# PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

## 2852.000 [Removed]

51. Section 2852.000 is removed.

# Subpart 2852.1—Instructions for Using Provisions and Clauses

### 2852.100 [Removed]

52. Section 2852.100 is removed.

# Subpart 2852.2—Texts and Provisions of Clauses

#### 2852.200 [Removed]

53. Section 2852.200 is removed.

### PART 2870—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

#### 2870.000 [Removed]

54. Section 2870.000 is removed.

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# NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 800, 830, and 831

### Reporting of Public Aircraft Accidents

**AGENCY:** National Transportation Safety Board.

**ACTION:** Final rules.

**SUMMARY:** Following review of the comments received, the NTSB is adopting revisions to its rules to implement Public Law 103–411, which expands the scope of its jurisdiction to include investigations of certain public aircraft accidents.

**DATES:** The rules are effective September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382–6540.

SUPPLEMENTARY INFORMATION: On October 25, 1994, President Clinton signed H.R. 2440, the Independent Safety Board Act Amendments of 1994. Codified as Public Law 103–411 (the Act), it was effective on April 23, 1995, and directly affects aircraft operated by and for Federal, State and local governments. In addition to expanding the Federal Aviation Administration's (FAA) safety regulation to previously exempt "public" aircraft, the Act expanded the jurisdiction of the National Transportation Safety Board (NTSB or Safety Board) to encompass the investigation of all public aircraft other than those operated by the Armed Forces or by a United States intelligence agency.

By notice of proposed rulemaking (NPR) published in the **Federal Register** March 15, 1995 (60 FR 13948), we proposed and sought comment on rules to implement this new authority. We received 14 comments.1 The States welcome the Board's investigation, in the unfortunate event that a State aircraft is involved in an accident, and either support or have no comment on the proposed rules themselves. ALPA favors this expansion of the Board's authority, but urges that funding levels be adequate for the Board to continue to investigate thoroughly public and civil aircraft accidents.

The Forest Service and Helicopter Association International are concerned that the exception for aircraft operated by the Armed Forces and U.S. intelligence agency aircraft not be read too broadly. The Forest Service's letter notes:

The Forest Service supplements its aerial firefighting resources during times of extreme fire activity with aircraft and flight crews from the Armed Forces. These resources are furnished to us by active military, Reserve, and National Guard units. The Forest Service pays the Armed Forces an hourly rate for this service, has operational control over their movement, and uses them for the same missions as civil and other public aircraft which includes the transportation of passengers. In the case of Reserve and National Guard units, the flight crews are often pilots that normally fly commercial aircraft, including airliners, and fly the Armed Forces aircraft on a part-time basis.

The Forest Service considers these flights to be under its auspices and control and therefore "public" for investigation purposes. It objects to the proposal in the NPR to define "operated by the Armed Forces" only with reference to the actual, physical manipulation of the controls. The Forest Service requests that we reconsider this approach and interpret the Armed Forces exception narrowly and exclude aircraft from Reserve and National Guard units that are under the operational control of non-defense agencies (that is, to define control not in a physical sense but in a sense of directing the use to which the aircraft is put).

Mr. Kuchta argues that the Armed Forces/intelligence agency exception, as we have proposed to interpret it, is too narrow. He cites the Federal Aviation

Act's definition of "operation of aircraft,"

"operate aircraft" and "operation of aircraft" mean using aircraft for the purposes of air navigation, including—

(A) the navigation of aircraft; and

(B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.<sup>2</sup>

Thus, the definition includes both types of control we have discussed. Mr. Kuchta also notes that, in its adjudication of FAA-instituted certificate actions (the so-called enforcement docket), the Board interprets the term "operation" expansively to include other than actual physical manipulation of the controls.

The comments of the parties should demonstrate, and have convinced us, that defining our jurisdiction with regard to the exception is not as straightforward as we had hoped. At the same time, however, FA Act definitions, while they may inform the process, do not control the interpretation of language in our enabling statute, nor does Board precedent from other contexts. The critical consideration is to ensure that the exception is not so broad as to unduly limit our investigatory role, and not so narrow as to intrude improperly in military concerns that have little or no implication for civilian air safety.

On review of the comments, we will revise our future approach. We will consider both the physical manipulation of the controls and the broader operational control concept in determining whether an aircraft is operated by the Armed Forces or an intelligence agency so as to remove it from our investigatory responsibility. Using this approach, we would find, for example, that a cloud-seeding flight using a National Guard pilot and aircraft, but arranged and contracted for by the Forest Service, is not a flight "operated by" the Armed Forces. Indeed, such a flight, because cloud seeding is also conducted by civilian aircraft, has implications for civilian aircraft safety and, therefore, prompts exercise of our statutory role to promote air safety. On the other hand, investigations of accidents involving combat aircraft, combat maneuvers, or military surveillance or air navigational control are clearly on the other side of the equation and we believe that it is examples such as these that prompted Congress' exception.

There may be instances where analysis under the standards of (A) and (B) above produces opposite conclusions. For example, if the Army

¹We received comments from 10 States (Alaska, Connecticut, Hawaii, Iowa, Maine, Maryland, Mississippi, Montana, Pennsylvania, and Wisconsin), three associations (the Air Line Pilots Association (ALPA), the Helicopter Association International, and the National Business Aircraft Association, Inc.), one government agency (the Department of Agriculture, Forest Service), and one individual (Joseph D. Kuchta).

<sup>&</sup>lt;sup>2</sup> 49 U.S.C. 40102(a)(32), as recodified.