



National Transportation Safety Board
Washington, DC 20594

Office of the Chairman

March 15, 2016

Lance M. Fritz
Chairman, President and Chief Executive Officer
Union Pacific Corporation and Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 6817960

Re: Investigation of a Collision of Two Union Pacific Freight Trains in Granger, WY, on
March 14, 2016

Dear Mr. Fritz:

This letter is a follow up to our telephone call regarding the investigative process and our expectations for party participants in our investigation of this accident. Thank you for speaking with my team and me regarding the National Transportation Safety Board (NTSB) investigation of this event. We look forward to maintaining close collaboration with, and assistance from, Union Pacific Corporation (UP) during the days and weeks ahead as we collect all evidence related to the accident. To ensure a productive working relationship, I thought it would be helpful to document some of the points we discussed during our telephone call.

The NTSB Investigator-in-Charge (IIC) for this accident is Mr. Jim Southworth. While on scene, Mr. Southworth may be reached on his cell phone at [REDACTED]. The IIC is responsible for organizing, conducting, controlling, and managing the field phase of the investigation and supervising and coordinating all resources and activities of NTSB and non-NTSB personnel involved in the investigation. The IIC continues to have considerable organizational and management responsibilities throughout later phases of the investigation. If you or other UP representatives have any questions or encounter any issues related to our investigative process, they should work with Mr. Southworth to resolve those questions or issues. If they are not able to reach agreement with the IIC, they may work with the director of the NTSB's Office of Rail, Pipeline and Hazardous Materials Investigations, Mr. Robert Hall, or his deputy director, Ms. Barbara Czech, and, if no resolution is reached, then escalate the issue to the NTSB Managing Director Thomas Zoeller.

The NTSB has designated UP as a formal party to the investigation, which means that its representatives on the investigative team will have full access to investigative information so that they may contribute their technical skills and expertise to our work to determine the facts and probable cause or causes of the accident. We appreciate UP's collaboration in the fact-

finding phase of the NTSB's investigation and particularly appreciate your commitment to ensuring that UP provides directly to the NTSB all available information and evidence in its possession concerning the accident. The NTSB requirements and guidance regarding our party process are enclosed.

The NTSB expects all party representatives to observe confidentiality rules. As specified in NTSB regulations, party representatives may not disclose any investigative information to anyone outside the investigation, including another company employee or officer, without the explicit approval of the IIC, Mr. Southworth. Records or documents that existed at the time of the accident, regardless of whether they are provided to NTSB in the course of the investigation, should not be considered investigative information for purposes of NTSB requirements.

The NTSB also encourages the implementation of immediate safety measures when they are necessary to prevent further accidents. We ask only that UP's representatives in the investigation notify the IIC before sharing any investigative information internally in your organization. Should UP wish to undertake an internal or external review or audit of its practices or circumstances related to the accident, please also coordinate those activities with Mr. Southworth. The NTSB will expect to receive a copy of the review or audit report and any underlying material developed by UP or any external organization. I appreciate your commitment to preventing any unauthorized use or disclosure of investigative information and to ensuring UP's employees do not publicly discuss any potential findings or speculate as to the likely probable cause or causes of the accident.

UP should coordinate release of information to the press with the NTSB Director of Public Affairs, Mr. Christopher O'Neil. In responding to press inquiries, UP may provide factual information that existed prior to the date of the accident. In providing any background information to the press, UP should refrain from analyzing or offering opinions as to the impact of this information on the accident.

We also recognize that UP may receive requests for information from numerous entities such as Members of Congress or their staffs, state or local elected officials, or the Federal Railroad Administration. The NTSB does not preclude parties from sharing information with the aforementioned entities when necessary. UP should not consider any of the NTSB rules regarding information sharing to prevent them from responding directly to any requests for information related to the accident from Congressional committees or Members' offices, state or local elected officials, law enforcement, and other governmental agencies that have authority to conduct oversight activities. We request that you notify the IIC upon receipt of any requests from those sources. In addition, we request that UP keep Mr. Steve Blackistone in our Government Affairs Office apprised of any Congressional or state or local elected official inquiries. Mr. Blackistone works with Members of Congress and Congressional staffs as well as other elected officials to ensure they are appropriately briefed about the progress of NTSB investigations and that they have access, as necessary, to NTSB investigative information. All the NTSB employees identified in this letter, including myself, can be reached through our 24/7 Response Operations Center at 202-314-6290.

The fact-gathering phase may continue for at least several months. We look forward to UP's active collaboration and participation in our work to gather facts and assemble evidence. The NTSB may elect to conduct an investigative hearing to gather additional information during the fact-gathering phase. Once they have gathered all relevant evidence, NTSB investigators will analyze the evidence and, ultimately, will present to the Board their conclusions as to the probable cause or causes of the accident. At that juncture, the Board will determine whether to adopt those conclusions in a final report on the accident.

In sum, the NTSB expects all party participants to follow our rules and procedures, and to act in good faith with a spirit of cooperation. NTSB accident investigations are non-adversarial proceedings aimed at determining probable cause and preventing future accidents. We expect all parties to work with us toward our mutual goals of fully understanding the circumstances of an accident and improving safety. We also encourage party organizations to counsel their employees associated with an NTSB investigation to follow NTSB instructions and to cooperate fully with NTSB investigators.

Again, I appreciate UP's cooperation in our investigation of the train accident yesterday in Granger, Wyoming. This letter will be placed in the public docket along with any future correspondence relating to the investigation.

We look forward to working with you and your team as our investigation proceeds.

Sincerely,

A handwritten signature in black ink that reads "Christopher A. Hart". The signature is written in a cursive style with a large, prominent initial "C".

Christopher A. Hart
Chairman

Enclosure



NTSB Investigation No. _____

Date of Accident: _____

Accident Location: _____

CERTIFICATION OF PARTY REPRESENTATIVE¹

I acknowledge that I am participating in the above-referenced accident or incident investigation, on behalf of my employer who has been named a party to the National Transportation Safety Board (NTSB) safety investigation, for the purpose of providing technical assistance to the NTSB's evidence documentation and fact-finding activities. I understand that as a party participant, I and my organization shall be responsive to the direction of NTSB personnel and may lose party status for conduct that is prejudicial to the investigation or inconsistent with NTSB policies or instructions. No information pertaining to the accident, or in any manner relevant to the investigation, may be withheld from the NTSB by any party or party participant.

I further acknowledge that I have familiarized myself with the attached copies of the NTSB Accident/Incident Investigation Procedures (49 C.F.R. Part 831) and "Information and Guidance for Parties to NTSB Accident and Incident Investigations," and will comply, and, if the party coordinator for my party, take all reasonable steps to ensure that the employees and participants of my organization comply, with these requirements.. This includes, but is not limited to, the provisions of 49 C.F.R. §§ 831.11 and 831.13, which, respectively, specify certain criteria for participation in NTSB investigations and limitations on the dissemination of investigation information.

No party coordinator or representative may occupy a legal position or be a person who also represents claimants or insurers. I certify that my participation is not on behalf of either claimants or insurers, and that, although factual information obtained as a result of participating in the NTSB investigation may ultimately be used in litigation (at the appropriate time, and in a manner that is not inconsistent with the provisions of 49 C.F.R. § 831.13 and 49 U.S.C. § 1154), my participation is to assist the NTSB safety investigation and not for the purposes of preparing for litigation. I also certify that, after the NTSB Investigator-in-Charge (IIC) releases the parties and party participants from the restrictions on dissemination of investigative information specified in 49 C.F.R. § 831.13, neither I nor my party's organization will in any way assert in civil litigation arising out of the accident any claim of privilege for information or records received as a result of my participation in the NTSB investigation.

Signature

Date

Name & Title

Party Organization/Employer

¹ In aviation investigations this form may also be referred to as "Statement of Party Representatives to NTSB Investigation."

**NATIONAL TRANSPORTATION SAFETY BOARD (NTSB)
WASHINGTON, D.C.**

**INFORMATION AND GUIDANCE FOR PARTIES
TO NTSB ACCIDENT AND INCIDENT INVESTIGATIONS**

I. Introduction

This guidance is intended to familiarize participants in NTSB accident and incident investigations with the NTSB investigative process, and the NTSB's expectations regarding the roles and responsibilities of organizations and individual employees of those organizations assigned to work in support of an NTSB investigation.

The Independent Safety Board Act of 1974, as amended, sets forth the powers and responsibilities of the NTSB, and all participants are encouraged to review its provisions. A recent compilation of these statutory provisions can be reviewed on the NTSB's website: http://www.nts.gov/alj/2003_Statute.PDF .

In addition, participants should be familiar with the NTSB's regulations governing accident and incident investigation procedures: 49 C.F.R. Part 831. These and other NTSB regulations can be viewed on the Government Printing Office's website: http://www.access.gpo.gov/nara/cfr/waisidx_06/49cfr831_06.html .

II. The NTSB and the Investigative Process

The NTSB is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant accidents in the other modes of transportation—railroad, highway, marine, pipeline and hazardous materials—and issuing an official determination regarding probable cause and, as appropriate, safety recommendations to prevent future accidents. The NTSB also investigates certain incidents that present significant safety issues. The NTSB strives to accurately identify and report all relevant facts, conditions, and circumstances relating to each accident or incident it investigates.

Safety recommendations are the most important product of an NTSB investigation. NTSB safety recommendations are based on findings of the investigation and may address deficiencies that do not pertain directly to what is ultimately determined to be the probable cause of the accident. The NTSB may issue safety recommendations before the completion of a specific investigation and may designate some recommendations as “urgent.”

For major accidents, the NTSB dispatches a "Go Team." The purpose of the NTSB Go Team is to deploy NTSB investigators to the accident scene as quickly as possible and assemble the broad spectrum of technical expertise that is needed to investigate complex transportation accidents.

The NTSB designates other organizations whose employees, functions, activities, or products were involved in the accident or incident as parties to the NTSB investigation to facilitate the rapid and complete acquisition of all relevant factual information. Except for the Federal Aviation Administration (FAA) and the Coast Guard, which by law are automatically designated a party to an NTSB investigation in their respective mode, the NTSB has complete discretion over which organizations it designates as parties to an investigation. Only those organizations that can provide technical expertise or knowledge to an NTSB investigation are granted party status, and only those persons who can provide the NTSB with needed technical expertise or specialized knowledge are permitted to participate in an investigation.

Parties, and party representatives or participants, to an NTSB investigation only participate directly in the fact-finding phase of an NTSB investigation. Although parties are encouraged to submit their own proposed findings and analysis regarding an accident, at the appropriate time, NTSB staff independently conducts its own analyses of the factual information developed during the investigation.

Persons occupying legal positions, pursuing litigation interests, or representing claimants or insurers, are not permitted to be involved in an NTSB investigation.

III. Role and Responsibilities of Parties to the Investigation

At the discretion of the investigator-in-charge (IIC), the NTSB may invite various qualified and interested organizations whose employees, functions, activities, or products were involved in the accident or incident, and who can provide suitable qualified technical personnel actively to assist in the investigation, to participate as parties to the fact-finding phase of the NTSB investigation. Participation as a party to an NTSB investigation is a privilege and confers no rights or benefits. The “party system” utilized by the NTSB to investigate accidents has been in use for decades, primarily because it is the most effective investigatory process for major transportation accidents. Parties are asked to participate in an NTSB investigation because the IIC believes they have unique knowledge or technical expertise, relevant to the investigation, that will assist NTSB staff in developing the most complete and accurate factual record. Only those party employees who have suitable and needed technical qualifications will be permitted to work on the NTSB investigation.

There are other, ancillary advantages to the “party system.” In addition to the synergistic and cooperative effects that arise from use of the “party system,” a collateral purpose is to ensure that, with appropriate coordination with the NTSB, responsible officials of party organizations whose products or services were involved in the accident or incident will have access to information necessary to expeditiously initiate any necessary preventive and/or corrective actions.

Parties and party participants may not withhold any information pertaining to the accident, or in any manner relevant to the investigation, from the NTSB.

Parties and party participants in the investigation shall be responsive to the direction of NTSB personnel and may lose party status if they conduct themselves in a manner prejudicial to the investigation or do not comply with NTSB instructions.

Each participating party will designate a party coordinator (spokesman) for its organization. The party coordinator will be the NTSB's direct and official point-of-contact for the party and should, therefore, be available to the IIC at all times during the on-scene investigation and periodically available on short notice during the post on-scene phase of the investigation. This party coordinator must have sufficient status and authority within his/her organization to effect a complete and timely response with minimal need for higher approval or coordination in response to a request of the IIC. During the on-scene phase of the investigation, and any additional field investigation activities, party coordinators are responsible for the behavior of their organization's employees or representatives.

All participants in an NTSB investigation (with the exception of representatives from federal regulatory agencies and law enforcement agencies, and Accredited Representatives of foreign governments and their foreign Technical Advisors) will be required to sign the "Certification of Party Representative," which is a statement of compliance with NTSB investigation procedures, rules, and restrictions. Party coordinators are responsible for ensuring that all group participants from their organization sign the NTSB statement of compliance.

IV. (Aviation and Marine Modes Only) The Role of the FAA or Coast Guard in the Investigation

Pursuant to statute, the FAA is automatically afforded party status to all NTSB aviation investigations, "[i]n order to assure the proper discharge by the Secretary of Transportation of his duties and responsibilities[.]"

Also pursuant to statute, the Secretary of the department in which the Coast Guard is operating, generally through the Commandant of the Coast Guard, is automatically afforded party status to all NTSB marine investigations.

V. (Aviation Mode Only) Accredited Representatives of Foreign Governments

The Accredited Representative of a foreign government and his or her properly designated advisors will be afforded the courtesies and rights as outlined in Annex 13 to the Convention of International Civil Aviation. The NTSB restriction on dissemination of accident information applies to all those supporting an NTSB investigation as advisors to the NTSB on foreign-led accident investigations or to an Accredited Representative in NTSB-led accident investigations involving a non-U.S. State of Design/Manufacture, State of Operator, or State of Registration. [The Accredited Representative and foreign Technical Advisors are not required to sign the party form.]

VI. Assignment and Duties of Group Members

The IIC will assign and organize investigative groups to document specific aspects of the accident. Each group will be under the direction of an NTSB investigator who is designated as the Group Chairman. Individuals representing selected parties will be assigned to investigative groups as the IIC and Group Chairman deem necessary and for the duration of the investigation. Not all parties will have members on every group; only those parties who can provide needed specific expertise relevant to the focus of the group will be considered for group assignments. Because parties are invited to participate in an investigation on the basis of their specialized, technical, party-specific knowledge about their product or operations, the NTSB does not, except in extremely rare circumstances, allow the use of outside consultants as participants in investigative groups. Those selected as group members *must have expertise in their proposed area of investigation*. Those selected as group members must be prepared to remain with the investigation until completion of the on-scene investigation, as well as any additional field investigative work and the development of a factual report on the work of the group.

Additional restrictions apply concerning information obtained from on-board image or audio recording devices. Participants on NTSB investigative groups working with these recorders will be briefed on these additional restrictions and required to sign additional documents confirming their agreement to comply with these restrictions.

Under the direction of the Group Chairman, one or more sets of group notes, termed "field notes," will be developed by each investigative group. Preparation of the field notes is a collaborative effort by the investigative group but managed by the NTSB Group Chairman leading the group. Field notes should include all relevant factual information developed by the group and will typically also include appendices of supporting documentation, photographs, or other records collected by the group. It is the responsibility of the NTSB Group Chairman to ensure that an accurate and complete set of field notes is compiled while the group is on-scene, or, as applicable, during follow-on investigative activity, and that each group member signs the completed field notes before being released from their on-scene duties. In addition, the IIC must approve the field notes before group members may be released from their on-scene duties. Accordingly, each group member must participate in a complete review of the field notes for technical accuracy and adequacy of the scope of the investigation of the group and affirm agreement with the contents of the field notes by signing them. If there is disagreement over the accuracy of any information documented in the field notes, or their scope, the NTSB Group Chairman will make all reasonable efforts to focus the group on resolving any such issues to the collective satisfaction of the group members. In the rare case that a disagreement of one member cannot be resolved, that member is expected to sign the field notes verifying their general agreement with the notes and annotating their specific objections to the disputed content in the notes. The NTSB Group Chairman is responsible for providing a copy of the signed group field notes to the IIC, who will ensure that each party coordinator receives a copy of the field notes from each investigative group.

Each NTSB Group Chairman will later prepare a Group Chairman Factual Report, which will draw extensively on the information in the field notes. A copy of the Group Chair-

man's draft factual report will be provided to participating group members for comment. It should be understood, however, that the final factual report is the NTSB Group Chairman's responsibility and concurrence by the entire group is not required. Any dissent regarding the factual accuracy or completeness of the factual report should be communicated to the NTSB Group Chairman, and, if necessary, will be discussed formally during a technical review meeting later in the investigative process.

VII. Flow and Dissemination of Investigative Information

All information obtained by members of an investigative group will immediately be brought to the attention of the Group Chairman. All information obtained during the investigation by the various groups will be passed to the IIC by the Group Chairmen.

No information may be passed to others within the party's organization, beyond those individuals actually participating in the NTSB investigation, without the approval of the IIC. If necessary for public safety, and with the IIC's permission, party coordinators may release information to their respective organizations provided the information is factual, neutral and objective in tone, and without purported NTSB characterization of the matter's contribution to the underlying accident. If a party's organization has a need, in the interest of safety, to transmit information to operators utilizing their products regarding issues related to the investigation, they must first provide the IIC with a written draft of the proposed correspondence and obtain the IIC's permission before its release.

The limitations on the release of factual information (within the party's organization) obtained from participation in the investigation shall normally end once the fact-finding phase of the investigation is complete. Limitations on parties commenting publicly on possible findings of the investigation, including the probable cause of the accident, will remain in effect until after the Board adopts the final report.

VIII. Release of Information

Prior to the NTSB's adoption of the final report, only appropriate NTSB personnel are authorized to publicly disclose investigative findings, and, even then, the release shall be limited to verified factual information identified during the course of the investigation. In addition, party participants or their respective organizations must refrain from providing opinions or analysis of the accident outside of the participants in the investigation. Failure to abide by these requirements may lead to removal of a party from the investigation. Any questions on this policy may be directed to the NTSB's IIC on an investigation, or to the NTSB's Public Affairs Office at 202-314-6100.

IX. Proprietary, Commercially Sensitive, and Export-Controlled Information

The NTSB has rules published at 49 C.F.R. § 831.6 governing identification and treatment of proprietary and commercially sensitive records and information. All records

provided to the NTSB must be clearly marked if they contain proprietary or commercially sensitive information.

Parties are also obligated to inform the NTSB, in writing, when materials and information provided to the NTSB, verbally or in writing, or in any other format, are subject to Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) and/or their participation in the investigation may be impacted by sanctions programs administered by the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) or other U.S. Government sanctions programs. All export-controlled records provided to the NTSB must be clearly and appropriately marked. All participants in the NTSB investigation who acquire or handle such materials must do so in compliance with the law and NTSB rules.

X. Organizational Meeting

The initial investigative meeting on-scene is designated as the “organizational meeting.” It is during the organizational meeting that the IIC introduces him/herself, explains his/her expectations for the investigation and the participants working with the NTSB, and introduces the NTSB Group Chairmen who will lead the anticipated investigative groups. During the organizational meeting, the parties to the investigation will be formally named, party coordinators will be formally assigned, and various individual group members will be vetted and assigned to appropriate investigative groups.

An attendance roster will be circulated, and everyone in the room must sign the roster and provide the requested contact information.

At the beginning of the meeting, all persons present will be required to identify themselves, including their affiliation and routine role within their organization. Persons responsible for managing litigation or insurance interests, members of the media, and, generally, corporate executives who will not be providing needed technical expertise as participants on an NTSB investigative group are not permitted to participate in an NTSB investigation.

XI. On-Scene Progress Meetings

A “progress meeting” is typically held at the end of each workday to review significant information obtained by each investigative group and to identify additional investigative activity to be pursued. These meetings also provide an opportunity to address investigative issues that require higher-level resolution or coordination, changes to the investigative plan, need for additional investigative support, or, possibly, an evaluation of whether urgent safety recommendations are needed.

Party coordinators must attend each progress meeting. For other participants in an NTSB investigation, attendance at each progress meeting is generally encouraged, but individual group members should communicate with their NTSB Group Chairman on a case-specific basis as to whether they are needed at the progress meeting, whether other group

investigative activities will take precedence, or whether they have been released from further on-scene participation. No persons other than those specifically designated by the IIC during the organizational meeting may attend progress meetings.

Each investigative group may also hold daily meetings that include participation from all group members. The responsibility for arranging these meetings is that of the Group Chairmen. Each group member is expected to raise in a timely manner any concerns, facts, and suggestions for proper consideration by the entire group so as to ensure maximum precision and thoroughness of the group's investigative efforts. In addition, group members may pass factual information to their respective party coordinators only after the information has been made known to the Group Chairman.

Finally, the IIC may meet daily with all of the NTSB Group Chairmen and, sometimes separately, with all of the party coordinators. These meetings are conducted as a means of encouraging open discussion and resolution of problems of concern to any party coordinator or Group Chairman.

XII. Safety Precautions During Investigations

Access to the site of an accident may be hazardous because of debris and hazardous or toxic materials. Participants are expected to arrive on-scene, or at field investigation activities, with appropriate personal protective equipment, supplied by their respective organizations. All participants must comply with safety procedures established by the on-scene incident command, the local organization(s) in charge of the accident site security and safety. Participants must exercise good judgment, use necessary personal protective equipment, and use caution in working at the site. All party participants should be instructed by their respective party coordinators to not exceed their physical limitations.

If you have questions concerning the existence of hazards, consult your Group Chairman. Any perceived hazards should be brought to the immediate attention of the appropriate Group Chairman and the IIC.

The NTSB does not assume responsibility for personal injuries received during the course of participation in an investigation.

The party coordinator or party participant will inform the IIC of any safety concerns regarding any on-scene activities, to include actions requested by the IIC, that the party coordinator or participant believes have material safety risks.

XIII. Dissemination of Information to Media

Contacts with news media concerning the investigation will be made **only** by the NTSB, through the Board Member if on-scene, the NTSB's representative of its Office of Public Affairs, or the IIC. The guiding policy is that the NTSB is a public agency engaged in the public's business and supported by public funds. The agency's work is open for public review, and the Act under which it operates makes this mandatory. The NTSB be-

believes that periodic factual briefings to the news media are a normal part of its investigation and that, for the public to perceive the investigation as credible, the investigation should speak with one voice, that being the independent agency conducting the investigation.

Therefore, the NTSB insists that it be the sole source of public information regarding the progress of an accident investigation.

Parties are encouraged to refer media inquiries to the NTSB's Office of Public Affairs. In any case, release to the media of investigative information at any time is grounds for removal as a party.

XIV. Public Hearing

After completion of the on-scene phase of the investigation, formal depositions or a public hearing may be conducted. Parties to the on-scene investigation may be consulted for their views on the value of conducting a hearing and may also be requested to participate in these activities. Parties to a public hearing may be different than those participating during the on-scene phase of the investigation. A public hearing or formal depositions may be held prior to completion of all field work, such as component testing, simulator runs, etc.

XV. Party Recommendations as to Findings, Conclusions, and Recommendations

Any party to an investigation may, and is encouraged to, submit to the NTSB proposed findings of fact and conclusions that the party believes should be drawn from the evidence obtained during the investigation. A party may also propose safety recommendations for preventive action. All submissions should be made in writing and parties should serve copies of submissions on all other parties. The IIC will provide a date by which such submissions must be made.

Title 49. Transportation

Subtitle B. Other Regulations Relating to Transportation

Chapter VIII. National Transportation Safety Board

Part 831. Accident/Incident Investigation Procedures

→ § 831.1 Applicability of part.

Unless otherwise specifically ordered by the National Transportation Safety Board (Board), the provisions of this part shall govern all accident or incident investigations, conducted under the authority of title VII of the Federal Aviation Act of 1958, as amended, and the Independent Safety Board Act of 1974. Rules applicable to accident hearings and reports are set forth in Part 845.

§ 831.2 Responsibility of Board.

(a) Aviation.

(1) The Board is responsible for the organization, conduct, and control of all accident and incident investigations (see § 830.2 of this chapter) within the United States, its territories and possessions, where the accident or incident involves any civil aircraft or certain public aircraft (as specified in § 830.5 of this chapter), including an investigation involving civil or public aircraft (as specified in § 830.5) on the one hand, and an Armed Forces or intelligence agency aircraft on the other hand. It is also responsible for investigating accidents/incidents that occur outside the United States, and which involve civil aircraft and/or certain public aircraft, when the accident/incident is not in the territory of another country (i.e., in international waters).

(2) Certain aviation investigations may be conducted by the Federal Aviation Administration (FAA), pursuant to a "Request to the Secretary of the Department of Transportation to Investigate Certain Aircraft Accidents," effective February 10, 1977 (the text of the request is contained in the appendix to part 800 of this chapter), but the Board determines the probable cause of such accidents or incidents. Under no circumstances are aviation investigations where the

portion of the investigation is so delegated to the FAA by the Board considered to be joint investigations in the sense of sharing responsibility. These investigations remain NTSB investigations.

¹ The authority of a representative of the FAA during such investigations is the same as that of a Board investigator under this part.

(3) The Board is the agency charged with fulfilling the obligations of the United States under Annex 13 to the Chicago Convention on International Civil Aviation (Eighth Edition, July 1994), and does so consistent with State Department requirements and in coordination with that department. Annex 13 contains specific requirements for the notification, investigation, and reporting of certain incidents and accidents involving international civil aviation. In the case of an accident or incident in a foreign state involving civil aircraft of U.S. registry or manufacture, where the foreign state is a signatory to Annex 13 to the Chicago Convention of the International Civil Aviation Organization, the state of occurrence is responsible for the investigation. If the accident or incident occurs in a foreign state not bound by the provisions of Annex 13 to the Chicago Convention, or if the accident or incident involves a public aircraft (Annex 13 applies only to civil aircraft), the conduct of the investigation shall be in consonance with any agreement entered into between the United States and the foreign state.

(b) Surface. The Board is responsible for the investigation of: railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train (see part 840 of this chapter); major marine casualties and marine accidents involving a public and non-public vessel or involving Coast Guard functions (see part 850 of this chapter); highway accidents, including railroad grade-crossing accidents, the investigation of which is selected in cooperation with the States; and pipeline accidents in which there is a fatality, significant injury to the environment, or substantial property damage.

² Part 850 also governs the conduct of certain investigations in which the Board and

the Coast Guard participate jointly.

(c) Other Accidents/Incidents. The Board is also responsible for the investigation of an accident/incident that occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of the Independent Safety Board Act of 1974. This authority includes, but is not limited to, marine and boating accidents and incidents not covered by part 850 of this chapter, and accidents/incidents selected by the Board involving transportation and/or release of hazardous materials.

§ 831.3 Authority of Directors.

The Directors, Office of Aviation Safety, Office of Railroad Safety, Office of Highway Safety, Office of Marine Safety, and Office of Pipeline and Hazardous Materials Safety, subject to the provisions of § 831.2 and part 800 of this chapter, may order an investigation into any accident or incident.

§ 831.4 Nature of investigation.

Accident and incident investigations are conducted by the Board to determine the facts, conditions, and circumstances relating to an accident or incident and the probable cause(s) thereof. These results are then used to ascertain measures that would best tend to prevent similar accidents or incidents in the future. The investigation includes the field investigation (on-scene at the accident, testing, teardown, etc.), report preparation, and, where ordered, a public hearing. The investigation results in Board conclusions issued in the form of a report or "brief" of the incident or accident. Accident/incident investigations are fact-finding proceedings with no formal issues and no adverse parties. They are not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 504 et seq.), and are not conducted for the purpose of determining the rights or liabilities of any person.

§ 831.5 Priority of Board investigations.

Any investigation of an accident or incident conducted by the Safety Board directly or pursuant to

the appendix to part 800 of this chapter (except major marine investigations conducted under 49 U.S.C. 1131(a)(1)(E)) has priority over all other investigations of such accident or incident 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 or incident. Nothing in this section impairs the authority of other Federal agencies to conduct investigations of an accident or incident under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, the transportation accident or incident, provided they do so without interfering with the Safety Board's investigation. 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.

§ 831.6 Request to withhold information.

(a) Trade Secrets Act (18 U.S.C. 1905), Exemption 4 of the Freedom of Information Act (5 U.S.C. 552) (FOIA), and The Independent Safety Board Act of 1974, as amended.

(1) General. The Trade Secrets Act provides criminal penalties for unauthorized government disclosure of trade secrets and other specified confidential commercial information. The Freedom of Information Act authorizes withholding of such information; however, the Independent Safety Board Act, at 49 U.S.C. 1114(b), provides that the Board may, under certain circumstances, disclose information related to trade secrets.

(2) Procedures. Information submitted to the Board that the submitter believes qualifies as a trade secret or confidential commercial information subject either to the Trade Secrets Act or FOIA Exemption 4 shall be so identified by the submitter on each and every page of such document. The Board shall give the submitter of any information so identified, or information the Board has substantial reason to believe qualifies as a trade secret or confidential commercial information subject either to the Trade Secrets Act or FOIA Exemption 4, the opportunity to com-

ment on any contemplated disclosure, pursuant to 49 U.S.C. 1114(b). In all instances where the Board determines to disclose pursuant to 49 U.S.C. 1114(b) and/or 5 U.S.C. 552, at least 10 days' notice will be provided the submitter. Notice may not be provided the submitter when disclosure is required by a law other than FOIA if the information is not identified by the submitter as qualifying for withholding, as is required by this paragraph, unless the Board has substantial reason to believe that disclosure would result in competitive harm.

(3) Voluntarily-provided safety information. It is the policy of the Safety Board that commercial, safety-related information provided to it voluntarily and not in the context of particular accident/incident investigations will not be disclosed. Reference to such information for the purposes of safety recommendations will be undertaken with consideration for the confidential nature of the underlying database(s).

(b) Other. Any person may make written objection to the public disclosure of any other information contained in any report or document filed, or otherwise obtained by the Board, stating the grounds for such objection. The Board, on its own initiative or if such objection is made, may order such information withheld from public disclosure when, in its judgment, the information may be withheld under the provisions of an exemption to the Freedom of Information Act (5 U.S.C. 552, see part 801 of this chapter), and its release is found not to be in the public interest.

§ 831.7 Right to representation.

Any person interviewed by an authorized representative of the Board during the investigation, regardless of the form of the interview (sworn, unsworn, transcribed, not transcribed, etc.), has the right to be accompanied, represented, or advised by an attorney or non-attorney representative.

§ 831.8 Investigator-in-charge.

The designated investigator-in-charge (IIC) organizes, conducts, controls, and manages the field phase of the investigation, regardless of whether a Board Member is also on-scene at the accident or

incident site. (The role of the Board member at the scene of an accident investigation is as the official spokesperson for the Safety Board.) The IIC has the responsibility and authority to supervise and coordinate all resources and activities of all personnel, both Board and non-Board, involved in the on-site investigation. The IIC continues to have considerable organizational and management responsibilities throughout later phases of the investigation, up to and including Board consideration and adoption of a report or brief of probable cause(s).

§ 831.9 Authority of Board representatives.

(a) General. Any employee of the Board, upon presenting appropriate credentials, is authorized to enter any property where an accident/incident subject to the Board's jurisdiction has occurred, or wreckage from any such accident/incident is located, and do all things considered necessary for proper investigation. Further, upon demand of an authorized representative of the Board and presentation of credentials, any Government agency, or person having possession or control of any transportation vehicle or component thereof, any facility, equipment, process or controls relevant to the investigation, or any pertinent records or memoranda, including all files, hospital records, and correspondence then or thereafter existing, and kept or required to be kept, shall forthwith permit inspection, photographing, or copying thereof by such authorized representative for the purpose of investigating an accident or incident, or preparing a study, or related to any special investigation pertaining to safety or the prevention of accidents. The Safety Board may issue a subpoena, enforceable in Federal district court, to obtain testimony or other evidence. Authorized representatives of the Board may question any person having knowledge relevant to an accident/incident, study, or special investigation. Authorized representatives of the Board also have exclusive authority, on behalf of the Board, to decide the way in which any testing will be conducted, including decisions on the person that will conduct the test, the type of test that will be conducted, and any individual who will witness the test.

(b) Aviation. Any employee of the Board, upon presenting appropriate credentials, is authorized to

examine and test to the extent necessary any civil or public aircraft (as specified in § 830.5), aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident in air commerce.

(c) Surface.

(1) Any employee of the Board, upon presenting appropriate credentials, is authorized to test or examine any vehicle, vessel, rolling stock, track, pipeline component, or any part of any such item when such examination or testing is determined to be required for purposes of such investigation.

(2) 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, vessel, rolling stock, track, or pipeline component, and shall be conducted in such a manner so as to preserve, to the maximum extent feasible, any evidence relating to the transportation accident, consistent with the needs of the investigation and with the cooperation of such owner or operator.

§ 831.10 Autopsies.

The Board is authorized to obtain, with or without reimbursement, a copy of the report of autopsy performed by State or local officials on any person who dies as a result of having been involved in a transportation accident within the jurisdiction of the Board. The investigator-in-charge, on behalf of the Board, may order an autopsy or seek other tests of such persons as may be necessary to the investigation, provided that to the extent consistent with the needs of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

§ 831.11 Parties to the investigation.

(a) All Investigations, regardless of mode.

(1) The investigator-in-charge designates parties to participate in the investigation. Parties shall be limited to those persons, government agencies, companies, and associations whose employees,

functions, activities, or products were involved in the accident or incident and who can provide suitable qualified technical personnel actively to assist in the investigation. Other than the FAA in aviation cases, no other entity is afforded the right to participate in Board investigations.

(2) Participants in the investigation (i.e., party representatives, party coordinators, and/or the larger party organization) shall be responsive to the direction of Board representatives and may lose party status if they do not comply with their assigned duties and activity proscriptions or instructions, or if they conduct themselves in a manner prejudicial to the investigation.

(3) No party to the investigation shall be represented in any aspect of the NTSB investigation by any person who also represents claimants or insurers. No party representative may occupy a legal position (see § 845.13 of this chapter). Failure to comply with these provisions may result in sanctions, including loss of status as a party.

(4) Title 49, United States Code § 1132 provides for the appropriate participation of the FAA in Board investigations, and § 1131(a)(2) provides for such participation by other departments, agencies, or instrumentalities. The FAA and those other entities that meet the requirements of paragraph (a)(1) of this section will be parties to the investigation with the same rights and privileges and subject to the same limitations as other parties, provided however that representatives of the FAA need not sign the "Statement of Party Representatives to NTSB Investigation" (see paragraph (b) of this section).

(b) Aviation investigations. In addition to compliance with the provisions of paragraph (a) of this section, and to assist in ensuring complete understanding of the requirements and limitations of party status, all party representatives in aviation investigations shall sign "Statement of Party Representatives to NTSB Investigation" immediately upon attaining party representative status. Failure timely to sign that statement may result in sanctions, including loss of status as a party.

§ 831.12 Access to and release of wreckage.

records, mail, and cargo.

(a) Only the Board's accident investigation personnel, and persons authorized by the investigator-in-charge to participate in any particular investigation, examination or testing shall be permitted access to wreckage, records, mail, or cargo in the Board's custody.

(b) Wreckage, records, mail, and cargo in the Board's custody shall be released by an authorized representative of the Board when it is determined that the Board has no further need of such wreckage, mail, cargo, or records. When such material is released, Form 6120.15, "Release of Wreckage," will be completed, acknowledging receipt.

§ 831.13 Flow and dissemination of accident or incident 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 person or organization participating in the investigation shall be passed to the IIC through appropriate channels before being provided to any individual outside the investigation. Parties to the investigation may relay to their respective organizations information necessary for purposes of prevention or remedial action. However, no information concerning the accident or incident may be released to any person not a party representative to the investigation (including non-party representative employees of the party organization) before initial release by the Safety Board without prior consultation and approval of the IIC.

§ 831.14 Proposed findings.

(a) General. Any person, government agency, company, or association whose employees, functions, activities, or products were involved in an accident or incident under investigation may submit to the Board written proposed findings to be drawn from the evidence produced during the

course of the investigation, a proposed probable cause, and/or proposed safety recommendations designed to prevent future accidents.

(b) Timing of submissions. To be considered, these submissions must be received before the matter is calendared for consideration at a Board meeting. All written submissions are expected to have been presented to staff in advance of the formal scheduling of the meeting. This procedure ensures orderly and thorough consideration of all views.

(c) Exception. This limitation does not apply to safety enforcement cases handled by the Board pursuant to part 821 of this chapter. Separate ex parte rules, at part 821, subpart J, apply to those proceedings.