

SUBCHAPTER G—NATIONAL CONSTRUCTION SAFETY TEAMS

PART 270—NATIONAL CONSTRUCTION SAFETY TEAMS

Subpart A—General

Sec.

270.1 Description of rule; purpose; applicability.

270.2 Definitions used in this part.

Subpart B—Establishment and Deployment of Teams

270.100 General.

270.101 Preliminary reconnaissance.

270.102 Conditions for establishment and deployment of a Team.

270.103 Publication in the FEDERAL REGISTER.

270.104 Size and composition of a Team.

270.105 Duties of a Team.

270.106 Conflicts of interest related to service on a team.

Subpart C—Investigations

270.200 Technical conduct of investigation.

270.201 Priority of investigation.

270.202 Coordination with search and rescue efforts.

270.203 Coordination with Federal, State, and local entities.

270.204 Provision of additional resources and services needed by a team.

270.205 Reports.

270.206 Public briefings and requests for information.

Subpart D—Collection and Preservation of Evidence; Information Created Pursuant to an Investigation; and Protection of Information

270.300 Scope.

270.301 Policy.

COLLECTION OF EVIDENCE

270.310 Evidence collected by investigation participants who are not NIST employees.

270.311 Collection of evidence.

270.312 Voluntary submission of evidence.

270.313 Requests for evidence.

270.314 Negotiations.

270.315 Subpoenas.

270.316 Public hearings.

ENTRY AND INSPECTION

270.320 Entry and inspection of site where a building failure has occurred.

270.321 Entry and inspection of property where building components, materials,

artifacts, and records with respect to a building failure are located.

270.322 Voluntary permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

270.323 Requests for permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

270.324 Negotiations.

270.325 Notice of authority to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

PRESERVATION OF EVIDENCE

270.330 Moving and preserving evidence.

INFORMATION CREATED PURSUANT TO AN INVESTIGATION

270.340 Information created by investigation participants who are not NIST employees.

PROTECTION OF INFORMATION

270.350 Freedom of Information Act.

270.351 Protection of voluntarily submitted information.

270.352 Public safety information

AUTHORITY: Pub. L. 107-231, 116 Stat. 1471 (15 U.S.C. 7301 *et seq.*).

SOURCE: 68 FR 4694, Jan. 30, 2003, unless otherwise noted.

Subpart A—General

§ 270.1 Description of rule; purpose; applicability.

(a) The National Construction Safety Team Act (the Act) (Pub. L. 107-231) provides for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life.

(b)(1) The purpose of the Act is to provide for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted

in substantial loss of life or that posed significant potential of substantial loss of life. The role of NIST in implementing the Act is to understand the factors contributing to the building failure and to develop recommendations for improving national building and fire model codes, standards, and practices. To do this, the Teams produce technical reports containing data, findings, and recommendations for consideration by private sector bodies responsible for the affected national building and fire model code, standard, or practice. While NIST is an active participant in many of these organizations, NIST's recommendations are one of many factors considered by these bodies. NIST is not now and will not become a participant in the processes and adoption of practices, standards, or codes by state or local regulatory authorities.

(2) It is not NIST's role to determine whether a failed building resulted from a criminal act, violated any applicable federal requirements or state or local code or regulatory requirements, or to determine any culpability associated therewith. These are matters for other federal, state, or local authorities, who enforce their regulations.

(c) This part is applicable to the establishment and deployment of Teams and the conduct of investigations under the Act.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 66704, Nov. 28, 2003; 69 FR 33571, June 16, 2004]

§ 270.2 Definitions used in this part.

The following definitions are applicable to this part:

Act. The National Construction Safety Team Act (Pub. L. 107-231, 116 Stat. 1471).

Advisory Committee. The National Construction Safety Team Advisory Committee.

Credentials. Credentials issued by the Director, identifying a person as a member of a National Construction Safety Team, including photo identification and other materials, including badges, deemed appropriate by the Director.

Director. The Director of the National Institute of Standards and Technology.

Evidence. Any document, record, book, artifact, building component, material, witness testimony, or physical evidence collected pursuant to an investigation.

General Counsel. The General Counsel of the U.S. Department of Commerce.

Investigation participant. Any person participating in an investigation under the Act, including all Team members, other NIST employees participating in the investigation, private sector experts, university experts, representatives of professional organizations, employees of other Federal, state, or local government entities, and other contractors.

Lead Investigator. A Team member who is a NIST employee and is designated by the Director to lead a Team.

NIST. The National Institute of Standards and Technology.

Team. A team established by the Director and deployed to conduct an investigation under the Act.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 66704, Nov. 28, 2003]

Subpart B—Establishment and Deployment of Teams

SOURCE: 68 FR 66704, Nov. 28, 2003, unless otherwise noted.

§ 270.100 General.

(a) Based on prior NIST experience, NIST expects that the Director will establish and deploy a Team to conduct an investigation at a frequency of approximately once per year or less.

(b) For purposes of this part, a building failure may involve one or more of the following: structural system, fire protection (active or passive) system, air-handling system, and building control system. Teams established under the Act and this part will investigate these technical causes of building failures and will also investigate the technical aspects of evacuation and emergency response procedures, including multiple-occupant behavior or evacuation (egress or access) system, emergency response system, and emergency communication system.

(c) For purposes of this part, the number of fatalities considered to be

§ 270.101

“substantial” will depend on the nature of the event, its impact, its unusual or unforeseen character, historical norms, and other pertinent factors.

[68 FR 66704, Nov. 28, 2003, as amended at 69 FR 33571, June 16, 2004]

§ 270.101 Preliminary reconnaissance.

(a) To the extent the Director deems it appropriate, the Director may conduct a preliminary reconnaissance at the site of a building failure. The Director may establish and deploy a Team to conduct the preliminary reconnaissance, as described in § 270.102 of this subpart, or may have information gathered at the site of a building failure without establishing a Team.

(b) If the Director establishes and deploys a Team to conduct the preliminary reconnaissance, the Team shall perform all duties pursuant to section 2(b)(2) of the Act, and may perform all activities that Teams are authorized to perform under the Act and these procedures, including gathering and preserving evidence. At the completion of the preliminary reconnaissance, the Team will report its findings to the Director in a timely manner. The Director may either determine that the Team should conduct further investigation, or may direct the Team to prepare its public report immediately.

(c) If the preliminary reconnaissance is conducted without the establishment of a Team, the leader of the initial assessment will report his/her findings to the Director in a timely manner. The Director will decide whether to establish a Team and conduct an investigation using the criteria established in § 270.102 of this subpart.

§ 270.102 Conditions for establishment and deployment of a Team.

(a) The Director may establish a Team for deployment after an event that caused the failure of a building or buildings that resulted in substantial loss of life or posed significant potential for substantial loss of life. The Director will determine the following prior to deploying a Team:

(1) The event was any of the following:

(i) A major failure of one or more buildings or types of buildings due to

15 CFR Subtitle B, Ch. II (1–1–06 Edition)

an extreme natural event (earthquake, hurricane, tornado, flood, etc.);

(ii) A fire that resulted in a building failure of the building of origin and/or spread beyond the building of origin.

(iii) A major building failure at significantly less than its design basis, during construction, or while in active use; or

(iv) An act of terrorism or other event resulting in a Presidential declaration of disaster and activation of the National Response Plan; and

(2) A fact-finding investigation of the building performance and emergency response and evacuation procedures will likely result in significant and new knowledge or building code revision recommendations needed to reduce or mitigate public risk and economic losses from future building failures.

(b) In making the determinations pursuant to paragraph (a) of this section, the Director will consider the following:

(1) Whether sufficient financial and personnel resources are available to conduct an investigation; and

(2) Whether an investigation of the building failure warrants the advanced capabilities and experiences of a Team; and

(3) If the technical cause of the failure is readily apparent, whether an investigation is likely to result in relevant knowledge other than reaffirmation of the technical cause; and

(4) Whether deployment of a Team will substantially duplicate local or state resources equal in investigatory and analytical capability and quality to a Team; and

(5) Recommendations resulting from a preliminary reconnaissance of the site of the building failure.

(c) To the maximum extent practicable, the Director will establish and deploy a Team within 48 hours after such an event.

[68 FR 66704, Nov. 28, 2003, as amended at 69 FR 33571, June 16, 2004]

§ 270.103 Publication in the Federal Register.

The Director will promptly publish in the FEDERAL REGISTER notice of the establishment of each Team.

§ 270.104 Size and composition of a team.

(a) *Size of a Team.* The size of a Team will depend upon the likely scope and complexity of the investigation. A Team may consist of five or less members if the investigation is narrowly focused, or a Team may consist of twenty or more members divided into groups if the breadth of the investigation spans a number of technical issues. In addition, Teams may be supported by others at NIST, in other federal agencies, and in the private sector, who may conduct supporting experiments, analysis, interviews witnesses, and/or examine the response of first responders, occupants, etc.

(b) *Composition of a Team.* (1) A Team will be composed of individuals selected by the Director and led by a Lead Investigator designated by the Director.

(2) The Lead Investigator will be a NIST employee, selected based on his/her technical qualifications, ability to mobilize and lead a multi-disciplinary investigative team, and ability to deal with sensitive issues and the media.

(3) Team members will include at least one employee of NIST and will include experts who are not employees of NIST, who may include private sector experts, university experts, representatives of professional organizations with appropriate expertise, and appropriate Federal, State, or local officials.

(4) Team members who are not Federal employees will be Federal Government contractors.

(5) Teams may include members who are experts in one or more of the following disciplines: civil, structural, mechanical, electrical, fire, forensic, safety, architectural, and materials engineering, and specialists in emergency response, human behavior, and evacuation.

(c) *Duration of a Team.* A Team's term will end 3 months after the Team's final public report is published, but the term may be extended or terminated earlier by the Director.

[68 FR 66704, Nov. 28, 2003, as amended at 69 FR 33571, June 16, 2004]

§ 270.105 Duties of a Team.

(a) A Team's Lead Investigator will organize, conduct, and control all technical aspects of the investigation, up to and including the completion of the final investigation public report and any subsequent actions that may be required. The Lead Investigator has the responsibility and authority to supervise and coordinate all resources and activities of NIST personnel involved in the investigation. The Lead Investigator may be the Contracting Officer's Technical Representative (COTR) on any contract for service on the Team or in support of the Team; while the COTR remains the technical representative of the Contracting Officer for purposes of contract administration, the Lead Investigator will oversee all NIST personnel acting as COTRs for contracts for service on the Team or in support of the Team. The Lead Investigator's duties will terminate upon termination of the Team. The Lead Investigator will keep the Director and the NCST Advisory Committee informed about the status of investigations.

(b) A Team will:

(1) Establish the likely technical cause or causes of the building failure;

(2) Evaluate the technical aspects of evacuation and emergency response procedures;

(3) Recommend, as necessary, specific improvements to building standards, codes, and practices based on the findings made pursuant to paragraphs (b)(1) and (b)(2) of this section;

(4) Recommend any research and other appropriate actions needed to improve the structural safety of buildings, and improve evacuation and emergency response procedures, based on the findings of the investigation; and

(5) Not later than 90 days after completing an investigation, issue a public report in accordance with § 270.205 of this subpart.

(c) In performing these duties, a Team will:

(1) Not interfere unnecessarily with services provided by the owner or operator of the buildings, building components, materials, artifacts, property, records, or facility;

§ 270.106

(2) Preserve evidence related to the building failure consistent with the ongoing needs of the investigation;

(3) Preserve evidence related to a criminal act that may have caused the building failure;

(4) Not impede and coordinate its investigation with any search and rescue efforts being undertaken at the site of the building failure;

(5) Coordinate its investigation with qualified researchers who are conducting engineering or scientific research (including social science) relating to the building failure;

(6) Cooperate with State and local authorities carrying out any activities related to a Team's investigation;

(d) In performing these duties, in a manner consistent with the procedures set forth in this part, a Team may:

(1) Enter property where a building failure being investigated has occurred and take necessary, appropriate, and reasonable action to carry out the duties described in paragraph (b) of this section;

(2) Inspect any record, process, or facility related to the investigation during reasonable hours;

(3) Inspect and test any building components, materials, and artifacts related to the building failure; and

(4) Move records, components, materials, and artifacts related to the building failure.

§ 270.106 Conflicts of interest related to service on a Team.

(a) Team members who are not Federal employees will be Federal Government contractors.

(b) Contracts between NIST and Team members will include appropriate provisions to ensure that potential conflicts of interest that arise prior to award or during the contract are identified and resolved.

Subpart C—Investigations

SOURCE: 68 FR 66704, Nov. 28, 2003, unless otherwise noted.

§ 270.200 Technical conduct of investigation.

(a) *Preliminary reconnaissance.* (1) An initial assessment of the event, including an initial site reconnaissance, if

15 CFR Subtitle B, Ch. II (1–1–06 Edition)

deemed appropriate by the Director, will be conducted. This assessment will be done within a few hours of the event, if possible. The Director may establish and deploy a Team to conduct the preliminary reconnaissance, using the criteria established in § 270.102 of this part, or may have information gathered at the site of a building failure without establishing a Team.

(2) If the Director establishes and deploys a Team to conduct the preliminary reconnaissance, the Team shall perform all duties pursuant to section 2(b)(2) of the Act, and may perform all activities that Teams are authorized to perform under the Act and these procedures, with a focus on gathering and preserving evidence, inspecting the site of the building failure, and interviewing of eyewitnesses, survivors, and first responders. Collections of evidence by a Team established for preliminary reconnaissance are investigatory in nature and will not be considered research for any purpose. At the completion of the preliminary reconnaissance, the Team will report its findings to the Director in a timely manner. The Director may either determine that the Team should conduct further investigation, or may direct the Team to immediately prepare the public report as required by section 8 of the Act.

(3) If the preliminary reconnaissance is conducted without the establishment of a Team, the leader of the initial assessment will report his/her findings to the Director in a timely manner. The Director will decide whether to establish a team and conduct an investigation using the criteria established in § 270.102 of this part.

(b) *Investigation plan.* (1) If the Director establishes a Team without ordering preliminary reconnaissance, establishes a Team after preliminary reconnaissance, or establishes a Team to conduct preliminary reconnaissance and subsequently determines that further investigation is necessary prior to preparing the public report required by section 8 of the Act, the Director, or his/her designee, will formulate a plan that includes:

(i) A brief description of the building failure;

(ii) The criteria upon which the decision to conduct the investigation was based;

(iii) Supporting effort(s) by other organizations either in place or expected in the future;

(iv) Identification of the Lead Investigator and Team members;

(v) The technical investigation plan;

(vi) Site, community, and local, state, and Federal agency liaison status; and

(vii) Estimated duration and cost.

(2) To the extent practicable, the Director will include the most appropriate expertise on each Team from within NIST, other government agencies, and the private sector. The NCST Advisory Committee may be convened as soon as feasible following the launch of an investigation to provide the Director the benefit of its advice on investigation Team activities.

(c) *Investigation.* (1) The duration of an investigation that proceeds beyond preliminary reconnaissance will be as little as a few months to as long as a few years depending on the complexity of the event.

(2) Tasks that may be completed during investigations that proceed beyond preliminary reconnaissance include:

(i) Consult with experts in building design and construction, fire protection engineering, emergency evacuation, and members of other investigation teams involved in the event to identify technical issues and major hypotheses requiring investigation.

(ii) Collect data from the building(s) owner and occupants, local authorities, and contractors and suppliers. Such data will include relevant building and fire protection documents, records, video and photographic data, field data, and data from interviews and other oral and written accounts from building occupants, emergency responders, and other witnesses.

(iii) Collect and analyze physical evidence, including material samples and other forensic evidence, to the extent they are available.

(iv) Determine the conditions in the building(s) prior to the event, which may include the materials of construction and contents; the location, size, and condition of all openings that may have affected egress, entry, and fire

conditions (if applicable); the installed security and/or fire protection systems (if applicable); the number of occupants and their approximate locations at the time of the event.

(v) Reconstruct the event within the building(s) using computer models to identify the most probable technical cause (or causes) of the failure and the uncertainty(ies) associated with it (them). Such models may include initial damage, blast effects, pre-existing deficiencies and phenomena such as fire spread, smoke movement, tenability, occupant behavior and response, evacuation issues, cooperation of security and fire protection systems, and building collapse.

(vi) Conduct small and full-scale experiments to provide additional data and verify the computer models being used.

(vii) Examine the impact of alternate building/system/equipment design and use on the survivability of the building and its occupants.

(viii) Analyze emergency evacuation and occupant responses to better understand the actions of the first responders and the impediments to safe egress encountered by the occupants.

(ix) Analyze the relevant building practices, including code adoption and enforcement practices, to determine the extent to which the circumstances that led to this building failure have regional or national implications.

(x) Identify specific areas in building and fire codes, standards, and building practices that may warrant revisions based on investigation findings.

(xi) Identify research and other appropriate actions required to help prevent future building failures.

(d) If a disaster site contains multiple building failures, the Director will narrow the scope of the investigation plan taking into account available financial and personnel resources, and giving priority to failures offering the most opportunity to advance the safety of building codes. The Director may consider the capabilities of NIST in establishing priorities.

[68 FR 66704, Nov. 28, 2003, as amended at 69 FR 33571, June 16, 2004]

§ 270.201

§ 270.201 Priority of investigation.

(a) *General.* Except as provided in this section, a Team investigation will have priority over any other investigation of any other Federal agency.

(b) *Criminal acts.* (1) If the Attorney General, in consultation with the Director, determines, and notifies the Director that circumstances reasonably indicate that the building failure being investigated by a Team may have been caused by a criminal act, the Team will relinquish investigative priority to the appropriate law enforcement agency.

(2) If a criminal investigation of the building failure being investigated by a Team is initiated at the state or local level, the Team will relinquish investigative priority to the appropriate law enforcement agency.

(3) The relinquishment of investigative priority by the Team will not otherwise affect the authority of the Team to continue its investigation under the Act.

(c) *National Transportation Safety Board.* If the National Transportation Safety Board is conducting an investigation related to an investigation of a Team, the National Transportation Safety Board investigation will have priority over the Team investigation. Such priority will not otherwise affect the authority of the Team to continue its investigation under the Act.

(d) Although NIST will share any evidence of criminal activity that it obtains in the course of an investigation under the Act with the appropriate law enforcement agency, NIST will not participate in the investigation of any potential criminal activity.

§ 270.202 Coordination with search and rescue efforts.

NIST will coordinate its investigation with any search and rescue or search and recovery efforts being undertaken at the site of the building failure, including FEMA urban search and rescue teams, local emergency management agencies, and local emergency response groups. Upon arrival at a disaster site, the Lead Investigator will identify the lead of the search and rescue operations and will work closely

15 CFR Subtitle B, Ch. II (1-1-06 Edition)

with that person to ensure coordination of efforts.

[68 FR 66704, Nov. 28, 2003, as amended at 69 FR 33571, June 16, 2004]

§ 270.203 Coordination with Federal, State, and local entities.

NIST will enter into Memoranda of Understanding with Federal, State, and local entities, as appropriate, to ensure the coordination of investigations.

§ 270.204 Provision of additional resources and services needed by a team.

The Director will determine the appropriate resources that a Team will require to carry out its investigation and will ensure that those resources are available to the Team.

§ 270.205 Reports.

(a) Not later than 90 days after completing an investigation, a Team shall issue a public report which includes:

(1) An analysis of the likely technical cause or causes of the building failure investigated;

(2) Any technical recommendations for changes to or the establishment of evacuation or emergency response procedures;

(3) Any recommended specific improvements to building standards, codes, and practices; and

(4) Recommendations for research and other appropriate actions needed to help prevent future building failures.

(b) A Team that is directed to prepare its public report immediately after conducting a preliminary reconnaissance will issue a public report not later than 90 days after completion of the preliminary reconnaissance. The public report will be in accordance with paragraph (a) of this section, but will be summary in nature.

(c) A Team that continues to conduct an investigation after conducting a preliminary reconnaissance will issue a public report not later than 90 days after completing the investigation in accordance with paragraph (a) of this section.

§ 270.206 Public briefings and requests for information.

(a) NIST will establish methods to provide updates to the public on its planning and progress of an investigation. Methods may include:

- (1) A public Web site;
- (2) Mailing lists, to include an emphasis on e-mail;
- (3) Semi-annual written progress reports;
- (4) Media briefings; and
- (5) Public meetings.

(b) Requests for information on the plans and conduct of an investigation should be submitted to the NIST Public and Business Affairs Division.

Subpart D—Collection and Preservation of Evidence; Information Created Pursuant to an Investigation; and Protection of Information**§ 270.300 Scope.**

During the course of an investigation conducted pursuant to the Act, evidence will be collected, and information will be created by the Team, NIST, and other investigation participants. This subpart sets forth the policy and procedures for the collection, preservation, and protection of evidence obtained and information created pursuant to an investigation.

§ 270.301 Policy.

Evidence collected and information created by Team members and all other investigation participants will be collected, preserved, and protected in accordance with the procedures set forth in this subpart.

COLLECTION OF EVIDENCE

§ 270.310 Evidence collected by investigation participants who are not NIST employees.

Upon receipt of evidence pursuant to an investigation under the Act, each investigation participant who is not a NIST employee shall:

- (a) As soon as practicable, transfer the original evidence to NIST, and retain a copy of the evidence only if necessary to carry out their duties under the investigation; and

(b) For any evidence that cannot reasonably be duplicated, retain the evidence in accordance with NIST procedures for preserving evidence as described in § 270.330 of this subpart, and upon completion of the duties for which retention of the evidence is necessary, transfer the evidence to NIST.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 24345, May 7, 2003]

§ 270.311 Collection of evidence.

(a) In the course of an investigation, evidence normally will be collected following the procedures described in §§ 270.312 through 270.315 of this subpart.

(b) Upon a written showing by the Lead Investigator of urgent and compelling reasons to believe that evidence may be destroyed, or that a witness may become unavailable, were the procedures described in §§ 270.312 through 270.314 of this subpart followed, the Director, with the concurrence of the General Counsel, may immediately issue a subpoena for such evidence or testimony, pursuant to § 270.315 of this subpart.

§ 270.312 Voluntary submission of evidence.

After the Director establishes and deploys a Team, members of the public are encouraged to voluntarily submit to the Team non-privileged evidence that is relevant to the subject matter of the pending investigation.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 24345, May 7, 2003]

§ 270.313 Requests for evidence.

(a) After the Director establishes and deploys a Team, the Lead Investigator, or their designee, may request the testimony of any person by deposition, upon oral examination or written questions, and may request documents or other physical evidence without seeking prior approval of the Director.

(b) Requests for responses to written questions will be made in writing and shall include:

- (1) A statement that the request is made to gather evidence necessary to an investigation being conducted under the Act;

§ 270.314

(2) Identification of the person whose responses are sought;

(3) Contact information for the person to whom the responses should be submitted;

(4) The date and time by which the responses are requested;

(5) A statement that the questions for which responses are sought are attached; and

(6) Contact information for the person to whom questions or problems regarding the request should be addressed.

(c) Requests for documents or other physical evidence will be made in writing and shall include:

(1) A statement that the request is made to gather evidence necessary to an investigation being conducted under the Act;

(2) A description of the documents or other physical evidence sought;

(3) Identification of the person or persons to whom the request is made;

(4) A request that each person to whom the request is directed produce and permit inspection and copying of the documents and physical evidence in the possession, custody, or control of that person at a specific time and place; and

(5) Contact information for the person to whom questions or problems regarding the request should be addressed.

(d) Requests for witness testimony will be made in writing and shall include:

(1) The name of the person whose testimony is requested;

(2) The date, time, and place of the deposition;

(3) A statement that the person whose testimony is requested may be accompanied by an attorney; and

(4) Contact information for the person to whom questions or problems regarding the request should be addressed.

(e) Collections of evidence under paragraphs (b), (c), and (d) of this section are investigatory in nature and will not be considered research for any purpose.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 66707, Nov. 28, 2003]

15 CFR Subtitle B, Ch. II (1-1-06 Edition)

§ 270.314 Negotiations.

The Lead Investigator may enter into discussions with appropriate parties to address problems identified with the submission of evidence requested pursuant to § 270.313 of this subpart. Should negotiations fail to result in the submission of such evidence, a subpoena may be issued pursuant to § 270.315.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 24345, May 7, 2003]

§ 270.315 Subpoenas.

(a) *General.* Subpoenas requiring the attendance of witnesses or the production of documentary or physical evidence for the purpose of taking depositions or at a hearing may be issued only under the signature of the Director with the concurrence of the General Counsel, but may be served by any person designated by the Counsel for NIST on behalf of the Director.

(b) *Determination whether to issue a subpoena.* In determining whether to issue a subpoena, the Director will consider the following factors:

(1) Whether the testimony, documentary, or physical evidence is required for an investigation being conducted pursuant to the Act;

(2) Whether the evidence sought is relevant to the purpose of the investigation;

(3) Whether NIST already has the evidence in its possession; and

(4) Whether the evidence required is described with specificity.

(c) *Contents of a subpoena.* A subpoena issued by the Director will contain the following:

(1) A statement that the subpoena is issued by the Director pursuant to section 5 of the Act;

(2) A description of the documents or physical evidence or the subject matter of the testimony required by the subpoena;

(3) A command that each person to whom it is directed attend and give testimony or produce and permit inspection and copying of designated books, documents or physical evidence in the possession, custody or control of that person at a time and place specified in the subpoena;

(4) A statement that any person whose testimony is required by the subpoena may be accompanied by an attorney; and

(5) The signature of the Director.

(d) *Service of a subpoena.* Service of a subpoena will be effected:

(1) By personal service upon the person or agent of the person whose testimony is required or who is in charge of the documentary or physical evidence required; or

(2) By certified mail, return receipt requested, or delivery to the last known residence or business address of such person or agent; or

(3) Where personal service, mailing, or delivery has been unsuccessful, service may also be effected by publication in the FEDERAL REGISTER.

(e) *Witness fees.* Witnesses will be entitled to the same fees and mileage as are paid to witnesses in the courts of the United States.

(f) *Failure to obey a subpoena.* If a person disobeys a subpoena issued by the Director under the Act, the Attorney General, acting on behalf of the Director, may bring civil action in a district court of the United States to enforce the subpoena. The court may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court.

[68 FR 4694, Jan. 30, 2003, as amended at 68 FR 24345, May 7, 2003; 68 FR 66707, Nov. 28, 2003]

§ 270.316 Public hearings.

(a) During the course of an investigation by a Team, if the Director considers it to be in the public interest, NIST may hold a public hearing for the purposes of gathering testimony from witnesses and informing the public on the progress of the investigation.

(b) Should NIST plan to hold a public hearing, NIST will publish a notice in the FEDERAL REGISTER, setting forth the date, time, and place of the hearing, and procedures for members of the public wishing to speak at the hearing. In addition, witnesses may be subpoenaed to provide testimony at a public hearing, in accordance with § 270.315 of this subpart.

(c) The Director, or his designee, will preside over any public hearing held pursuant to this section.

ENTRY AND INSPECTION

§ 270.320 Entry and inspection of site where a building failure has occurred.

When the Director establishes and deploys a Team, the Team members will be issued notices of inspection authority to enter and inspect the site where the building failure has occurred.

§ 270.321 Entry and inspection of property where building components, materials, artifacts, and records with respect to a building failure are located.

(a) In the course of an investigation, entry and inspection of property where building components, materials, artifacts and records with respect to a building failure are located normally will be conducted following the procedures described in §§ 270.322 through 270.325 of this subpart.

(b) Upon a written showing by the Lead Investigator of urgent and compelling reasons to believe that building components, materials, artifacts or records located on a particular property may be destroyed were the procedures described in §§ 270.322 through 270.324 of this subpart followed, the Director, with the concurrence of the General Counsel may immediately issue a notice of inspection authority for such property, pursuant to § 270.325 of this subpart.

§ 270.322 Voluntary permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

After the Director establishes and deploys a Team, members of the public are encouraged to voluntarily permit Team members to enter property where building components, materials, artifacts, and records with respect to the building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team.

§ 270.323

§ 270.323 Requests for permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

(a) After the Director establishes and deploys a Team, the Lead Investigator or their designee may request permission to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team.

(b) Requests for permission to enter and inspect such property will be made in writing and shall include:

(1) The name and title of the building owner, operator, or agent in charge of the building;

(2) If appropriate, the name of the building to be inspected;

(3) The address of the building to be inspected;

(4) The date and time of the inspection;

(5) If appropriate, a description of particular items to be inspected; and

(6) Contact information for the person to whom questions or problems regarding the request should be addressed.

§ 270.324 Negotiations.

The Lead Investigator may enter into discussions with appropriate parties to address problems identified with the goal of obtaining the permission requested pursuant to § 270.323 of this subpart.

§ 270.325 Notice of authority to enter and inspect property where building components, materials, artifacts, and records with respect to a building failure are located.

(a) *General.* In investigating a building failure pursuant to the Act, any member of a Team, or any other person authorized by the Director to support a Team, on display of written notice of inspection authority provided by the Director with concurrence of the General Counsel and appropriate credentials, may

(1) Enter property where a building failure being investigated has occurred, or where building components, mate-

15 CFR Subtitle B, Ch. II (1-1-06 Edition)

rials, and artifacts with respect to the building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected and to carry out the duties of the Team;

(2) During reasonable hours, inspect any record (including any design, construction, or maintenance record), process, or facility related to the investigation;

(3) Inspect and test any building components, materials, and artifacts related to the building failure; and

(4) Move any record, component, material and artifact as provided by this part.

(b) *Conduct of inspection, test, or other action.* An inspection, test, or other action taken by a Team pursuant to section 4 of the Act will be conducted in a way that does not interfere unnecessarily with services provided by the owner or operator of the building components, materials, or artifacts, property, records, process, or facility, and to the maximum extent feasible, preserves evidence related to the building failure, consistent with the ongoing needs of the investigation.

(c) *Determination whether to issue a notice of inspection authority.* In determining whether to issue a notice of inspection authority, the Director will consider whether the specific entry and inspection is reasonable and necessary for the Team to carry out its duties under the Act.

(d) *Notice of inspection authority.* Notice of inspection authority will be made in writing and shall include:

(1) A statement that the notice of inspection authority is issued pursuant to section 4 of the Act;

(2) The name and title of the building owner, operator, or agent in charge of the building;

(3) If appropriate, the name of the building to be inspected;

(4) The address of the building to be inspected;

(5) The date and time of the inspection;

(6) If appropriate, a description of particular items to be inspected; and

(7) The signature of the Director.

(e) *Refusal of entry on to property.* If upon being presented with a notice of inspection by any member of a Team,

or any other person authorized by the Director, the owner, operator, or agent in charge of the building or property being inspected refuses to allow entry or inspection, the Director may seek the assistance of the Department of Justice to obtain a warrant or other authorized judicial order enabling entry on to the property.

PRESERVATION OF EVIDENCE

§ 270.330 Moving and preserving evidence.

(a) A Team and NIST will take all necessary steps in moving and preserving evidence obtained during the course of an investigation under the Act to ensure that such evidence is preserved.

(b) In collecting and preserving evidence in the course of an investigation under the Act, a Team and NIST will:

(1) Maintain records to ensure that each piece of evidence is identified as to its source;

(2) Maintain and document an appropriate chain of custody for each piece of evidence;

(3) Use appropriate means to preserve each piece of evidence; and

(4) Ensure that each piece of evidence is kept in a suitably secure facility.

(c) If a Federal law enforcement agency suspects and notifies the Director that a building failure being investigated by a Team under the Act may have been caused by a criminal act, the Team, in consultation with the Federal law enforcement agency, will take necessary actions to ensure that evidence of the criminal act is preserved and that the original evidence or copies, as appropriate, are turned over to the appropriate law enforcement authorities.

INFORMATION CREATED PURSUANT TO AN INVESTIGATION

§ 270.340 Information created by investigation participants who are not NIST employees.

Unless requested sooner by the Lead Investigator, at the conclusion of an investigation, each investigation participant who is not a NIST employee shall transfer any original information they created pursuant to the investigation to NIST. An investigation partici-

pant may retain a copy of the information for their records but may not use the information for purposes other than the investigation, nor may they release, reproduce, distribute, or publish any information first developed pursuant to the investigation, nor authorize others to do so, without the written permission of the Director or their designee. Pursuant to 15 U.S.C. 281a, no such information may be admitted or used as evidence in any suit or action for damages arising out of any matter related to the investigation.

PROTECTION OF INFORMATION

§ 270.350 Freedom of Information Act.

As permitted by section 7(b) of the Act, the following information will not be released:

(a) Information described by section 552(b) of Title 5, United States Code, or protected from disclosure by any other law of the United States; and

(b) Copies of evidence collected, information created, or other investigation documents submitted or received by NIST, a Team, or any other investigation participant, until the final investigation report is issued.

§ 270.351 Protection of voluntarily submitted information.

Notwithstanding any other provision of law, a Team, NIST, any investigation participant, and any agency receiving information from a Team, NIST, or any other investigation participant, will not disclose voluntarily provided safety-related information if that information is not directly related to the building failure being investigated and the Director finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

Subch. H-I Public safety information.

A Team, NIST, and any other investigation participant will not publicly release any information it receives in the course of an investigation under the Act if the Director finds that the disclosure might jeopardize public safety.