narrative report or in a computer format (briefs of accidents). Pursuant to section 701(e) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1441(e)) (FA Act) and section 304(c) of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(c)) (Safety Act), no part of these reports may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such reports.

Factual accident report means an investigator's report of his investigation of the accident.

§ 835.3 Scope of permissible testimony.

(a) Section 701(e) of the FA Act and section 304(c) of the Safety Act preclude the use or admission into evidence of Board accident reports in any suit or action for damages arising from accidents. These sections reflect Congress' "strong * * * desire to keep the Board free of the entanglement of such suits." Rep. No. 93-1192, 93d Cong., 2d Sess., 44 (1974), and serve to ensure that the Board does not exert an undue influence on litigation. The purposes of these sections would be defeated if expert opinion testimony of Board employees, which may be reflected in the

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views of the Board expressed in its reports, were admitted in evidence or used in litigation arising out of an accident. The Board relies heavily upon its investigators' opinions in its deliberations. Furthermore, the use of Board employees as experts to give opinion testimony would impose a significant administrative burden on the Board's investigative staff. Litigants must obtain their expert witnesses from other sources.

(b) For the reasons stated in paragraph (a) of this section and §835.1, Board employees may only testify as to the factual information they obtained during the course of an investigation, including factual evaluations embodied in their factual accident reports. However, they shall decline to testify regarding matters beyond the scope of their investigation, and they shall not give any expert or opinion testimony.

§835.4 Use of reports.

(a) A Board employee may use a copy of his factual accident report as a testimonial aid, and may refer to that report during his testimony or use it to refresh his memory.

(b) Consistent with section 701(e) of the FA Act and section 304(c) of the Safety Act, a Board employee may not use the Board's accident report for any purpose during his testimony.

§835.5 Manner in which testimony is given.

(a) Testimony of Board employees may be made available for use in actions or suits for damages arising out of accidents through depositions or written interrogatories. Board employees are not permitted to appear and testify in court in such actions.

(b) Normally, depositions will be taken and interrogatories answered at the Board's office to which the employee is assigned, and at a time arranged with the employee reasonably fixed to avoid substantial interference with the performance of his duties.

(c) Board employees are authorized to testify only once in connection with any investigation they have made of an accident. Consequently, when more than one lawsuit arises as a result of an accident, it shall be the duty of counsel seeking the employee's deposi-

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tion to ascertain the identity of all parties to the multiple lawsuits and their counsel, and to advise them of the fact that a deposition has been granted, so that all interested parties may be afforded the opportunity to participate therein.

(d) Upon completion of the deposition of a Board employee, a copy of the transcript of the testimony will be furnished, at the expense of the party requesting the desposition, to the Board's Counsel for the Board files.

§835.6 Request for testimony.

(a) A request for testimony of a Board employee relating to an accident by deposition or interrogatories shall be addressed to the General Counsel, who may approve or deny the request. Such request shall set forth the title of the case, the court, the type of accident (aviation, railroad, etc.), the date and place of the accident, the reasons for desiring the testimony, and a showing that the information desired is not reasonably available from other sources.

(b) The General Counsel shall attach to his approval such reasonable conditions as he may deem appropriate in order that the testimony will be limited to the matters delineated in §835.3, will not interfere with the performance of the duties of the employees as set forth in §835.5, and will otherwise conform to the policies of this part.

(c) A subpoena shall not be served upon a Board employee in connection with the taking of his deposition.

§835.7 Testimony of former Board employees.

It is not necessary to request Board approval for testimony of a former Board employee. However, the scope of testimony of former Board employees is limited to the matters delineated in §835.3, and use of reports as prescribed by §835.4.

§835.8 Procedure in the event of a subpoena.

(a) If a Board employee has received a subpoena to appear and testify, a request for his deposition shall not be approved until the subpoena has been withdrawn.

(b) Upon receipt of a subpoena, the employee shall immediately notify the General Counsel and provide the data identifying the accident; the title of the case, the name of the judge, if available, and the title and address of the court; the type of accident (aviation, railroad, etc.); the date on which the employee is directed to appear; the name, address, and telephone number, if available, of the attorney representing the party who caused the issuance of the subpoena; the scope of the testimony, if known; and a statement as to whether a prior deposition on the same accident has been given.

(c) The General Counsel shall determine the course of action to be taken and will so advise the employee.

§835.9 Testimony in State or local investigations.

Board employees may testify at a coroner's inquest, grand jury, or criminal proceeding conducted by a State of local government. Testimony shall be limited to the matters delineated in §835.3.

PART 840—RULES PERTAINING TO NOTIFICATION OF RAILROAD ACCIDENTS

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AUTHORITY: Sec. 304(a)(1)(c), Independent Safety Board Act of 1974, as amended (49 U.S.C. 1903).

§840.1 Applicability.

This part contains the Safety Board's accident notification requirements, and its authority for inspection, examination, and testing of physical evidence, and describes the exercise of the Safety Board's priority accorded to its activities when investigating railroad accidents.

[47 FR 49408, Nov. 1, 1982]

§840.2 Definitions.

As used in this part, the following words or phrases are defined as follows:

(a) *Railroad* means any system of surface transportation of persons or property over rails. It includes, but is not limited to, line-haul freight and passenger-carrying railroads, and rapid transit, commuter, scenic, subway, and elevated railways.

(b) *Accident* means any collision, derailment, or explosion involving railroad trains, locomotives, and cars; or any other loss-causing event involving the operation of such railroad equipment that results in a fatality to a passenger or employee, or the emergency evacuation of persons.

(c) *Joint operations* means rail operations conducted on a track used jointly or in common by two or more railroads subject to this part, or operation of a train, locomotive, or car by one railroad over the track of another railroad.

(d) *Fatality* means the death of a person either at the time an accident occurs or within 24 hours thereafter.

[41 FR 13925, Apr. 1, 1976, as amended at 47 FR 49408, Nov. 1, 1982]

§840.3 Notification of railroad accidents.

The operator of a railroad shall notify the Board by telephoning the National Response Center at telephone 800-424-0201 at the earliest practicable time after the occurrence of any one of the following railroad accidents:

(a) No later than 2 hours after an accident which results in:

(1) A passenger or employee fatality or serious injury to two or more crewmembers or passengers requiring admission to a hospital;

(2) The evacuation of a passenger train;

(3) Damage to a tank car or container resulting in release of hazardous materials or involving evacuation of the general public; or

(4) A fatality at a grade crossing.

(b) No later than 4 hours after an accident which does not involve any of the circumstances enumerated in paragraph (a) of this section but which results in:

(1) Damage (based on a preliminary gross estimate) of \$150,000 or more for