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## **Title 49 —Transportation**

### **Subtitle B —Other Regulations Relating to Transportation**

#### **Chapter VIII —National Transportation Safety Board**

#### **Part 845** Rules of Practice in Transportation: Investigative Hearings; Meetings, Reports, and Petitions for Reconsideration

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## **PART 845—RULES OF PRACTICE IN TRANSPORTATION: INVESTIGATIVE HEARINGS; MEETINGS, REPORTS, AND PETITIONS FOR RECONSIDERATION**

**Authority:** Sec. 515, Pub. L. 106-554, App. C, 114 Stat. 2763, 2763A-153 (44 U.S.C. 3516 note); 49 U.S.C. 1112,

1113(f), 1116, 1131, unless otherwise noted.

**Source:** 80 FR 80287, Dec. 24, 2015, unless otherwise noted.

## **§ 845.1 Applicability.**

Unless otherwise specifically ordered by the National Transportation Safety Board (NTSB), the provisions of this part shall govern all NTSB proceedings conducted under the authority of 49 U.S.C. 1113 and 1131, and reports issued by the Board.

## **Subpart A—Investigative Hearings**

### **§ 845.2 Investigative hearings.**

Investigative hearings are convened to assist the NTSB in further developing the facts, conditions, and circumstances of the transportation accident or incident, which will ultimately assist the Board in determining the cause or probable cause of the accident or incident, and in ascertaining measures that will tend to prevent such accidents or incidents and promote transportation safety. Investigative hearings are fact-finding proceedings with no adverse parties. They are not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 554) and are not conducted for the purpose of determining the rights, liabilities, or blame of any person or entity.

### **§ 845.3 Sessions open to the public.**

- (a) All investigative hearings shall normally be open to the public. However, no person shall be allowed at any time to interfere with the proper and orderly functioning of the hearing.
- (b) Sessions shall not be open to the public when evidence of a classified nature or which affects national security is to be received.

### **§ 845.4 Determination to hold hearing.**

- (a) The Board may order an investigative hearing as part of an investigation whenever a hearing is deemed necessary in the public interest.
- (b) If a quorum of the Board is not immediately available in the event of a catastrophic accident, the determination to hold an investigative hearing may be made by the Chairman of the Board.

### **§ 845.5 Board of inquiry.**

- (a) **Composition of board of inquiry.** The board of inquiry shall consist of a chairman of the board of inquiry, as specified in paragraph (c) of this section, and other members in accordance with Board policy.
- (b) **Duties of board of inquiry.** The board of inquiry shall examine witnesses and secure, in the form of a public record, facts pertaining to the accident or incident under investigation and surrounding circumstances and conditions from which the Board may determine probable cause and may formulate recommendations and/or other documents for corrective or preventative action.
- (c) **Chairman of board of inquiry.** The chairman of the board of inquiry, or his or her designee, shall have the following powers:
  - (1) To designate parties to the investigative hearing and revoke such designations;

- (2) To open, continue, or adjourn the investigative hearing;
- (3) To determine the admissibility of and to receive evidence and to regulate the course of the investigative hearing;
- (4) To dispose of procedural requests or similar matters; and
- (5) To take any other appropriate action to ensure the orderly conduct of the investigative hearing.

### **§ 845.6 Designation of parties.**

- (a) The chairman of the board of inquiry shall designate as parties to the investigative hearing those persons and organizations whose participation in the hearing is deemed necessary in the public interest and whose special knowledge will contribute to the development of pertinent evidence. Parties to the investigative hearing shall be represented by suitable representatives who do not occupy legal positions.
- (b) No party to the investigation and/or investigative hearing shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party to the investigative hearing.

### **§ 845.7 Hearing officer.**

The investigative hearing officer, upon designation by the NTSB Chairman or a Board Member designated by the Chairman, shall have the following powers:

- (a) To give notice concerning the time and place of investigative hearing;
- (b) To administer oaths and affirmations to witnesses; and
- (c) To issue subpoenas requiring the attendance and testimony of witnesses and production of documents. The investigative hearing officer may, in consultation with the chairman of the board of inquiry and the NTSB Managing Director, add witnesses until the time of the prehearing conference.

### **§ 845.8 Technical panel.**

The appropriate office director(s) and/or the hearing officer, in consultation with the NTSB Managing Director, shall determine if a technical panel is needed and, if so, shall designate members of the NTSB technical staff to participate in the investigative hearing. Members of the technical panel may conduct pre-screening of witnesses through interviews, and may take other actions to prepare for the hearing. At the hearing, the technical panel will initially examine the witnesses through questioning. The technical panel shall examine witnesses and secure, in the form of a public record, facts pertaining to the accident or incident under investigation and surrounding circumstances and conditions.

### **§ 845.9 Prehearing conference.**

- (a) Except as provided in paragraph (d) of this section, the chairman of the board of inquiry, or his/her designee, shall hold a prehearing conference with the parties to the investigative hearing at a convenient time and place prior to the hearing. At the prehearing conference, the parties shall be advised of the witnesses to be called at the investigative hearing, the topics about which they will be examined, and the exhibits that will be offered in evidence.
- (b) At the prehearing conference, parties to the investigative hearing shall submit copies of any additional documentary exhibits they desire to offer for admission at the hearing.

- (c) A party to the investigative hearing who, at the time of the prehearing conference, fails to advise the chairman of the board of inquiry of additional exhibits he or she intends to submit, or additional witnesses he or she desires to examine, shall be prohibited from introducing such evidence unless the chairman of the board of inquiry determines for good cause shown that such evidence should be admitted.
- (d) The board of inquiry may hold an investigative hearing on an expedited schedule. The chairman of the board of inquiry may hold a prehearing conference for an expedited investigative hearing. When an expedited investigative hearing is held, the chairman of the board of inquiry may waive the requirements in paragraphs (b) and (c) of this section concerning the identification of witnesses, exhibits or other evidence.

### § 845.10 Right of representation.

Any person who appears to testify at an investigative hearing has the right to be accompanied, represented, or advised by counsel or by any other representative.

### § 845.11 Examination of witnesses.

- (a) **Examination.** In general, the technical panel shall initially examine witnesses. Following such examination, parties to the investigative hearing shall be given the opportunity to examine such witnesses. The board of inquiry shall then conclude the examination following the parties' questions.
- (b) **Objections.**
  - (1) Materiality, relevancy, and competency of witness testimony, exhibits, or physical evidence shall not be the subject of objections in the legal sense by a party to the investigative hearing or any other person.
  - (2) Such matters shall be controlled by rulings of the chairman of the board of inquiry on his or her own motion. If the examination of a witness by a party to the investigative hearing is interrupted by a ruling of the chairman of the board of inquiry, the party shall have the opportunity to show materiality, relevancy, or competency of the testimony or evidence sought to be elicited from the witness.

### § 845.12 Evidence.

In accordance with § 845.2, the chairman of the board of inquiry shall receive all testimony and evidence that may be of aid in determining the probable cause of the transportation accident or incident. He or she may exclude any testimony or exhibits that are not pertinent to the investigation or are merely cumulative.

### § 845.13 Proposed findings.

Following the investigative hearing, any party to the hearing may submit proposed findings to be drawn from the testimony and exhibits, a proposed probable cause, and proposed safety recommendations designed to prevent future accidents or incidents. The proposals shall be submitted within the time specified by the investigative hearing officer at the close of the hearing, and shall be made a part of the public docket. Parties to the investigative hearing shall serve copies of their proposals on all other parties to the hearing.

## **§ 845.14 Transcript.**

A verbatim report of the investigative hearing shall be taken. Any interested person may obtain copies of the transcript from the NTSB or from the court reporting firm preparing the transcript upon payment of the fees fixed therefor. (See part 801, subpart G, Fee schedule.)

## **§ 845.15 Payment of witnesses.**

Any witness subpoenaed to attend the investigative hearing under this part shall be paid such fees for travel and attendance for which the hearing officer shall certify.

## **Subpart B—Meetings**

### **§ 845.20 Meetings.**

The Board may hold a meeting concerning an investigation or Board product, as described in § 804.3 of this chapter or any other circumstance, when the Board determines holding a meeting is in the public interest.

### **§ 845.21 Symposiums, forums, and conferences.**

(a)

#### **(1) Definitions.**

(i) A symposium is a public proceeding focused on a specific topic, where invited participants provide presentations of their research, views or expertise on the topic and are available for questions.

(ii) A forum is a public proceeding generally organized in a question-and-answer format with various invited participants who may make presentation and are available for questioning by the Board or designated NTSB staff as individuals in a panel format.

(iii) A conference is a large, organized proceeding where individuals present materials, and a moderator or chairperson facilitates group discussions.

(2) These proceedings are related to transportation safety matters and will be convened for the purpose of focusing attention, raising awareness, encouraging dialogue, educating the NTSB, or generally advancing or developing safety recommendations. The goals of the proceeding will be clearly articulated and outlined, and will be consistent with the mission of the NTSB.

(b) A quorum of Board Members is not required to attend a forum, symposium, or conference. All three types of proceedings described in paragraph (a) of this section may have a relationship to previous or ongoing investigative activities; however, their purpose is not to obtain evidence for a specific investigation.

(c) Symposiums, forums, and conferences are voluntary for all invited participants.

## **Subpart C—Miscellaneous Provisions**

### **§ 845.30 Board products.**

(a) *Reports of investigations.*

- (1) The Board will adopt a report on the investigation. The report will set forth the relevant facts, conditions, and circumstances relating to the accident or incident and the probable cause thereof, along with any appropriate safety recommendations and/or safety alerts formulated on the basis of the investigation. The scope and format of the report will be determined in accordance with Board procedures.
- (2) The probable cause and facts, conditions, and circumstances of other accidents or incidents will be reported in a manner and form prescribed by the Board. The NTSB allows the appropriate office director, under his or her delegated authority as described in § 800.25 of this chapter, to issue a "brief," which includes the probable cause and relevant facts, conditions, and circumstances concerning the accident or incident. Such briefs do not include recommendations. In particular circumstances, the Board in its discretion may choose to approve a brief.

(b) ***Studies and reports*** –

- (1) ***NTSB studies and reports.*** The NTSB may issue reports describing investigations of more than one accident or incident that share commonalities. Such reports are similar to accident or incident investigation reports, as described in paragraph (a)(1) of this section. Such reports often include safety recommendations and/or safety alerts, which the Board adopts.
- (2) ***Safety studies and reports.*** The NTSB issues safety studies and reports, which usually examine safety concerns that require the investigation of a number of related accidents or incidents to determine the extent and severity of the safety issues. Such studies and reports often include safety recommendations and/or safety alerts, which the Board adopts.

- (c) ***Safety recommendations.*** The Board may adopt and issue safety recommendations, either as part of a Board report or as a stand-alone Board product.

## § 845.31 Public docket.

(a) ***Investigations.***

- (1) As described in § 801.3 of this chapter, the public docket shall include factual information concerning the accident or incident. Proposed findings submitted pursuant to § 831.14 or § 845.13 and petitions for reconsideration and modification submitted pursuant to § 845.32, comments thereon by other parties, and the Board's rulings on proposed findings and petitions shall also be placed in the public docket.
- (2) The NTSB shall establish the public docket following the accident or incident, and material shall be added thereto as it becomes available. Where an investigative hearing is held, the exhibits will be introduced into the record at the hearing and will be included in the public docket.

- (b) ***Other Board reports and documents.*** The NTSB may elect to open and place materials in a public docket concerning a safety study or report, special investigation report, or other agency product. The NTSB will establish the public docket following its issuance of the study or report.

- (c) ***Availability.*** The public docket shall be made available to any person for review, as described in § 801.30 of this chapter. Records within the public docket are available at [www.nts.gov](http://www.nts.gov).

## § 845.32 Petitions for reconsideration or modification of report.

(a) ***Requirements.***

- (1) The Board will only consider petitions for reconsideration or modification of findings and determination of probable cause from a party or other person having a direct interest in an investigation.
- (2) Petitions must be in writing and addressed to the NTSB Chairman. Please send your petition via email to [correspondence@ntsb.gov](mailto:correspondence@ntsb.gov). In the alternative, you may send your petition via postal mail to: NTSB Headquarters at 490 L'Enfant Plaza SW., Washington, DC 20594.
- (3) Petitions must be based on the discovery of new evidence or on a showing that the Board's findings are erroneous.
  - (i) Petitions based on the discovery of new matter shall: Identify the new matter; contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and state why the new matter was not available prior to Board's adoption of its findings.
  - (ii) Petitions based on a claim of erroneous findings shall set forth in detail the grounds upon which the claim is based.
- (b) **Acceptance of petitions.** The Board will not consider petitions that are repetitious of proposed findings submitted pursuant to § 845.13, or of positions previously advanced.
- (c) **Proof of service.**
  - (1) When a petition for reconsideration or modification is filed with the Board, copies of the petition and any supporting documentation shall be served on all other parties to the investigation or investigative hearing and proof of service shall be attached to the petition.
  - (2) Any party served with a copy of the petition may file comments no later than 90 days after service of the petition.
- (d) **Oral presentation.** Oral presentation normally will not form a part of proceedings under this section. However, oral presentation may be permitted where a party or interested person specifically shows the written petition for reconsideration or modification is an insufficient means by which to present the party's or person's position.

### § 845.33 Investigation to remain open.

The Board never officially closes an investigation, but provides for the submission of new and pertinent evidence by any interested person. If the Board finds such evidence is relevant and probative, the evidence shall be made a part of the public docket and, where appropriate, the Board will provide parties an opportunity to examine such evidence and to comment thereon.