

## National Transportation Safety Board

## § 835.10

at the expense of the party requesting the deposition, to the Board's General Counsel at Washington, DC headquarters for the Board's files.

[55 FR 41541, Oct. 12, 1990, as amended at 63 FR 71607, Dec. 29, 1998]

### § 835.6 Request for testimony in civil litigation.

(a) A written request for testimony by deposition or interrogatories of a Board employee relating to an accident shall be addressed to the General Counsel, who may approve or deny the request consistent with this part. Such request shall set forth the title of the civil case, the court, the type of accident (aviation, railroad, etc.), the date and place of the accident, the reasons for desiring the testimony, and a showing that the information desired is not reasonably available from other sources.

(b) Where testimony is sought in connection with civil litigation, the General Counsel shall not approve it until the factual accident report is issued (*i.e.*, in the public docket). In the case of major accident investigations where there are multiple factual reports issued and testimony of group chairmen is sought, the General Counsel may approve depositions regarding completed group factual reports at any time after incorporation of the report in the public docket. However, no deposition will be approved prior to the Board's public hearing, where one is scheduled or contemplated. The General Counsel may approve a deposition in the absence of a factual accident report when such a report will not be issued but all staff fact-finding is complete.

(c) The General Counsel shall attach to the approval of any deposition such reasonable conditions as may be deemed appropriate in order that the testimony will be consistent with § 835.1, will be limited to the matters delineated in § 835.3, will not interfere with the performance of the duties of the employee as set forth in § 835.5, and will otherwise conform to the policies of this part.

(d) A subpoena shall not be served upon a Board employee in connection

with the taking of a deposition in civil litigation.

[63 FR 71607, Dec. 29, 1998]

### § 835.7 Testimony of former Board employees.

It is not necessary to request Board approval for testimony of a former Board employee, nor is testimony limited to depositions. However, the scope of permissible testimony continues to be constrained by all the limitations set forth in § 835.3 and § 835.4.

[63 FR 71608, Dec. 29, 1998]

### § 835.8 Testimony by current Board employees regarding prior activity.

Any testimony regarding any accident within the Board's jurisdiction, or any expert testimony arising from employment prior to Board service is prohibited absent approval by the General Counsel. Approval shall only be given if testimony will not violate § 835.1 and § 835.3, and is subject to whatever conditions the General Counsel finds necessary to promote the purposes of this part as set forth in § 835.1 and § 835.3.

[63 FR 71608, Dec. 29, 1998]

### § 835.9 Procedure in the event of a subpoena in civil litigation.

(a) If the Board employee has received a subpoena to appear and testify in connection with civil litigation, a request for his deposition shall not be approved until the subpoena has been withdrawn.

(b) Upon receipt of a subpoena, the employee shall immediately notify the General Counsel and provide all information requested by the General Counsel.

(c) The General Counsel shall determine the course of action to be taken and will so advise the employee.

[63 FR 71608, Dec. 29, 1998]

### § 835.10 Testimony in Federal, State, or local criminal investigations and other proceedings.

(a) As with civil litigation, the Board prefers that testimony be taken by deposition if court rules permit, and that testimony await the issuance of the factual accident report. The Board recognizes, however, that in the case of

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coroner's inquests and grand jury proceedings this may not be possible. The Board encourages those seeking testimony of Board employees to contact the General Counsel as soon as such testimony is being considered. Whenever the intent to seek such testimony is communicated to the employee, he shall immediately notify the General Counsel.

(b) In any case, Board employees are prohibited from testifying in any civil, criminal, or other matter, either in person or by deposition or interrogatories, absent advance approval of the General Counsel. The Board discourages the serving of a subpoena for testimony but, if issued, it should be served on the General Counsel, rather than the employee.

(c) If permission to testify by deposition or in person is granted, testimony shall be limited as set forth in § 835.3. Only factual testimony is authorized; no expert or opinion testimony shall be given.

[63 FR 71608, Dec. 29, 1998]

### **§ 835.11 Obtaining Board accident reports, factual accident reports, and supporting information.**

It is the responsibility of the individual requesting testimony to obtain desired documents. There are a number of ways to obtain Board accident reports, factual accident reports, and accompanying accident docket files. Our rules at parts 801 and 837 of this chapter explain our procedures, as will our web site, at [www.nts.gov](http://www.nts.gov). Or, you may call our Public Inquiries Branch, at (800) 877-6799. Documents will not be supplied by witnesses at depositions, nor will copying services be provided by deponents.

[63 FR 71608, Dec. 29, 1998]

## **PART 837—PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS**

Sec.

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837.3 Published reports, material contained in the public accident investigation dockets, and accident database data.

837.4 Other material.

AUTHORITY: 49 U.S.C. 1101 *et seq.*; 40101 *et seq.*; 5 U.S.C. 301.

## **49 CFR Ch. VIII (10–1–03 Edition)**

SOURCE: 62 FR 27703, May 21, 1997, unless otherwise noted.

### **§ 837.1 Purpose and scope.**

(a) This part sets forth procedures to be followed when requesting material for use in legal proceedings (including administrative proceedings) in which the National Transportation Safety Board (NTSB or Board) is not a party, and procedures to be followed by the employee upon receipt of a subpoena, order, or other demand (collectively referred to here as a demand) by a court or other competent authority or by a private litigant. "Material," as used in this part, means any type of physical or documentary evidence, including but not limited to paper documents, electronic media, videotapes, audiotapes, etc.

(b) The purposes of this part are to:

(1) Conserve the time of employees for conducting official business;

(2) Minimize the possibility of involving the NTSB in controversial issues not related to its mission;

(3) Maintain the impartiality of the Board among private litigants;

(4) Avoid spending the time and money of the United States for private purposes; and

(5) To protect confidential, sensitive information, and the deliberative processes of the Board.

### **§ 837.2 Applicability.**

This part applies to requests to produce material concerning information acquired in the course of performing official duties or because of the employee's official status. Specifically, this part applies to requests for: material contained in NTSB files; and any information or material acquired by an employee of the NTSB in the performance of official duties or as a result of the employee's status. Two sets of procedures are here established, dependent on the type of material sought. Rules governing requests for employee testimony, as opposed to material production, can be found at 49 CFR part 835. Document production shall not accompany employee testimony, absent compliance with this part and General Counsel approval.