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310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies

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 Section 8.15: Air Pollution Incident Emergency (Effective 4/2/2010)
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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

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: Final rule.

SUMMARY: The NTSB is amending its regulations on the notification and reporting of aircraft accidents or incidents by adding a definition of “unmanned aircraft accident” and requiring that operators notify the NTSB of accidents involving such aircraft. (Unmanned aircraft are often also called remotely piloted vehicles.)

DATES: This final rule will become effective October 25, 2010.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), published in the *Federal Register* (FR), is available for inspection and copying in the NTSB’s public reading room, located at 490 L’Enfant Plaza, SW., Washington, DC 20594-2000. Alternatively, a copy of the NPRM is available on the NTSB’s Web site at <http://www.nts.gov> and at the government-wide Web site on regulations at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: William English, Office of Aviation Safety, (202) 314-6686.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 31, 2008, the NTSB published an NPRM entitled, “Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records,” in the *Federal Register* (73 FR 16826). This NPRM proposed the addition of a new definition of “unmanned aircraft accident” to the section of the NTSB’s regulations concerning notification of aircraft accidents and incidents (49 CFR 830.2) to clarify the applicability of these regulations to unmanned aircraft systems (UAS). The proposed definition stated, “*Unmanned aircraft accident* means an occurrence associated with the operation of a public or civil unmanned aircraft that takes place between the time that the aircraft is activated with the purpose of flight and the time that the aircraft is deactivated at the conclusion of its mission, in which any person suffers death or serious injury, or in which the aircraft receives substantial damage.” The NPRM also proposed the addition of the following sentence to the NTSB’s existing definition of aircraft accident: “For purposes of this part, the definition of ‘aircraft accident’ includes ‘unmanned aircraft accident,’ as defined herein.” Together, these proposed additions would require that the NTSB be notified of unmanned aircraft accidents as defined in the NPRM. The NTSB requested comments on the NPRM by June 30, 2008, but subsequently reopened the comment period for the NPRM and accepted all comments submitted by September 30, 2008.

The NTSB analyzed the potential application of the Regulatory Flexibility Act (5 United States Code [U.S.C.] 601-612) to this rule. Before publishing the NPRM, the NTSB considered whether this rule would have a significant economic impact on a substantial number of small entities, and it certified under 5 U.S.C. 605(b) that this rule would not have such an impact. The NTSB notes that this rule will require affected persons to notify the NTSB of applicable UAS accidents by the most expeditious means available as described in 49 CFR 830.5 and, in some cases, to complete NTSB Form 6120.1, “Pilot/Operator Accident/Incident Report,” as described in 49 CFR 830.15, within 10 days after an applicable UAS accident. Any cost for an individual to

notify the NTSB and/or complete the form would be minimal. (An electronic version of Form 6120.1 is available at <http://www.nts.gov>.) Therefore, the NTSB verifies that its certification under 5 U.S.C. 605(b) is valid.

In response to the publication of this NPRM, the NTSB received 13 comments, all of which it carefully considered. The NTSB did not receive any requests for a public meeting and already possessed the information needed to develop the rule and verify the rule's 5 U.S.C. 605(b) certification; therefore, the NTSB did not hold a public meeting about the NPRM. Below is a summary of, and response to, each concern of the commenters.

Discussion of Comments and Changes

Of the 13 comments that the NTSB received, 4 were from individuals, 4 were from manufacturers, and 5 were from unions and industry organizations. Several commenters raised concerns that the rule, as originally proposed, could require the reporting of accidents involving very small aircraft. The NTSB agrees that the airborne components of UASs may include very small, lightweight vehicles, which pose little threat to transportation safety because of their size and the FAA-imposed constraints on UAS's exposure to people and property on the ground. Therefore, the NTSB has modified 49 CFR 830.2 to specify the size of airborne components subject to the rule. However, the NTSB also acknowledges that, given the evolving nature of UAS technologies and operations, the criteria for determining which accidents must be reported might need to be updated as technologies mature and UAS operations expand.

The NTSB's final rule will require reporting of unmanned aircraft accidents in which: (a) Any person suffers death or serious injury; or (b) the aircraft has a maximum gross takeoff weight [MGTO] of 300 pounds or greater and sustains substantial damage.

The cited MGTO of 300 pounds is similar to the maximum weight of a powered ultralight vehicle, as described in 14 CFR 103.1(e). That regulation sets a maximum weight for a fully fueled powered ultralight vehicle as about 288 pounds. Although 14 CFR part 103 applies only to manned aircraft, the NTSB considered that a similar maximum weight for unmanned aircraft is logical, captures those aircraft that pose a threat to safety, and results in a reporting requirement similar to that which applies to manned small aircraft. Moreover, this weight equates to a vehicle about the size of the RQ-7 Shadow, which most of the public

would identify as an aircraft and not a toy or model. The 300-pound MGTO is also similar to the European Organization for Civil Aviation Equipment Working Group 73 definition of a small UAS as less than 150 kilograms (330 pounds).

The NTSB acknowledges that the defined cutoff weight in this rule is larger than the 55-pound MGTO that the FAA small UAS (sUAS) Aviation Rulemaking Committee used for its definition of an sUAS. The NTSB is also aware that the International Civil Aviation Organization (ICAO) amendment 13 to Annex 13, Aircraft Accident and Incident Investigation, defines unmanned aircraft accident without size or weight criteria. However, the NTSB's reporting requirement, which will capture only accidents that involve aircraft weighing over 300 pounds unless serious injuries or fatalities result, will allow the agency to focus on events involving the most significant risks to public safety. If the NTSB implemented the ICAO standard, it would likely receive many reports that would not be useful to fulfilling its statutory purpose of improving public safety through accident investigations and safety recommendations. In addition, the proposed ICAO standard would not address the concerns of the NPRM commenters. As stated previously, the NTSB may consider revising the UAS accident threshold weight in the future as UAS technology and the UAS accident knowledge base increases. The NTSB also notes that UAS accidents involving a serious injury or death, including those associated with the ground control station or other non-airborne components of the system, are not exempt under this rule, regardless of the airborne component's weight.

The NTSB maintains that the change in the proposed regulatory language regarding the weight of the airborne component is a logical outgrowth of the proposed rule and of due consideration of public comments regarding the proposed rule. Therefore, this change complies with the rulemaking requirements of the Administrative Procedure Act.

Other commenters stated that, under this rule, duplicate reports may be necessary because operators are already required to submit a report of an accident involving a UAS to the FAA, pursuant to the provisions of each FAA Certificate of Authorization (COA). See 72 FR 6689 (Feb. 13, 2007). The FAA COA Guidance Manual 08-01 notes that reports of events involving the UAS will be required per the COA approval, but these reports are not necessarily for the

purposes of accident investigation. Some commenters suggested that the NTSB receive notifications directly from the FAA, in lieu of UAS operators directly notifying the NTSB. The NTSB rejects this idea because the NTSB needs immediate notification of UAS accidents so that it can determine the appropriate response, which might include immediately dispatching investigators to the scene. Relying on notifications from a third party such as the FAA would create an unacceptable delay in notification to and response by the NTSB. When notification is delayed, critical evidence can be lost, hampering the investigation. Further, the FAA has acknowledged that its current system of approving operation of these aircraft under COAs and special airworthiness certificates in the experimental category may not be permanent; thus, the NTSB must have regulations in place that require that it receive reports of UAS accidents independent of the FAA. The NTSB notes that operators of manned aircraft also are required to make separate reports to both the FAA and NTSB under certain circumstances, given the agencies' different missions.

The NTSB believes that providing the weight exemptions previously described here and adding no UAS-specific reportable incident types at this time to 49 CFR 830.5 will minimize any burden that requiring duplicative reports might cause.

Some commenters expressed concern about the NTSB accident definition for UASs with frangible components. The commenters considered that the separation of a frangible component is similar to "normal wear and tear" or use of consumables. The NTSB agrees that separation of a frangible component would not likely require a "major repair" or equivalent. Thus, the existing definition is sufficient to exclude most cases of frangible component separation.

Commenters also discussed incident-reporting requirements and described the use of UASs in military operations. The NTSB is not proposing any additional incident reporting requirements at this time because it is likely that existing required reports, including near-midair collision reports, hazardous air traffic reports, and traffic alert and collision avoidance system events, capture most safety-related events that are likely to be associated with UAS operations. Further, the NTSB intends its inclusion of the phrase "public or civil" in the amended rule to exclude military UASs, model aircraft, and commercial spacecraft operating under FAA waivers.

List of Subjects in 49 CFR Part 830

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

■ In conclusion, for the reasons discussed in the preamble, the NTSB amends 49 CFR part 830 as follows:

■ 1. The authority citation for 49 CFR part 830 continues to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101–1155); Federal Aviation Act of 1958, Pub. L. 85–726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101).

■ 2. Amend § 830.2 to add the following sentence at the end of the definition of “*Aircraft accident*” and to add a new definition of “*Unmanned aircraft accident*” to read as follows:

§ 830.2 Definitions

* * * * *

Aircraft accident * * * For purposes of this part, the definition of “aircraft accident” includes “unmanned aircraft accident,” as defined herein.

* * * * *

Unmanned aircraft accident means an occurrence associated with the operation of any public or civil unmanned aircraft system that takes

place between the time that the system is activated with the purpose of flight and the time that the system is deactivated at the conclusion of its mission, in which:

(1) Any person suffers death or serious injury; or

(2) The aircraft has a maximum gross takeoff weight of 300 pounds or greater and sustains substantial damage.

Dated: August 17, 2010.

Deborah A.P. Hersman,
Chairman.

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