



7533-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

[Docket No. NTSB-AS-2012-0001]

RIN 3147-AA11

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Direct final rule.

SUMMARY: The NTSB is publishing an amendment to its regulations concerning notification and reporting requirements with regard to aircraft accidents or incidents, titled, "Immediate notification." The regulation currently requires reports of Airborne Collision and Avoidance System (ACAS) advisories issued under certain specific circumstances. The NTSB now narrows the ACAS reporting requirement, consistent with the agency's authority to issue non-controversial amendments to rules, pursuant to the direct final rulemaking procedure. The NTSB also updates its contact information for notifications.

DATES: This direct final rule will be effective [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further notice, unless the NTSB receives adverse comment by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE

FEDERAL REGISTER]. If the NTSB receives adverse comment, we will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: A copy of this direct final rule, published in the *Federal Register*, is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza, SW, Washington, D.C. 20594-2000. Alternatively, a copy of the rule is available on the NTSB website, at <http://www.nts.gov>, and at the government-wide website on regulations, at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Scott Dunham, National Resource Specialist - ATC, Office of Aviation Safety, (202) 314-6387.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 7, 2008, the NTSB published a Notice of Proposed Rulemaking (NPRM) titled "Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records." 73 FR 58520. The NPRM proposed several additions to 49 CFR 830.5, to require reports of various types of serious aviation incidents. Among the proposed requirements, the NTSB sought mandatory reports of Airborne Collision Avoidance System (ACAS) resolution advisories

issued either (i) when an aircraft is being operated on an instrument flight rules (IFR) flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft, or (ii) to an aircraft operating in class A airspace. 73 FR 58523-24.

On January 7, 2010, the NTSB published its amendment to the final rule by requiring operators of civil aircraft to report certain ACAS incidents, along with other types of serious incidents. 75 FR 922. The NTSB explained its intent in imposing this reporting requirement is to identify, evaluate, and investigate (when appropriate) serious incidents where aircraft maneuvers were required to avert a substantial risk of collision between aircraft equipped with traffic collision avoidance systems (TCAS) and other aircraft and to evaluate situations where resolution advisories occur between aircraft under positive control in class A airspace. The NTSB clarified it did not intend to require the reporting of all resolution advisories or, outside class A airspace, to require the reporting of any resolution advisory resulting from an encounter between aircraft where no substantial risk of collision exists. 75 FR 925-26.

The NTSB stated it believed the reporting requirement would achieve the NTSB's objective of receiving notification of aircraft encounters that present a significant risk of

collision. In the Final Rule, the NTSB adopted the proposed language, which now appears at 49 CFR 830.5(a)(10).¹

Collection of Reports

By this direct final rule, the NTSB removes the requirement of notifications of ACAS reports from aircraft operators within Class A airspace. The NTSB has determined, through review of the types of events submitted, that it is possible to reduce the scope of the notification requirement while still achieving the safety objective of the rule, which is to increase our awareness of potentially hazardous occurrences in the air traffic control system.

When it issued the requirement of § 830.5(a)(10), the NTSB anticipated its collection of ACAS incident reports would educate the agency concerning whether the TCAS equipment functioned appropriately. In addition, the NTSB sought information concerning whether operators received improper resolution advisories, as well as a general understanding of the effectiveness of TCAS.

Collecting the data on the volume of TCAS alerts that fulfill the criteria listed in § 830.5(a)(10) has been educational and has assisted the NTSB Office of Aviation Safety with understanding the general effectiveness of TCAS as well as

¹ On December 8, 2011, the NTSB published an NPRM proposing to exempt certain "monitor vertical speed" advisories from § 830.5(a)(10)(ii). 76 FR 76686. The NTSB did not incorporate this exemption in an amendment to the rule.

the types of encounters that are likely to cause TCAS resolution advisories.

Amending § 830.5(a)(10) to narrow the reporting requirement of TCAS resolution advisories also achieves the purpose of Executive Order 13579, "Regulation and Independent Regulatory Agencies" (76 FR 41587, July 14, 2011). The purpose of Executive Order 13579 is to ensure all agencies adhere to the key principles found in Executive Order 13563, "Improving Regulation and Regulatory Review" (76 FR 3821, January 21, 2011), which emphasizes agencies must promulgate regulations that are written plainly and clearly written, and do not present duplicative or unnecessary requirements. Removing the requirement of notifications from aircraft operators within Class A airspace that receive a TCAS resolution advisory achieves the purpose of Executive Order 13563, because the NTSB has concluded the notifications are not necessary.

Direct Final Rulemaking Procedure

The NTSB has determined it is appropriate to narrow the reporting requirement in § 830.5(a)(10) by publishing a Direct Final Rule. On September 23, 2015, the NTSB published a Final Rule codifying its authority to utilize the direct final rulemaking process to alter rules that are not controversial and to which the NTSB does not expect substantive comments. 80 FR 57307. As explained in its NPRM describing this process,

agencies frequently use the direct final rulemaking process for minor changes to rules to which it does not expect adverse comments. 80 FR 34874 (June 18, 2015). The NTSB's rule on this procedure, codified at 49 CFR 800.44, states a direct final rule makes changes to a regulation which will take effect on a certain date unless the NTSB receives an adverse comment or a notice of intent to file an adverse comment. If the NTSB receives an adverse comment or notice of intent to file one, the agency will publish a document in the *Federal Register* withdrawing the rule change. The NTSB may then issue an NPRM proposing the change it sought to make by way of the direct final rulemaking process. Id. § 800.44(d). Section 800.44 also defines "adverse comment" for purposes of the direct final rulemaking procedure.

This change limits required notifications to events that evidence a significant risk of collision, thereby reducing the regulatory burden on aircraft operators while continuing to achieve the safety objective of the rule. Informal discussions with organizations such as Air Line Pilots Association, International, Airlines for America, Regional Airline Association, and National Air Carrier Association have shown these organizations support the amendment. Overall, we do not expect to receive any negative industry comments.

Legal Analyses and Effective Date

The NTSB notes it analyzed the potential application of the Regulatory Flexibility Act (5 U.S.C. 601-612) to this rule. The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

In addition, this rule will not require collection of new information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Operators continue to have the option of notifying the NTSB of an ACAS advisory that fulfills the requirements of this rule via telephone or email. The NTSB is continuing to work with the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), to obtain an OMB control number under the Paperwork Reduction Act to collect reports of ACAS advisories, as well as other notifications, via a web-based form. See 80 FR 38751 (July 7, 2015).

Pursuant to 49 CFR 800.44(c), the NTSB will publish a confirmation rule in the *Federal Register* if it has not received an adverse comment or notice of intent to file an adverse comment within 30 days of the date of publication of this direct final rule.

List of Subjects in 49 CFR Part 830

Aircraft accidents, Aircraft incidents, Aviation safety, Overdue aircraft notification and reporting, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the NTSB amends 49 CFR part 830 as follows:

PART 830—

1. The authority citation for part 830 is revised read as follows:

Authority: 49 U.S.C. 1101 - 1155; Pub. L. No. 85-726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101).

2. Section 830.5 is amended by revising the introductory text and paragraphs (a) introductory text and (a)(10) to read as follows:

§ 830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (NTSB) office,¹ when:

- (a) An aircraft accident or any of the following listed serious incidents occur:

¹ NTSB headquarters is located at 490 L'Enfant Plaza, SW, Washington, D.C. 20594. Contact information for the NTSB's regional offices is available at <http://www.nts.gov>. To report an accident or incident, you may call the NTSB Response Operations Center, at 844-373-9922 or 202-314-6290.

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(10) Airborne Collision and Avoidance System (ACAS) resolution advisories issued when an aircraft is being operated on an instrument flight rules flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft.

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Christopher A. Hart,
Chairman.

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