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§ 837.3 Published reports, material contained in the public accident investigation dockets, and accident database data.

(a) Demands for material contained in the NTSB's official public docket files of its accident investigations, or its computerized accident database(s) shall be submitted, in writing, to the Public Inquiries Branch. Demands for specific published reports and studies should be submitted to the National Technical Information Service. The Board does not maintain stock of these items. Demands for information collected in particular accident investigations and made a part of the public docket should be submitted to the Public Inquiries Branch or, directly, to our contractor. For information regarding the types of documents routinely issued by the Board, see 49 CFR part 801.

(b) No subpoena shall be issued to obtain materials subject to this paragraph, and any subpoena issued shall be required to be withdrawn prior to release of the requested information. Payment of reproduction fees may be required in advance.

§ 837.4 Other material.

(a) *Production prohibited unless approved.* Except in the case of the material referenced in § 837.3, no employee or former employee of NTSB shall, in response to a demand of a private litigant, court, or other authority, produce any material contained in the files of the NTSB (whether or not agency records under 5 U.S.C. 552) or produce any material acquired as part of the performance of the person's official duties or because of the person's official status, without the prior written approval of the General Counsel.

(b) *Procedures to be followed for the production of material under this paragraph.*

(1) All demands for material shall be submitted to the General Counsel at NTSB headquarters, Washington, DC 20594. If an employee receives a demand, he shall forward it immediately to the General Counsel.

(2) Each demand must contain an affidavit by the party seeking the material or his attorney setting forth the material sought and its relevance to

the proceeding, and containing a certification, with support, that the information is not available from other sources, including Board materials described in §§ 837.3 and part 801 of this chapter.

(3) In the absence of General Counsel approval of a demand, the employee is not authorized to comply with the demand.

(4) The General Counsel shall advise the requester of approval or denial of the demand, and may attach whatever conditions to approval considered appropriate or necessary to promote the purposes of this part. The General Counsel may also permit exceptions to any requirement in this part when necessary to prevent a miscarriage of justice, or when the exception is in the best interests of the NTSB and/or the United States.

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

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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 repairs, or the current replacement cost, to railroad and nonrailroad property; or

(2) Damage of \$25,000 or more to a passenger train and railroad and non-railroad property.

(c) Accidents involving joint operations must be reported by the railroad

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that controls the track and directs the movement of trains where the accident has occurred.

(d) Where an accident for which notification is required by paragraph (a) or (b) of this section occurs in a remote area, the time limits set forth in that paragraph shall commence from the time the first railroad employee who was not at the accident site at the time of its occurrence has received notice thereof.

[53 FR 49152, Dec. 6, 1988]

§ 840.4 Information to be given in notification.

The notice required by § 840.3 shall include the following information:

(a) Name and title of person reporting.

(b) Name of railroad.

(c) Location of accident (relate to nearest city).

(d) Time and date of accident.

(e) Description of accident.

(f) Casualties:

(1) Fatalities.

(2) Injuries.

(g) Property damage (estimate).

(h) Name and telephone number of person from whom additional information may be obtained.

[41 FR 13925, Apr. 1, 1976]

§ 840.5 Inspection, examination and testing of physical evidence.

(a) Any employee of the Safety Board, upon presenting appropriate credentials is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things necessary for proper investigation, including examination or testing of any vehicle, rolling stock, track, or any part of any part of any such item when such examination or testing is determined to be required for purposes of such investigation.

(b) Any examination or testing shall be conducted in such a manner so as not to interfere with or obstruct unnecessarily the transportation services provided by the owner or operator of such vehicle, rolling stock, or track, and shall be conducted in such a manner so as to preserve, to the maximum extent feasible, any evidence relating

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to the transportation accident, consistent with the needs of the investigation and with the cooperation of such owner or operator. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such accident. Each inspection shall be commenced and completed promptly and the results of such inspection, examination, or test made available to the parties.

[47 FR 49408, Nov. 1, 1982]

§ 840.6 Priority of Board investigations.

Any investigation of an accident conducted by the Safety Board shall have priority over all other investigations of such accident conducted by other Federal agencies. The Safety Board shall provide for the appropriate participation by other Federal agencies in any such investigation, except that such agencies may not participate in the Safety Board's determination of the probable cause of the accident. Nothing in this section impairs the authority of other Federal agencies to conduct investigations of an accident under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, the transportation accident. The Safety Board and other Federal agencies shall assure that appropriate information obtained or developed in the course of their investigations is exchanged in a timely manner.

[47 FR 49408, Nov. 1, 1982]

PART 845—RULES OF PRACTICE IN TRANSPORTATION; ACCIDENT/INCIDENT HEARINGS AND REPORTS

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AUTHORITY: Title VII, Federal Aviation Act of 1958, as amended (49 U.S.C. 1441 *et seq.*); and the Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 (49 U.S.C. 1901 *et seq.*).

SOURCE: 44 FR 34419, June 14, 1979, unless otherwise noted.

§ 845.1 Applicability.

Unless otherwise specifically ordered by the National Transportation Safety Board (Board), the provisions of this part shall govern all transportation accident investigation hearings conducted under the authority of section 304(b) of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(b)) and accident reports issued by the Board.

§ 845.2 Nature of hearing.

Transportation accident hearings are convened to assist the Board in determining cause or probable cause of an accident, in reporting the facts, conditions, and circumstances of the accident, and in ascertaining measures which will tend to prevent accidents and promote transportation safety. Such hearings are factfinding proceedings with no formal issues and no adverse parties and are not subject to the provisions of the Administrative Procedure Act (Pub. L. 89-554, 80 Stat. 384 (5 U.S.C. 554)).

[44 FR 34419, June 14, 1979; 44 FR 39181, July 5, 1979]