



121 North Henry Street  
Alexandria, VA 22314-2903  
T: 703 739 9543 F: 703 739 9488  
arsa@arsa.org www.arsa.org

October 29, 2014

National Transportation Safety Board  
Office of General Counsel  
490 L'Enfant Plaza East, S.W.  
Washington, DC 20594-2003

Submitted Electronically to the  
Federal eRulemaking Portal:  
<http://www.regulations.gov>

RE: Comments to Docket No. NTSB–GC–2012-0002  
**Notice of Proposed Rulemaking Regarding Amendments to National  
Transportation Safety Board Regulations**

To Whom It May Concern:

The Aeronautical Repair Station Association (ARSA) respectfully submits the following comments to the notice of proposed rulemaking (NPRM) published in the Federal Register on August 12, 2014.<sup>1</sup>

ARSA is the principal association for the aviation maintenance industry. Its members include aviation maintenance facilities, aircraft operators, manufacturers and individuals certificated by the Federal Aviation Administration (FAA). As such, ARSA members are directly impacted by the regulations addressed in the NPRM.

### **Section 831.6 Request to Withhold Information**

In the NPRM's preamble, the NTSB declined to strengthen the protections of 49 CFR § 831.6, noting that it believed to do so would be contrary to the agency's enabling statute "which only prohibits the NTSB from disclosing 'voluntarily provided safety-related information if that information is *not* related to the exercise of the Board's... investigation authority.'"<sup>2</sup> However, while the enabling statute provides explicit protection of such information, it does not further *mandate* the disclosure of voluntarily submitted safety information when it is pertinent to an investigation. Such a leap is contrary to both the legislative language and the practice of the agency.

Further, the NTSB asserts in the NPRM that it "is uncertain that it could withhold voluntarily provided information in response to a request under the FOIA [(Freedom of Information Act)], unless the NTSB had a statutory exemption permitting it to do so."<sup>3</sup> For example, this assessment ignores the existing Exemption 4 provided in FOIA legislation and recodified in the NTSB's own regulations.<sup>4</sup> Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is]

<sup>1</sup> Investigation Procedures, 79 Fed. Reg. 47064 (proposed Aug. 12, 2014) (to be codified at 49 C.F.R. pt. 831).

<sup>2</sup> 79 Fed. Reg. at 47067 (citing 49 U.S.C. 1114(b)(3)).

<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. § 552(b)(4); 49 C.F.R. § 801.54.

October 29, 2014

Page 2

RE: Comments to Docket No. NTSB–GC–2012-0002  
**Notice of Proposed Rulemaking Regarding Amendments to National  
Transportation Safety Board Regulations**

privileged or confidential.”<sup>5</sup> Where the information being sought is provided voluntarily by a submitter who would not customarily release such information to the public,<sup>6</sup> the agency can invoke Exemption 4 and withhold disclosure.

The prohibition of disclosure described in the enabling statute<sup>7</sup> neither requires the NTSB to release voluntarily disclosed safety information related to the exercise of investigative authority nor prevents the invocation of FOIA Exemption 4 or any other statutory exemption. In fact, the statute acknowledges that “this subsection **does not require** the release of information described by section 552 (b) of title 5 or protected from disclosure by another law of the United States.”<sup>8</sup> (Emphasis added). Thus, current regulations<sup>9</sup> conclusively protect voluntarily submitted safety information so long as that information meets one of the established exemptions.

## Conclusion

ARSA requests the NTSB clarify that voluntarily submitted safety information will continue to be exempt from disclosure when it meets established FOIA or other statutory and regulatory protections, even if there is a pending investigation. If, on the other hand, the Board believes that the pendency of an investigation trumps its ability to protect voluntarily submitted safety information under any circumstances, ARSA requests that the Board make this clear in the final rule so appropriate legislative relief can be sought.

Respectfully submitted,



Laura Vlieg  
Regulatory Affairs Manager

---

<sup>5</sup> 5 U.S.C. § 552(b)(4).

<sup>6</sup> *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 877-79 (D.C. Cir. 1992).

<sup>7</sup> 49 U.S.C. 1114(b)(3).

<sup>8</sup> 49 U.S.C. § 1114(a)(2) (Emphasis added).

<sup>9</sup> See 49 CFR § 831.6; see generally 49 CFR § 801.