



## **Information And Guidance for Parties to NTSB Accident and Incident Investigations**

### **1. 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. Our legislative mandate can be found at <https://www.nts.gov/about/Pages/default.aspx>.

In addition, participants should be familiar with the NTSB's regulations governing accident and incident investigation procedures: 49 *Code of Federal Regulations (CFR)* Part 831. These and other NTSB regulations can be viewed at the National Archives' website: <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VIII/part-831>.

### **2. 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 events in the other modes of transportation—railroad, transit, highway, marine, pipeline, and commercial space. We determine the probable causes of the accidents and events that we investigate and issue safety recommendations aimed at preventing future occurrences. In addition, we conduct transportation safety research studies and offer information and other assistance to family members and survivors for each accident or event we investigate. We also serve as the appellate authority for enforcement actions involving aviation and mariner certificates issued by the Federal Aviation Administration (FAA) and US Coast Guard, and we adjudicate appeals of civil penalty actions taken by the FAA.

Safety recommendations are the most important product of an NTSB investigation. NTSB safety recommendations are based on the findings of an

investigation and address safety deficiencies identified during the investigation. The NTSB may issue safety recommendations before the completion of a specific investigation and may designate some recommendations as “urgent” if immediate action is necessary to avoid imminent loss of life due to a similar accident.

When the NTSB launches to an investigation, we assemble a broad spectrum of technical expertise to investigate complex transportation accidents. We designate as parties to the investigation entities whose employees, functions, activities, or products were involved in the accident or incident. This facilitates the rapid and complete acquisition of all relevant factual information. Only those entities 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. The NTSB has complete discretion over which entities it designates as parties to an investigation; this decision is final and not appealable.<sup>1</sup>

Parties and party representatives to an NTSB investigation participate directly only 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, the NTSB independently conducts our 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.

### **3. Role and Responsibilities of Parties to the Investigation**

At the discretion of the investigator-in-charge (IIC), the NTSB may invite qualified entities whose employees, functions, activities, or products were involved in the accident or incident, and who can provide suitable qualified technical personnel, to actively assist in the investigation and 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. The NTSB has used the “party system” for decades primarily because it is the most effective investigatory process for 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

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<sup>1</sup> The Federal Aviation Administration and the US Coast Guard are, by law, automatically designated a part of an NTSB investigation in their respective mode.

suitable and needed technical qualifications will be permitted to work on the NTSB investigation.

There are other advantages to the party system. In addition to the 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 will have access to information necessary to quickly initiate any preventive and/or corrective actions needed.

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 will 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 if they do not comply with NTSB instructions.

Each participating party will designate a party coordinator (spokesperson) for its organization. The party coordinator will be the NTSB's direct and official point-of-contact for the party and, therefore, should be available to the IIC at all times during the on-scene investigation and periodically available on short notice following the on-scene phase. The party coordinator must have sufficient authority within their organization to ensure a complete and timely response to a request from the IIC with minimal need for higher approval or coordination. 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 (except for representatives from government 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. Representatives from federal regulatory agencies and law enforcement agencies, and accredited representatives of foreign governments and their foreign technical advisors, will be requested to acknowledge the form. Party coordinators are responsible for ensuring that all group participants from their organization sign the NTSB certification.

#### **4. (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.

The FAA and the Coast Guard will acknowledge receipt of the party form.

#### **5. (Aviation Mode Only) Accredited Representatives of Foreign Governments**

The accredited representative of a foreign government and their 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-US State of Design/Manufacture, State of Operator, or State of Registration. The accredited representative and foreign technical advisors will acknowledge receipt of the party form but are not required to sign the party certification.

#### **6. 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 chair. The IIC and group chair will assign individuals representing selected parties to investigative groups 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 based on 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 the group’s 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 investigative work and the development of the group chair's factual report.

Additional restrictions apply to 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 agreeing to comply with these restrictions.

Under the direction of the group chair, one or more sets of group notes (or field notes) will be developed by each investigative group. Field notes should include all relevant factual information developed by the group and will typically also include supporting documentation, photographs, or other records collected by the group. It is the responsibility of the NTSB group chair 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. Each group member must participate in a complete review of the field notes for technical accuracy and adequacy of the scope of the group's investigation 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 chair will make all reasonable efforts to focus the group on resolving any such issues. 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. The NTSB group chair 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 chair will later prepare a group chair factual report, which will draw extensively on the information in the field notes as well as any follow-up activities. A copy of the group chair's draft factual report will be provided to participating group members for comment. However, the final factual report is the NTSB group chair'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 chair, and, if necessary, will be discussed formally during a technical review meeting later in the investigative process.

## **7. Flow and Dissemination of Investigative Information**

All information obtained by members of an investigative group will immediately be provided to the group chair. All information obtained during the investigation by the various groups will be passed to the IIC by the group chairs.

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 that the information is factual, neutral, and objective in tone, and that the coordinator does not characterize whether the matter contributed to the underlying accident. If a party's organization has a need, in the interest of safety, to transmit information to operators using 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) will 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.

## **8. Release of Information**

Before the NTSB's adoption of the final report, only appropriate NTSB personnel are authorized to publicly disclose investigative information, which will be limited to verified factual information identified during the course of the investigation. In addition, party participants and 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 Media Relations Division at 202-314-6100.

## **9. Proprietary, Commercially Sensitive, and Export-Controlled Information**

Title 49 *Code of Federal Regulations* 831.6 governs the identification and treatment of proprietary and commercially sensitive records and information. All records containing proprietary or commercially sensitive information provided to the NTSB must be clearly marked as such.

Parties are also obligated to inform the NTSB in writing when materials and information provided to the NTSB, verbally, in writing, or in any other format, are subject to Export Administration Regulations (EAR) or to International Traffic in Arms Regulations (ITAR) and/or when their participation in the investigation may be impacted by sanctions programs administered by the US Department of the Treasury Office of Foreign Assets Control (OFAC) or other US 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.

Failure to disclose information relevant to an accident is grounds for removal as a party.

## **10. Organizational Meeting**

The initial investigative meeting on scene is designated as the "organizational meeting." During this meeting, the IIC introduces themselves, explains their expectations for the investigation and for the participants working with the NTSB, and introduces the NTSB group chairs who will lead the investigative groups. In addition, the parties to the investigation will be named, party coordinators will be assigned, and individual group members will be vetted and assigned to appropriate investigative groups.

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

At the beginning of the meeting, everyone 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.

## **11. 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, and, possibly, an evaluation of whether urgent safety recommendations are needed.

Party coordinators must attend every progress meeting. For other investigation participants, attendance at every such meeting is generally encouraged, but individual group members should communicate with their NTSB group chair regarding whether they will be needed at a specific progress meeting,

whether other group investigative activities should take precedence, or whether they have been released from further on-scene participation. No one 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 its members. The group chair is responsible for arranging these meetings. Each group member is expected to raise in a timely manner any concerns, facts, or suggestions for proper consideration by the entire group to ensure maximum precision and thoroughness of the group's investigative efforts. Group members may pass factual information to their respective party coordinators only after the information has been made known to the group chair.

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

## **12. Safety Precautions During Investigations**

Access to the accident site 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 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.

Questions concerning the existence of hazards should be directed to the group chair. Any perceived hazards should be brought to the immediate attention of the appropriate group chair and the IIC.

The NTSB does not assume responsibility for personal injuries received during 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.



### **13. 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 Media Relations representative, or the IIC. 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 the NTSB operates makes this mandatory. The NTSB believes that periodic factual briefings to the news media are a normal part of our investigation and that, for the public to perceive the investigation as credible, the investigation must speak with one voice: that of 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 Media Relations Division. Release to the media of investigative information at any time is grounds for a party's removal from the investigation.

### **14. Depositions or Investigative Hearing**

After completion of the on-scene phase of the investigation, formal depositions or an investigative hearing may be conducted. (See Title 49 *Code of Federal Regulations* 845.2 for more information on investigative hearings.) 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 before all field work (such as component testing, simulator runs, and other such tests) is completed.

### **15. Party Recommendations as to Findings, Conclusions, and Recommendations**

At the completion of the fact-finding phase of an investigation, any party to is encouraged to submit to the NTSB proposed findings 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 provide copies of submissions to all other parties. The IIC will provide a date by which such submissions must be made.