

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NATIONAL TRANSPORTATION SAFETY BOARD
AND THE
FEDERAL BUREAU OF INVESTIGATION**

BACKGROUND AND PURPOSE

The National Transportation Safety Board (NTSB) and the Federal Bureau of Investigation (FBI) have established a good working relationship, as exhibited during the recent NTSB investigations of the Alaska Airlines Flight 261 accident and the American Airlines Flight 587 accident. The purpose of this MOU is to formally implement and perpetuate the current NTSB and FBI practices and procedures, in order to facilitate each agency's performance of its respective responsibilities whenever there is overlapping NTSB and FBI interest.

The NTSB's statutory mandate is to "investigate ... and establish the facts, circumstances, and cause or probable cause of" all civil aircraft accidents and most non-military public aircraft accidents. 49 U.S.C. § 1131(a)(1)(A). The NTSB also has jurisdiction over certain highway, pipeline and railroad accidents, accidents involving hazardous materials, and major marine casualties, 49 U.S.C. § 1131(a)(1)(B)-(E), as well as "any other accident related to the transportation of individuals or property when the Board decides - (i) the accident is catastrophic; (ii) the accident involves problems of a recurring character; or (iii) the investigation of the accident would carry out this chapter." 49 U.S.C. § 1131(a)(1)(F). The "term 'accident' includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or otherwise." 49 U.S.C. § 1101.

The FBI is responsible for investigating criminal violations of federal law and has been designated as the lead agency for domestic and international terrorism matters. The federal authorities designating the FBI's investigative authority include 6 U.S.C. § 111, 28 USC § 533 and 538, 18 USC § 2332b, 28 CFR § 0.85, Presidential Decision Directive 39, and Homeland Security Presidential Directive numbers 5, 7, and 8.

NTSB investigations have "priority over any investigation by another department, agency, or instrumentality of the United States Government." 49 U.S.C. § 1131(a)(2)(A). Congress has defined the circumstances and method by which the NTSB's investigative priority shall be transferred:

If the Attorney General, in consultation with the Chairman of the Board, determines and notifies the Board that circumstances reasonably indicate that the accident may have been caused by an intentional criminal act, the Board shall relinquish investigative priority to the Federal Bureau of Investigation. The relinquishment of investigative priority by the Board shall not otherwise affect the authority of the Board to continue its investigation under this section.

49 U.S.C. § 1131(a)(2)(B).

The NTSB, when exercising investigative priority, is obligated to "provide for appropriate participation by other departments, agencies, or instrumentalities in the investigation." 49 U.S.C. § 1131(a)(2)(A). In addition, "[i]f a Federal law enforcement agency suspects and notifies the Board that an accident being investigated by the Board under subparagraph (A), (B), (C), or (D) of paragraph (1) may have been caused by an intentional criminal act, the Board, in consultation with the law enforcement agency, shall take necessary actions to ensure that evidence of the criminal act is preserved." 49 U.S.C. § 1131(a)(2)(C). The NTSB's investigative priority does "not affect the authority of another department, agency, or instrumentality of the Government to investigate an accident under applicable law or to obtain information directly from the parties involved in, and witnesses to, the accident," 49 U.S.C. § 1131(a)(3), but, nonetheless, advance coordination is critical for any separate FBI or NTSB fact-finding activities in order to avoid unnecessary interference or complication of either agency's investigation. Congress has directed that "[t]he Board and other departments, agencies, and instrumentalities shall ensure that appropriate information developed about the accident is exchanged in a timely manner." 49 U.S.C. § 1131(a)(3).

ACCIDENT/INCIDENT INVESTIGATIONS (GENERAL)

In the immediate aftermath of a transportation accident, the NTSB is the presumptive lead investigative agency and will assume control of the accident scene. The primary NTSB point of contact (POC) will be the assigned NTSB investigator in charge (NTSB IIC). If the FBI elects to investigate any transportation accident, the primary FBI POC will be the assigned on-scene Special Agent in Charge (FBI SAC) or his/her designee.

FBI personnel will, through the assigned FBI SAC, coordinate in advance with the NTSB IIC all FBI activity on-scene as well as any FBI fact-finding activity elsewhere (e.g., interviewing witnesses, collecting documents or other evidence, etc.). This procedure is intended, notwithstanding the provisions of 49 U.S.C. § 1131(a)(3), to ensure that neither NTSB nor FBI investigative activity unnecessarily complicates or compromises the other agency's investigation. NTSB investigations will be conducted pursuant to NTSB procedures (including 49 C.F.R. Part 831), but modifications to the standard NTSB procedures -- including, for example, direct participation by FBI personnel in NTSB investigation specialty groups, or specific chain of custody procedures, and limitations on information dissemination -- will be fashioned on a case-by-case basis by the NTSB in consultation with the FBI.

NOTIFICATIONS AND FBI-NTSB COMMUNICATIONS

The NTSB will notify the FBI Strategic Information and Operations Center (SIOC) immediately when launching a major investigation "go-team" from Washington, D.C. The FBI SIOC or the assigned FBI SAC will notify the assigned NTSB IIC immediately when the FBI initiates an investigation pertaining to a transportation accident or incident.

All primary communication between NTSB and FBI shall be through the FBI SIOC and the NTSB Communications Center. The FBI SIOC and NTSB Communications Center shall be

responsible for maintaining current 24-hour contact information, including facsimile numbers, for the other agency.

A complete and expeditious exchange of information resulting from any investigation is of significant benefit to both agencies in fulfilling their respective responsibilities. Therefore, if requested by the on-scene FBI SAC, the NTSB IIC will ensure that the FBI SAC is kept fully informed of all factual information developed during the course of the NTSB investigation. The FBI SAC will likewise ensure that the NTSB IIC is fully informed of all factual information developed during the course of the FBI investigation. If grand jury secrecy rules or other constraints preclude FBI sharing of particular information, the FBI SAC will inform the NTSB IIC of that fact so that appropriate NTSB and Department of Justice officials can explore the need for NTSB access to the factual information and, if the NTSB believes the information important to the NTSB investigation, make all reasonable efforts to create an acceptable solution to effectuate the exchange of information.

The FBI SAC will inform the NTSB IIC immediately of any decision by FBI to either suspend an investigation or to invoke the procedures for transferring investigative priority to the FBI. In the case of the latter scenario, the agencies agree that NTSB-FBI communication and consultation are critical, so that technical expertise and professional experience are fully shared and considered prior to invocation of the transfer procedures outlined in 49 U.S.C. § 1131(a)(2)(B).

MEDIA CONTACT AND PUBLIC RELEASE OF INFORMATION

Unless and until the NTSB relinquishes status as the lead investigative agency during an investigation, the release of information to the public about the investigation shall be solely the responsibility of the NTSB, subject to 49 U.S.C. § 1131(a)(2)(C). Should the FBI need to make public announcements (for example, seeking public tips), such announcements shall be coordinated with the NTSB IIC or on-scene NTSB Board Member. Neither the NTSB nor the FBI contemplates a requirement for joint appearances at press conferences, with the possible exception of an announcement of NTSB relinquishment of investigative priority.

FBI LABORATORY AND OTHER TECHNICAL EXPERTISE

If requested by the NTSB IIC, the FBI SAC will initiate a request for the assistance of an Evidence Response Team (ERT) from a local field office as well as the Laboratory Division's Evidence Response Team Unit (ERTU), the Disaster Squad, and other response components of the FBI Laboratory. ERT and Laboratory support may include, but is not limited to, documenting, mapping, and recovery of personal effects and human remains, mapping and documenting the wreckage and accident scene, and chemical analysis for residues of explosives and accelerants. Disaster Squad assistance may include forensic processes directed at victim identification. If a request for ERT or FBI Laboratory assistance is made, it will be without regard to the cause of the accident or incident. The FBI SAC will make the request for FBI Laboratory assistance through the FBI SIOC, and the FBI Assistant Director, Laboratory

Division, will be the authorizing authority. If assistance is authorized, all activities of the FBI ERT and the FBI Laboratory will remain under the direction of the FBI SAC in full coordination with the NTSB IIC, who will remain in charge of the crash site until or unless investigative priority is transferred to the FBI under 49 U.S.C. § 1131(a)(2)(B).

Other. If requested by the NTSB IIC, the FBI SAC will initiate a request for other FBI technical expertise including, but not limited to, video analysis and other services of the FBI Operational Technology Division.

NTSB CONTROL OF WRECKAGE AND TESTING

Prior to any transfer of investigative priority to FBI pursuant to § 1131(a)(2)(B), unless otherwise mutually agreed upon by the NTSB IIC and the FBI SAC for special circumstances, all accident or incident wreckage and/or evidence collected in the accident investigation shall remain in the custody and control of the NTSB, including:

Flight and Vehicle Recorders. Any onboard vehicle recorders recovered from the accident scene or the accident vehicle, including, but not limited to, cockpit voice recorders (CVRs), flight data recorders (FDRs), and cockpit image recorders (CIRs) will be read out and analyzed at the NTSB's laboratory facilities.

Component Testing/Analysis. All wreckage and recovered components will be examined at NTSB laboratory facilities or another facility selected by the NTSB.

All wreckage and evidence at the accident scene shall remain undisturbed, unless otherwise authorized in advance by the NTSB IIC. Recovery or documentation of wreckage or evidence at the accident scene by FBI personnel (including ERT personnel), if authorized by the NTSB IIC, shall be done in accordance with procedures specified by the NTSB.

The FBI SAC shall inform the NTSB IIC of any special requirements due to the circumstances of an FBI investigation, so that such issues can be resolved in accordance with 49 U.S.C. § 1131(a)(2)(C).

INTERVIEWS

FBI participation in any NTSB interviews will be coordinated in advance by the FBI SAC with the NTSB IIC. The FBI SAC shall inform the NTSB IIC of any special requirements dictated by the circumstances of an FBI investigation, so that such issues can be resolved without undue delay to NTSB interviews.

FBI interviews separate from the NTSB investigation shall be coordinated by the FBI SAC with the NTSB IIC. This is intended to avoid situations in which witnesses critical to the NTSB investigation are interviewed by the FBI before NTSB subject-matter experts have the opportunity to interview those witnesses. The NTSB IIC will immediately inform the FBI SAC

if the NTSB has no interest in a particular interview or class of witnesses, to minimize potential delays to FBI interviews necessitated by NTSB-FBI coordination.

TRAINING

NTSB personnel may attend FBI ERT training or other relevant FBI training opportunities identified by the FBI.

FBI personnel are encouraged to attend relevant courses offered by the NTSB Academy, including the Basic Aircraft Accident Investigation course.

FAMILY ASSISTANCE

The agency with investigative priority shall also be responsible for providing family assistance and related services. In the event of a transfer of investigative priority to the FBI pursuant to 49 U.S.C. § 1131(a)(2)(B), NTSB Transportation Disaster Assistance personnel will coordinate with the FBI Office for Victims Assistance to ensure a smooth transition for FBI assumption of responsibility for family assistance and related services.

WITHDRAWAL FROM INVESTIGATION AND/OR TRANSFER OF PRIORITY

If the FBI terminates an FBI investigation, or reassigns personnel assisting the NTSB investigation, due consideration will be given to minimizing adverse impact on the NTSB investigation.

In the event the Attorney General determines, in consultation with the NTSB Chairman, that the FBI shall have lead investigative status, the NTSB may, at the NTSB's discretion, continue to investigate the accident or safety issues stemming from the accident, as specified in 49 U.S.C. § 1131(a)(2)(B). In all cases, the NTSB will coordinate its actions with the FBI SAC and act to avoid adverse impact on the FBI investigation. Where the NTSB withdraws completely from an investigation, the NTSB will, if possible, provide technical assistance to the FBI upon request. When NTSB technical assistance is requested, diligent attempts will be made to avoid NTSB entanglement in subsequent criminal proceedings.

FUNDING

Unless otherwise agreed to in writing in a separate funding document, each agency will bear the costs for its activity in any investigation and/or participation in training.

LIABILITY

Each agency shall assume responsibility for addressing and/or defending the alleged negligent or wrongful acts or omissions of its own employees. In event that the employees of both agencies appear to be jointly responsible for the alleged negligent or wrongful act or omission, representatives of each agency will confer to determine an equitable and appropriate resolution of respective liability. Both parties understand that the Department of Justice cannot guarantee legal representation for agency employees who are sued in their individual capacities but must determine entitlement to legal representation on a case-by-case basis in accordance with the procedures set forth in Title 28 of the Code of Federal Regulations.

DISPUTE RESOLUTION

Where a dispute or conflict arises during the course of the activities covered by this MOU, the NTSB IIC and the FBI SAC should confer and endeavor to resolve the matter. If an agreement cannot be reached by the NTSB IIC and the FBI SAC, unresolved issues should be referred expeditiously to the appropriate executive management personnel at FBI and NTSB Headquarters for resolution.

DURATION, MODIFICATION, AND TERMINATION

This MOU shall be in effect upon execution by both the NTSB and the FBI. Modifications to this MOU must be in writing and signed by appropriate officials of both the NTSB and the FBI. This MOU remains in effect until cancelled, in writing, by either party with at least 60 days advance notice. In all cases, the confidentiality provisions set forth in the MEDIA CONTACT AND PUBLIC RELEASE OF INFORMATION section of this MOU will survive cancellation of this MOU.

SIGNED:

Mark V. Rosenker
Acting Chairman
National Transportation Safety Board


Date

Robert S. Mueller, III
Director
Federal Bureau of Investigation


Date