

Dated: November 9, 2006.

**Marilyn Marton,**

*Director, Office of Small and Disadvantaged Business Utilization (OSDBU).*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 604**

[Docket No. FTA-2005-22657]

RIN 2132-AA85

**Charter Service Negotiated Rulemaking Advisory Committee**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of meeting location and time of the meeting.

**SUMMARY:** This notice lists the location and time of the next Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) meeting.

**DATES:** *Effective Date:* November 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Martineau, Attorney-Advisor, Office of the Chief Counsel, Federal Transit Administration, 202-366-1936 ([elizabeth.martineau@dot.gov](mailto:elizabeth.martineau@dot.gov)). Her mailing address at the Federal Transit Administration at 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Meeting Location**

The Residence Inn Marriott, 550 Army Navy Drive, Arlington, VA 22202.

**Meeting Time**

December 6th, 9 a.m.–4:30 p.m.  
December 7th, 8:30 a.m.–4 p.m.

Issued this 16th day of November, 2006, in Washington, DC.

**James S. Simpson,**  
*Administrator.*

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**NATIONAL TRANSPORTATION SAFETY BOARD**

**49 CFR Part 801**

**Public Availability of Information**

**AGENCY:** National Transportation Safety Board (NTSB).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The NTSB is proposing to amend 49 *Code of Federal Regulations*

(CFR) Part 801, “Public Availability of Information,” to include updated information regarding the availability of NTSB records. This amendment updates the NTSB regulations that implement the Freedom of Information Act (FOIA) and Privacy Act, notifies the public of changes in the NTSB’s Freedom of Information Act processing procedures and, in general, advises the public on the availability of information from NTSB accident investigations.

**DATES:** Submit comments on or before December 22, 2006.

**ADDRESSES:** Mail comments concerning this proposed rule to Gary L. Halbert, General Counsel, National Transportation Safety Board, 490 L’Enfant Plaza, SW., Washington, DC 20594-2000.

**FOR FURTHER INFORMATION CONTACT:** Gary L. Halbert, (202) 314-6080.

**SUPPLEMENTARY INFORMATION:**

**Proposed Revision to § 801.1, Applicability**

The NTSB seeks to amend § 801.1 in order to clarify the NTSB’s implementation of the provisions of the Freedom of Information Act, and update the relevant statutory citations.

**Proposed Revision to § 801.2, Policy**

The NTSB seeks to amend § 801.2 in order to emphasize that persons seeking information from the NTSB need not submit a request under the FOIA, but instead should first search for information that is publicly available. Although the NTSB makes “public docket” of investigative information available to the public at the conclusion of each investigation, the NTSB still receives hundreds of FOIA requests each year for the same or similar information. Many FOIA requesters find that the information they receive from the NTSB, beyond that already in the public docket, is not helpful to them. Section 801.2 emphasizes this point and encourages requesters to obtain the public docket of investigative information before they consider submitting a FOIA request.

**Proposed Revision to § 801.3, Definitions**

The NTSB seeks to amend § 801.3 in order to update existing definitions, and in order to include definitions for the terms, “public docket” and “non-docket,” which are unique to the NTSB.

**Proposed Revision to § 801.10, General**

The NTSB seeks to amend § 801.10 to replace references to “Director, Bureau of Administration” with “Chief, Records Management Division.” The NTSB no

longer has a Director, Bureau of Administration.

In addition, the NTSB seeks to amend § 801.10 in order to update the deadline by which the NTSB must respond to requests for information under the FOIA; Congress amended the FOIA in 1996 to expand the response deadline from 10 working days to 20 working days. 5 U.S.C. 552(a)(6)(A)(i). The NTSB’s proposed amendment to § 801.10(b) reflects this change. In updating this provision, however, the NTSB notes that the FOIA does not require an agency to search for records, meet time deadlines, or release any records until the agency has received a FOIA request. A request for information under the FOIA must comply with published regulations before an agency is required to consider it a proper FOIA request.

The NTSB also seeks to amend § 801.10 to notify persons seeking information that the NTSB will deny requests for information related to an ongoing investigation, in accordance with the exemptions of the FOIA.

The other proposed amendments to § 801.10 clarify the general requirements for submitting a FOIA request to the NTSB.

**Proposed Revision to § 801.11, Segregability of Records**

The NTSB seeks to amend § 801.11 in order to update the title of the NTSB employee who makes a segregability determination. The amendments also clarify the NTSB’s practice of segregating exempt portions of a record from non-exempt portions via redaction, when possible.

**Proposed Revision to § 801.12, Protection of Records**

The NTSB seeks to amend § 801.12 in order to provide a cross-reference to another relevant section within this title, and to add to a quotation of 18 U.S.C. 641. In general, the NTSB intends to retain the majority of this section as the NTSB originally enacted it, in order to cite the specific penalties that a person will encounter if they attempt to steal, alter, mutilate, obliterate, or destroy an agency record.

**Proposed Addition of § 801.20, Processing of Records**

The NTSB seeks to add § 801.20 to this part, in order to notify persons seeking information concerning the NTSB FOIA Office’s “tracking” system for processing requests. This system allows the NTSB to process requests more efficiently; rather than allowing a complex, broad request to inhibit the processing of simpler requests, the

NTSB places each request on an appropriate "track" and processes them on a "first-in, first-out" basis. This process is consistent with the courts' interpretations of the processing requirements of the FOIA. *See, e.g., Open Am. v. Watergate*, 547 F.2d 605, 616 (D.C. Cir. 1976).

The addition of § 801.20 also addresses expedited processing. This proposed text regarding the expedition of certain requests states that requesters must demonstrate a "compelling need" for the information, in accordance with the FOIA. 5 U.S.C. 552(a)(6)(E). Requesters may show a "compelling need" in one of two ways: By establishing that his or her failure to obtain the records quickly "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual"; or, if the requester is a "person primarily engaged in disseminating information," by demonstrating that an "urgency to inform the public concerning actual or alleged federal government activity" exists. *Id.* Section 552(a)(6)(E)(v).

#### **Proposed Revision to § 801.21, Initial Determination**

The NTSB seeks to amend § 801.21 in order to update the title of the NTSB employee who makes an initial determination regarding the release of records within the scope of each request. The proposed amendments to § 801.21 also update the time limit for the NTSB's response to requests from 10 days to 20 days, in accordance with the existing version of the FOIA. 5 U.S.C. 552(a)(6)(A)(i).

#### **Proposed Revision to § 801.22, Final Determination**

The NTSB seeks to amend § 801.22 in order to set forth a time limit in which a requester may appeal the initial determination of the NTSB FOIA Officer. The proposed amendments to § 801.22 also clarify that the NTSB's Managing Director will determine whether to grant or deny the appeal.

#### **Proposed Revisions to § 801.23, Extension**

The NTSB seeks to amend § 801.23 in order to include certain minor technical amendments.

#### **Proposed Revisions to § 801.30, Records From Accident Investigations**

The NTSB seeks to amend § 801.30 in order to simplify the process by which investigative records become publicly available. Section 801.30 now encompasses all types of investigations, and describes what types of records are available for inspection and duplication.

#### **Proposed Revisions to § 801.31, Public Hearings Regarding Investigations**

The NTSB seeks to amend § 801.31 to reflect a reorganization of §§ 801.30–801.33, and to encompass hearings on all types of investigations. The NTSB also seeks to change the approximate time period in which transcripts and other records from the hearing become available.

#### **Proposed Revisions to § 801.32, Accident Reports**

The NTSB seeks to amend § 801.32 to reflect a reorganization of §§ 801.30–801.33, and to include a citation to the section of the NTSB's enabling statute that addresses accident reports. The NTSB also seeks to amend these sections to include a reference to the NTSB public Web site, <http://www.nts.gov>.

#### **Proposed Deletion of §§ 801.33–801.36**

The NTSB seeks to delete §§ 801.33–801.36, which address accident reports according to the mode of transportation at issue. The NTSB's current practice of issuing accident reports in accordance with 49 U.S.C. 1131(e) does not significantly vary depending on the mode of transportation; therefore, the NTSB seeks to consolidate and simplify the mode-specific sections regarding accident reports and hearings.

#### **Proposed Revision to § 801.40, the Board's Rules**

The NTSB seeks to amend § 801.40 to correct the citation in which the NTSB's rules are located in the Code of Federal Regulations.

#### **Proposed Deletion of § 801.41, Transportation Safety Recommendations**

The NTSB seeks to delete the text of § 801.41. Previously, this section stated that the NTSB publishes transportation safety recommendations in the **Federal Register**. The NTSB's statute no longer requires the NTSB to publish safety recommendations in the **Federal Register**; as such, the NTSB does not distribute safety recommendations via the **Federal Register**.

#### **Proposed Deletion of § 801.42, Indexes to Aviation and Maritime Enforcement Cases**

The NTSB no longer maintains the indexes described in § 801.42. Instead, the NTSB maintains an index of enforcement decisions on the NTSB Web site. Therefore, the NTSB seeks to delete § 801.42.

#### **Proposed Revision to § 801.43, Administrative Staff Manuals and Instructions and Indexes That Affect the Public**

The NTSB no longer maintains an updated index of staff manuals in the NTSB FOIA Reading Room. Therefore, the NTSB seeks to delete § 801.43.

#### **Proposed Revision to § 801.44, Reports to Congress**

The NTSB seeks to amend § 801.44 in order to update the citation to the section of the NTSB's statute that requires the NTSB to submit an annual report to Congress, and to include a reference to the NTSB's public Web site, which contains the NTSB's annual report to Congress.

#### **Proposed Revision to § 801.45, Other Records**

The NTSB seeks to delete the text of § 801.45, because the NTSB makes records regarding each investigation available to the public in the form of "public dockets," as described in § 801.10.

#### **Proposed Revision to § 801.46, Special Document Services**

The NTSB seeks to amend § 801.46 to include minor technical amendments.

#### **Proposed Revision to § 801.50, General**

The NTSB seeks to amend § 801.50 to include minor technical amendments, and to clarify that the NTSB may choose to make a discretionary release of a record that may be exempt under the FOIA. Such discretionary releases do not create any right enforceable in court, and depend upon the circumstances surrounding the record at issue.

#### **Proposed Revision to § 801.51, National Defense and Foreign Policy Secrets**

The NTSB seeks to amend § 801.51 to include minor technical amendments, and to update the relevant citations regarding the release of classified records.

#### **Proposed Revision to § 801.52, Internal Personnel Rules and Practices of the NTSB**

The NTSB seeks to amend § 801.52 to clarify which records are exempt from disclosure pursuant to Exemption 2.

#### **Proposed Revision to § 801.53, Records Exempt by Statute From Disclosure**

The NTSB seeks to amend § 801.53 to include minor technical amendments. The NTSB also notes that the NTSB's enabling statute prohibits the NTSB from releasing certain records; therefore, the NTSB encourages requesters to review the NTSB's statute before

submitting a request under the FOIA. See 49 U.S.C. 1114 and 1136(d)(2).

**Proposed Revision to § 801.54, Trade Secrets and Commercial or Financial Information**

The NTSB seeks to amend § 801.54, which implements Exemption 4 of the FOIA, in order to correlate with the enumerated exemptions of the FOIA. Previously, the text of this section existed as § 801.59.

**Proposed Revision to § 801.55, Interagency and Intra-Agency Exchanges**

The NTSB seeks to amend § 801.55 to include minor technical amendments.

**Proposed Revision to § 801.56, Unwarranted Invasion of Personal Privacy**

The NTSB seeks to amend § 801.56 to include minor technical amendments.

**Proposed Revision to § 801.57, Records Compiled for Law Enforcement Purposes**

The NTSB seeks to amend § 801.57 to include minor technical amendments. The NTSB also notes that courts have recently broadened the application of Exemption 7 to include records regarding the enforcement of regulations of a civil nature. As such, Exemption 7(A) applies to withhold records related to a pending civil investigation.

**Proposed Revision to § 801.58, Records for Regulation of Financial Institutions**

The NTSB seeks to amend § 801.58 to include minor technical amendments.

**Proposed Revision to § 801.59, Geological Records**

The NTSB seeks to amend § 801.59 to include minor technical amendments.

**Proposed Addition of Subpart G, Fee Schedule**

The NTSB seeks to add §§ 801.60 and 801.61 within a new subpart, entitled "Fee Schedule."

**Proposed Addition of § 801.60, Fee Schedule**

The NTSB seeks to delete the Appendix containing the NTSB Fee Schedule for FOIA requests that accompanies these regulations, and instead place the fee schedule in a new section, § 801.60. The NTSB proposes significant changes to the fee schedule in accordance with case law developments and guidance from the Department of Justice and Office of Management and Budget regarding such fees. Although the NTSB had previously not charged fees for the fulfillment of

most requests for records, the NTSB will begin requiring that requesters pay fees for the search, review, and duplication of records, as provided in § 801.60. The NTSB will not consider a request to be "received" pursuant § 801.10 of this title until the requester agrees to pay the amount that the NTSB FOIA Office specifies.

**Proposed Addition of § 801.61, Appeals of Fee Determinations**

The NTSB seeks to add § 801.61, Appeals of Fee Determinations, to provide that a requester may appeal the FOIA Office's decision regarding fees.

**List of Subjects in 49 CFR part 801**

Archives and records, Freedom of information, Privacy.

For the reasons set forth in the preamble, the NTSB proposes to amend 49 CFR part 801 as follows:

**PART 801—PUBLIC AVAILABILITY OF INFORMATION**

1. The authority citation for part 801 is revised to read as follows:

**Authority:** Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101–1155); 5 U.S.C. 551(2); Freedom of Information Act (5 U.S.C. 552); 18 U.S.C. 641 and 2071; 31 U.S.C. 3717 and 9701; Federal Records Act, 44 U.S.C. Chapters 21, 29, 31, and 33.

2. Section 801.1 is revised to read as follows:

**§ 801.1 Applicability.**

(a) This part contains the rules that the National Transportation Safety Board (NTSB) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read together with the FOIA, which provides additional information about public access to records maintained by the NTSB.

(b) This part also provides for document services and the fees for such services, pursuant to 31 U.S.C. 9701.

(c) This part applies only to records existing when the request for the information is made. The NTSB is not required to create records for the sole purpose of responding to a FOIA request.

(d) Sections 801.51 through 801.59 of this title describe records that are exempt from public disclosure.

3. Section 801.2 is revised to read as follows:

**§ 801.2 Policy.**

(a) In implementing 5 U.S.C. 552, it is the policy of the NTSB to make information available to the public to the greatest extent possible, consistent with the mission of the NTSB.

Information the NTSB routinely provides to the public as part of a regular NTSB activity (such as press releases and information disclosed on the NTSB's public website) may be provided to the public without compliance with this part. In addition, as a matter of policy, the NTSB may make discretionary disclosures of records or information otherwise exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption; however, this policy does not create any right enforceable in court.

(b) Given the NTSB's stated policy of providing as much information as possible regarding general NTSB operations and releasing documents involving investigations, the NTSB strongly encourages requesters seeking information to check the NTSB's website for such information before submitting a FOIA request. For every investigation in which the NTSB has determined the probable cause of an accident, the NTSB's docket management system will include a "public docket" containing documentation that the investigator-in-charge deemed pertinent to the investigation. Requesters may obtain these public dockets without submitting a FOIA request. The NTSB encourages all requesters to review the public docket materials before submitting a FOIA request.

4. Section 801.3 is revised to read as follows:

**§ 801.3 Definitions.**

The following definitions shall apply in this subpart:

(a) "Record" includes any writing, drawing, map, recording, tape, film, photo, or other documentary material by which information is preserved. In this part, "document" and "record" shall have the same meaning.

(b) "Redact" refers to the act of making a portion of text illegible by placing a black mark on top of the text.

(c) "Public Docket" includes a collection of records from an accident investigation that the investigator who oversaw the investigation of that accident has deemed pertinent to determining the probable cause of the accident.

(d) "Non-docket" items include other records from an accident that the investigator who oversaw the investigation of that accident has deemed irrelevant or not directly pertinent to determining the probable cause of the accident.

(e) "Chairman" means the Chairman of the NTSB.

(f) "Managing Director" means the Managing Director of the NTSB.

(g) "Requester" means any person, as defined in 5 U.S.C. 551(2), who submits a request pursuant to the FOIA.

5. Section 801.10 is revised to read as follows:

**§ 801.10 General.**

(a) The NTSB's Chief, Records Management Division, is responsible for the custody and control of all NTSB records required to be preserved under the Federal Records Act, 44 U.S.C. Chapters 21, 29, 31, and 33.

(b) The NTSB's FOIA Officer shall be responsible for the initial determination of whether to release records within the 20-working-day time limit, or the extension specified in the Freedom of Information Act.

(c) The NTSB's Chief, Records Management Division, shall:

(1) Maintain for public access and commercial reproduction all accident files containing aviation and surface investigators' reports, factual accident reports or group chairman reports, documentation and accident correspondence files, transcripts of public hearings, if any, and exhibits; and

(2) Maintain a public reference room, also known as a "Reading Room," in accordance with 5 U.S.C. 552(a)(2). The NTSB's public reference room is located at 490 East L'Enfant Plaza, SW., Washington, DC. Other records may be available in the NTSB's Electronic Reading Room, which is located on the NTSB's website, found at <http://www.nts.gov>.

(d) Requests for documents must be made in writing to: National Transportation Safety Board, Attention: FOIA Officer CIO-40, 490 L'Enfant Plaza, SW., Washington, DC 20594-2000. All requests:

(1) Must reasonably identify the record requested. For requests regarding an investigation of a particular accident, requesters should include the date and location of the accident, as well as the NTSB investigation number. In response to broad requests for records regarding a particular investigation, the FOIA Office will notify the requester of the existence of a public docket, and state that other non-docket items may be available, or may become available, at a later date. After receiving this letter and reviewing the items in the public docket, requesters should notify the FOIA office if the items contained in the public docket suffice to fulfill their request.

(2) Must be accompanied by the fee or agreement (if any) to pay the

reproduction costs shown in the fee schedule at § 801.60 of this title, and

(3) Must contain the name, address, and telephone number of the person making the request. Requesters must update their address and telephone number in writing should this information change.

(e) The envelope in which the requester submits the request should be marked prominently with the letters "FOIA." If a request fails to include a citation to the FOIA, the NTSB FOIA Office will attempt to contact the requester immediately to rectify the omission and/or clarify the request. However, the 20-working-day time limit for processing shall not commence until the FOIA Office receives a complete request.

(f) The field offices of the NTSB shall not maintain, for public access, records maintained by the Chief, Records Management Division. Requests mailed to NTSB field offices will not satisfy the NTSB's requirements for submitting a FOIA request.

(g) The NTSB may work with a commercial reproduction firm to accommodate requests for reproduction of accident records from the public docket. The reproduction charges may be subject to change. The NTSB will update its FOIA website to reflect any such changes. Section 801.60 of this title contains a current fee schedule.

(h) The NTSB will not release records originally generated by other agencies or entities. Instead, the NTSB will refer such requests for other agencies' records to the appropriate agency, which will make a release determination upon receiving and processing the referred request.

(i) Where a requester seeks a record on behalf of another person, and the record contains that person's personal information protected by Exemption 6 of the FOIA (see section 801.56 of this title), the NTSB requires the requester to submit a notarized statement of consent from the person whose personal information is contained in the record, before the NTSB releases the record.

(j) In general, the NTSB will deny requests for records concerning a pending investigation, pursuant to appropriate exemptions under the FOIA. The FOIA Office will notify the requester of this denial, and will provide the requester with information regarding how the requester may receive information on the investigation once the investigation is complete. The NTSB discourages requesters from submitting multiple FOIA requests in a continuing effort to obtain records before an investigation is complete.

6. Section 801.11 is revised to read as follows:

**§ 801.11 Segregability of records.**

The initial decision of the FOIA Officer will include a determination of segregability. If it is reasonable to do so, the exempt portions of a record will be segregated and, where necessary, redacted, and the nonexempt portions will be sent to the requester.

7. Section 801.12 is revised to read as follows:

**§ 801.12 Protection of records.**

(a) No person may, without permission, remove from the place where it is made available any record made available for inspection or copying under § 801.10(c)(2) of this part. Stealing, altering, mutilating, obliterating, or destroying, in whole or in part, such a record shall be deemed a criminal offense.

(b) Section 641 of title 18 of the United States Code provides, in pertinent part, as follows:

"Whoever \* \* \* steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record \* \* \* or thing of value of the United States or of any department or agency thereof \* \* \* shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both."

(c) Section 2071(a) of title 18 of the United States Code provides, in pertinent part, as follows:

"Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited \* \* \* in any public office, or with any \* \* \* public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both."

8. Section 801.20 is revised to read as follows:

**§ 801.20 Processing of requests.**

(a) The NTSB processes FOIA requests upon receipt. The NTSB FOIA Office may notify the requester that the NTSB has received the request. The FOIA Office will then place each request on one of three tracks:

(1) Track 1: Requests for which there are no records, requests that meet the

criteria for expedited processing, or requests that seek records that have been produced in response to a prior request.

(2) Track 2: Requests that do not involve voluminous records or lengthy consultations with other entities.

(3) Track 3: Requests that involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

(b) Regarding expedited processing, if a requester states that he or she has a compelling need for the expedited treatment of their request, then the NTSB FOIA Office will determine whether to expedite the request and, where appropriate, do so.

9. Section 801.21 is revised to read as follows:

**§ 801.21 Initial determination.**

The NTSB FOIA Officer will make an initial determination as to whether to release a record within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after the request is received. This time limit may be extended up to 10 additional working days in accordance with § 801.23 of this part. The person making the request will be notified immediately in writing of such determination. If a determination is made to release the requested record(s), such record(s) will be made available promptly. If the FOIA Officer determines not to release the record(s), the person making the request will, when he or she is notified of such determination, be advised of:

(a) The reason for the determination;

(b) The right to appeal the determination; and

(c) The name and title or positions of each person responsible for the denial of the request.

10. Section 801.22 is revised to read as follows:

**§ 801.22 Final determination.**

Requesters seeking an appeal of the FOIA Officer's initial determination must send a written appeal to the NTSB's Managing Director within 20 days. The NTSB's Managing Director will determine whether to grant or deny any appeal made pursuant to § 801.21 within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended for as many as 10 additional working days, in accordance with § 801.23.

11. Section 801.23 is added to read as follows:

**§ 801.23 Extension.**

In unusual circumstances as specified in this section, the time limits prescribed in either § 801.21 or § 801.22, may be extended by written notice to the person making a request and setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice will not specify a date that would result in an extension for more than 10 working days. As used in this paragraph, "unusual circumstances," as they relate to any delay that is reasonably necessary to the proper processing of the particular request, means—

(a) The need to search for and collect the requested records from field facilities or other establishments;

(b) The need to search for, collect, and appropriately examine and process a voluminous amount of records which are the subject of a single request; or

(c) The need to consult with another agency that has a substantial interest in the disposition of the request or with two or more components of the agency having substantial subject-matter interest therein.

12. Section 801.30 is revised to read as follows:

**§ 801.30 Records from accident investigations.**

Upon completion of an accident investigation, each NTSB investigator (or "group chairman," depending on the investigation) shall complete a factual report with supporting documentation and include these items in the public docket for the investigation. The Chief, Records Management Division, will then make the records available to the public for inspection or production by an order for commercial copying.

13. Section 801.31 is revised to read as follows:

**§ 801.31 Public hearings regarding investigations.**

Within approximately four (4) weeks after a public hearing concerning an investigation, the Chief, Records Management Division, will make available to the public the hearing transcript. On or before the date of the hearing, the Chief, Records Management Division, will make the exhibits introduced at the hearing available to the public for inspection or commercial copy order.

14. Section 801.32 is revised to read as follows:

**§ 801.32 Accident reports.**

(a) The NTSB will report the facts, conditions, and circumstances, and its determination of the probable causes of

U.S. civil transportation accidents, in accordance with 49 U.S.C. 1131(e).

(b) These reports may be made available for public inspection in the NTSB's public reference room and/or on the NTSB's Web site, at <http://www.nts.gov>.

**§ 801.33 [Removed]**

15. Section 801.33 is removed.

**§ 801.34 [Removed]**

16. Section 801.34 is removed.

**§ 801.35 [Removed]**

17. Section 801.35 is removed.

**§ 801.36 [Removed]**

18. Section 801.36 is removed.

19. Section 801.40 is revised to read as follows:

**§ 801.40 The Board's rules.**

The NTSB's rules are published in the Code of Federal Regulations as Parts 800 through 850 of Title 49.

**§§ 801.41, 801.42, 801.43 [Removed]**

20. Sections 801.41, 801.42, and 801.43 are removed.

21. Section 801.41 is revised to read as follows:

**§ 801.41 Reports to Congress.**

The NTSB submits its annual report to Congress each year, in accordance with 49 U.S.C. 1117. The report will be available on the NTSB's Web site, found at <http://www.nts.gov>. Interested parties may purchase the report from the Government Printing Office or review it in the NTSB's public reference room. All other reports or comments to Congress will be available in the NTSB's public reference room for inspection or by ordering a copy after issuance.

**§ 801.45 [Removed]**

22. Section 801.45 is removed.

**§ 801.46 [Removed]**

23. Section 801.46 is removed.

24. Section 801.50 is revised to read as follows:

**§ 801.50 Exemptions from disclosure.**

Title 5, United States Code section 552(a) and (b) exempt certain records from public disclosure. As stated in § 801.2 of this title, the NTSB may choose to make a discretionary release of a record that is authorized to be withheld under 5 U.S.C. 552(b), unless it determines that the release of that record would be inconsistent with the purpose of the exemption concerned. Examples of records given in §§ 801.51 through 801.58 included within a particular statutory exemption are not necessarily illustrative of all types of

records covered by the applicable exemption.

25. Section 801.51 is revised to read as follows:

**§ 801.51 National defense and foreign policy secrets.**

Pursuant to 5 U.S.C. 552(b)(1), national defense and foreign policy secrets established by Executive Order, as well as properly classified documents, are exempt from public disclosure. Requests to the NTSB for such records will be transferred to the source agency as appropriate, where such classified records are identified. (See, e.g., Executive Order 12,958, as amended on March 25, 2003.)

26. Section 801.52 is revised to read as follows:

**§ 801.52 Internal personnel rules and practices of the NTSB.**

Pursuant to 5 U.S.C. 552(b)(2), the following records are exempt from disclosure under FOIA:

(a) Records relating solely to internal personnel rules and practices, including memoranda pertaining to personnel matters such as staffing policies, and procedures for the hiring, training, promotion, demotion, or discharge of employees, and management plans, records, or proposals relating to labor-management relations.

(b) Records regarding:

(1) Internal matters of a relatively trivial nature that have no significant public interest; and

(2) Predominantly internal matters, the release of which would risk circumvention of a statute or agency regulation.

27. Section 801.53 is revised to read as follows:

**§ 801.53 Records exempt by statute from disclosure.**

Pursuant to 5 U.S.C. 552(b)(3), the NTSB will not disclose records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute:

(a) Requires that the matters be withheld from the public in such manner as to leave no discretion on the issue; or

(b) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

28. Section 801.54 is revised to read as follows:

**§ 801.54 Trade secrets and commercial or financial information.**

Pursuant to 5 U.S.C. 552(b)(4), trade secrets and items containing commercial or financial information that are obtained from a person and are privileged or confidential are exempt from public disclosure.

29. Section 801.55 is revised to read as follows:

**§ 801.55 Interagency and intra-agency exchanges.**

(a) Pursuant to 5 U.S.C. 552(b)(5), any record prepared by an NTSB employee for internal Government use is exempt from public disclosure to the extent that it contains—

(1) Opinions made in the course of developing official action by the NTSB but not actually made a part of that official action, or

(2) Information concerning any pending NTSB proceeding, or similar matter, including any claim or other dispute to be resolved before a court of law, administrative board, hearing officer, or contracting officer.

(b) The purpose of this section is to protect the full and frank exchange of ideas, views, and opinions necessary for the effective functioning of the NTSB. These resources must be fully and readily available to those officials upon whom the responsibility rests to take official NTSB action. Its purpose is also to protect against the premature disclosure of material that is in the developmental stage, if premature disclosure would be detrimental to the authorized and appropriate purposes for which the material is being used, or if, because of its tentative nature, the material is likely to be revised or modified before it is officially presented to the public.

(c) Examples of materials covered by this section include, but are not limited to, staff papers containing advice, opinions, or suggestions preliminary to a decision or action; preliminary notes; advance information on such things as proposed plans to procure, lease, or otherwise hire and dispose of materials, real estate, or facilities; documents exchanged in preparation for anticipated legal proceedings; material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly processes of the NTSB; records of inspections, investigations, and surveys pertaining to internal management of the NTSB; and matters that would not be routinely disclosed in litigation but which are likely to be the subject of litigation.

30. Section 801.56 is revised to read as follows:

**§ 801.56 Unwarranted invasion of personal privacy.**

Pursuant to 5 U.S.C. 552(b)(6), any personal, medical, or similar file is exempt from public disclosure if its disclosure would harm the individual concerned or would be a clearly

unwarranted invasion of the person's personal privacy.

31. Section 801.57 is revised to read as follows:

**§ 801.57 Records compiled for law enforcement purposes.**

Pursuant to 5 U.S.C. 552(b)(7), any records compiled for law or regulatory enforcement are exempt from public disclosure to the extent that disclosure would interfere with enforcement, would be an unwarranted invasion of privacy, would disclose the identity of a confidential source, would disclose investigative procedures and practices, or would endanger the life or security of law enforcement personnel.

32. Section 801.58 is revised to read as follows:

**§ 801.58 Records for regulation of financial institutions.**

Pursuant to 5 U.S.C. 552(b)(8), records compiled for agencies regulating or supervising financial institutions are exempt from public disclosure.

33. Section 801.59 is revised to read as follows:

**§ 801.59 Geological records.**

Pursuant to 5 U.S.C. 552(b)(9), records concerning geological wells are exempt from public disclosure.

34. Section 801.60 is added as follows:

**§ 801.60 Fee Schedule.**

(a) Pursuant to 5 U.S.C. 552(a)(4)(i) and 52 Fed. Reg. 10,012 (Mar. 27, 1987), the NTSB may charge certain fees for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section, or where a waiver or reduction of fees is granted under paragraph (e) of this section. The NTSB may collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, and must send fee payments to the NTSB's FOIA Office (see mailing address at § 801.10(d)).

(b) Definitions. For purposes of this section:

(1) "Commercial use request" means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests. This includes the furtherance of commercial interests through litigation. When it appears that the requester will use the requested records for a commercial purpose, either because of the nature of the request or because the NTSB has reasonable cause to doubt a

requester's stated use, the NTSB shall provide the requester with a reasonable opportunity to submit further clarification.

(2) "Direct costs" means those expenses that an agency actually incurs in searching for, reviewing, and duplicating records in response to a FOIA request. This includes the salaries of employees performing the work, as listed below, but does not include overhead expenses such as the costs of office space.

(3) "Duplication" means the copying of a record, or of the information contained in a record, in response to a FOIA request.

(4) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. In order for a requester to demonstrate that their request falls within the category of an "educational institution," the requester must show that the request is authorized by the qualifying institution and that the requester does not seek the records for commercial use, but only to further scholarly research.

(5) "Representative of the news media" or "news media requester" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization (for example, a journalist may submit a copy of a publication contract for which the journalist needs NTSB records).

(6) "Review" means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. "Review" also includes processing the record(s) for disclosure, which includes redacting and otherwise preparing releasable records for disclosure. The NTSB may require review costs even if the NTSB ultimately does not release the record(s).

(7) "Search" means the process of looking for and retrieving records or information within the scope of a request. "Search" includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The NTSB will make an effort to

conduct such searches in the least expensive manner.

(c) In responding to FOIA requests, the NTSB will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (d) of this section:

(1) Search.

(i) The NTSB will charge search fees for all requests, unless an educational institution, a noncommercial scientific institution, or a news media representative submits a request containing adequate justification for obtaining a fee waiver. These fees, however, are subject to the limitations of paragraph (d) of this section. The NTSB may charge for time spent searching even if the NTSB does not locate any responsive record or if the NTSB withholds the record(s) located because such record(s) are exempt from disclosure.

(ii) The NTSB will charge \$4.00 for each quarter of an hour spent by clerical personnel in searching for and retrieving a requested record. Where clerical personnel cannot entirely perform a search and retrieval (for example, where the identification of records within the scope of a request requires the assistance of professional personnel), the applicable fee will instead be \$7.00 for each quarter hour of search time spent by professional personnel. Where a request requires the time of managerial personnel, the fee will be \$10.25 for each quarter hour of time spent by these personnel.

(2) Duplication. The NTSB will charge duplication fees, subject to the limitations of paragraph (d) of this section.

(i) The NTSB utilizes the services of a commercial reproduction facility for requests for duplicates of NTSB public dockets and publications.

(ii) Regarding the reproduction of non-public records in response to a FOIA request, the NTSB will charge \$0.10 per page for the duplication of a standard-size paper record. For other forms of duplication, the NTSB will charge the direct costs of the duplication.

(iii) Where the NTSB certifies records upon request, the NTSB will charge the direct cost of certification.

(3) Review. The NTSB will charge fees for the initial review of a record to determine whether the record falls within the scope of a request, or whether the record is exempt from disclosure. Such fees will be charged to requesters who make a request for commercial purposes. The NTSB will not charge for subsequent review of the request and responsive record; for example, in general, the NTSB will not

charge additional fees for review at the administrative appeal level when the NTSB has already applied an exemption. The NTSB will charge review fees at the same rate as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) Limitations on charging fees.

(1) The NTSB will not charge a fee for notices, decisions, orders, etc. provided to persons acting as parties in the investigation, or where required by law to be served on a party to any proceeding or matter before the NTSB. Likewise, the NTSB will not charge fees for requests made by family members of accident victims, when the NTSB has investigated the accident that is the subject of the FOIA request.

(2) The NTSB will not charge a search fee for requests from educational institutions or representatives of the news media.

(3) The NTSB will not charge a search fee or review fee for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for commercial use, the NTSB will provide the following items without charge:

(i) The first 100 pages of duplication (or the cost equivalent) of a record; and

(ii) The first two hours of search (or the cost equivalent) for a record.

(5) Whenever the total fee calculated under paragraph (c) of this section is \$14.00 or less for any request, the NTSB will not charge a fee.

(6) When the NTSB's FOIA Office determines or estimates that fees to be charged under this section will amount to more than \$25.00, the Office will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If the FOIA Office is able to estimate only a portion of the expected fee, the FOIA Office will advise the requester that the estimated fee may be only a portion of the total fee. Where the FOIA Office notifies a requester that the actual or estimated fees will exceed \$25.00, the NTSB will not expend additional agency resources on the request until the requester agrees in writing to pay the anticipated total fee. In circumstances involving a total fee that will exceed \$250.00, the NTSB may require the requester to make an advance payment or deposit of a specific amount before beginning to process the request.

(7) The NTSB may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided at 31

U.S.C. 3717 and will accrue from the date of the billing until the NTSB receives payment. The NTSB shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(8) Where a requester has previously failed to pay a properly charged FOIA fee to the NTSB within 30 days of the date of billing, the NTSB may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the NTSB begins to process a new request or continues to process a pending request from that requester.

(9) Where the NTSB reasonably believes that a requester or group of requesters acting together is attempting to divide a request into multiple series of requests for the purpose of avoiding fees, the NTSB may aggregate those requests and charge accordingly.

(e) Requirements for waiver or reduction of fees. For fee purposes, the NTSB will determine, whenever reasonably possible, the use to which a requester will put the requested records.

(1) The NTSB will furnish records responsive to a request without charge, or at a reduced charge, where the NTSB determines, based on all available information, that the requester has shown that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations of activities of the government, and

(ii) Disclosure of the requested information is not primarily in the commercial interest or for the commercial use of the requester.

(2) In determining whether disclosure of the requested information is in the public interest, the NTSB will consider the following factors:

(i) Whether the subject of the requested records concerns identifiable operations or activities of the federal government, with a connection that is direct and clear, and not remote or attenuated. In this regard, the NTSB will consider whether a requester's use of the documents would enhance transportation safety or contribute to the NTSB's programs.

(ii) Whether the portions of a record subject to disclosure are meaningfully informative about government operations or activities. The disclosure of information already in the public domain, in either a duplicative or substantially identical form, would not

be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) Whether disclosure of the requested information would contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The NTSB will consider a requester's expertise in the subject area and ability to effectively convey information to the public.

(iv) Whether the disclosure is likely to enhance the public's understanding of government operations or activities.

(3) In determining whether the requester is primarily in the commercial interest of the requester, the NTSB will consider the following factors:

(i) The existence and magnitude of any commercial interest the requester may have, or of any person on whose behalf the requester may be acting. The NTSB will provide requesters with an opportunity in the administrative process to submit explanatory information regarding this consideration.

(ii) Whether the commercial interest is greater in magnitude than any public interest in disclosure.

(4) Additionally, the NTSB may, at its discretion, waive publication, reproduction, and search fees for qualifying foreign countries, international organizations, nonprofit public safety entities, State and Federal transportation agencies, and colleges and universities, after approval by the Chief, Records Management Division.

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, the NTSB will grant a waiver for those particular records.

(6) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (2) and (3) of this subsection, insofar as they apply to each request. The NTSB will exercise its discretion to consider the cost-effectiveness of its use of administrative resources in determining whether to grant waivers or reductions of fees.

(f) Services available free of charge.

(1) The following documents are available without commercial reproduction cost until limited supplies are exhausted:

- (i) Press releases;
- (ii) Safety Board regulations (Chapter VIII of Title 49, Code of Federal Regulations);
- (iii) Indexes to initial decisions, Board orders, opinion and orders, and staff manuals and instructions;
- (iv) Safety recommendations; and
- (v) NTSB Annual Reports.

(2) The NTSB public Web site, located at <http://www.nts.gov>, also includes an e-mail subscription service for press releases, safety recommendations, and other announcements.

35. Section 801.61 is added as follows:

**§ 801.61 Appeals of Fee Determinations.**

Requesters seeking an appeal of the FOIA Officer's fee or fee waiver determination must send a written appeal to the NTSB's Managing Director within 20 days. The NTSB's Managing Director will determine whether to grant or deny any appeal made pursuant to § 801.21 within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended for as many as 10 additional working days, in accordance with § 801.23.

Dated: November 15, 2006.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Proposed Rule To List Six Foreign Birds as Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list six avian species, black stilt (*Himantopus novaehollandiae*), caerulean Paradise-flycatcher (*Eutrichomyias rowleyi*), giant ibis (*Pseudibis gigantea*), Gurney's pitta (*Pitta gurneyi*), Socorro mockingbird (*Mimodes graysoni*), and long-legged thick-knee (*Trichocichla rufa*) as endangered, pursuant to the Endangered Species Act of 1973, as amended (Act). This proposal, if made final, would extend the Act's protection to these species. The Service seeks data and comments from the public on this proposal.

**DATES:** We must receive comments and information from all interested parties by February 20, 2007. Public hearing requests must be received by January 8, 2007.

**ADDRESSES:** Submit any comments, information, and questions by mail to