NTSB Form 6120.1:
AT THE INTERSECTION OF TORT, COVERAGE AND REGULATORY
LITIGATION

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# The NTSB 6120.1 Form

## National Transportation Safety Board

**Pilot/Operator Aircraft Accident/Incident Report**

This form to be used for reporting civil and public use aircraft accidents and incidents.

### Basic Information
- **Accident/Incident Location**
  - Nearest City/Place: ___________________________  State: __________
  - ZIP: __________ Country: ___________________________
  - Latitude: (dd mm ss N/S)  Longitude: (dd mm ss E/W)

- **Date/Time**
  - Date: __________ Local Time: __________
  - Time Zone: __________

- **Phase of Operation**
  - □ Standing  □ Takeoff (incl initial climb)  □ Cruise  □ Hover
  - □ Descent  □ Landing  □ Approach  □ Unknown

- **Collision with Other Aircraft**
  - □ Mid-air  □ On-ground  □ None

- **Altitude of In-Flight Occurrence**
  - __________ ft MSL

### Aircraft Information
- **Manufacturer:** _____________________________
- **Model:** _____________________________
- **Serial Number:** _____________________________
- **Registration Number:** _____________________________
- **Amateur-built:** □ Yes □ No
- **Max Gross Weight:** __________ lbs
- **Weight at Time of Accident/Incident:** __________ lbs
- **Location of Center of Gravity at Time of Accident/Incident:**
  - □ inches from nose or □ datum
  - __________
- **Percent Mean Aerodynamic Chord (% MAC):** __________

- **Category of Aircraft**
  - □ Airplane  □ Balloon  □ Rotorcraft
  - □ Glider  □ Gyroplane  □ Helicopter
  - □ Powered Lift  □ Ultralight  □ Unknown

- **Type of Airworthiness Certificate**
  - □ Standard  □ Special
  - □ Normal  □ Utility  □ Aeronautical Transport
  - □ Limited  □ Experimental  □ Special Flight
  - □ Experimental  □ Light Sport

- **Number of Seats:** __________

- **Landing Gear**
  - □ Retractable  □ Fixed
  - □ Tricycle  □ Tailwheel
  - □ Amphibious  □ High Skid  □ Float
  - □ Skid  □ Ski  □ Skid/Wheel

- **Type of Maintenance Program**
  - □ Annual  □ Conditional (Amateur-built only)
  - □ Manufacturer’s Inspection Program  □ Other Approved Inspection Program (AAIP)

- **Last Inspection Type**
  - □ Continuous Airworthiness  □ Other, specify
  - □ 100 Hour  □ Annual

- **Date Last Inspection:** __________ ____________

- **Airframe Total Time:** __________ hrs

- **IFR Equipped:** □ Yes □ No □ Unknown

- **Stall Warning System Installed:** □ Yes □ No □ Unknown

- **Type of Fire Extinguishing System:** □ None

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Why is the 6120.1 form problematic?

- Pressure by NTSB IIC for quick submission, often while flight crew is hospitalized and/or medicated
- Lack of timely access to all records due to above
- NTSB interests are limited compared to those of the “pilot/operator”
- Simultaneous FAA pressures for submission of the same form, but scope of FAA inquiries often include FAA enforcement and not just FAA accident investigation
- Insurer investigation proceeding simultaneously, which can effect coverage – such as if an FAR violation is found
- Conflicts - Pilot(s)? Operator? Owner/insured?
When is a “pilot/operator” required to complete the 6120.1 form?

• Within 10 days of an “Accident” as defined in 49 C.F.R. 830.2

• 49 CFR 830.2 defines an accident as follows:

“an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage.”
“SERIOUS INJURY”

(1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received;

(2) Results in a fracture of any bone (except simple fractures of fingers, toes, or nose);

(3) Causes severe hemorrhages, nerve, muscle, or tendon damage;

(4) Involves any internal organ; or

(5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.”

49 C.F.R. 830.2
“Substantial Damage”

(1) Damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, which would normally require major repair or replacement of the affected component.

(2) Engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairings or cowling, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades, and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered “substantial damage” for the purpose of this part.
Importance of the 6120.1 Form:

• First step in the NTSB’s investigation
• Likely the first recorded statement of a party
• The form requires admissions, which have effects in three axes – not just involving NTSB – under severe time pressure and with imperfect information
• Admissible in subsequent litigation – accident litigation, FAA enforcement litigation, insurance coverage litigation
Who completes the form?

- The form requires the “pilot/operator” to complete it
- Who is the “pilot/operator”?
- Is there more than one pilot?
- Is a corporate entity considered the operator?
- Who has access to all the aircraft records required to complete the exhaustive aircraft details questions?
- Who has both knowledge of and authority to sign the form containing detailed aircraft information?
- Who had operational control over the flight?
Potential pitfalls in completing the 6120.1 form:

• Inadvertently admitting that a person or entity was the “operator” when he/she/it may not be authorized by FAA to do so

• Who was on board? Purpose of the flight? Whom were pilots employed by? Pilot and mechanic agency agreements in place? FAA “air transportation for compensation or hire” and operational control analysis effect the answer and outcome

• Admissions can include pilots who meet FAA training requirements but not stricter insurer training requirements

• Other inadvertent admissions based on issues that have not yet arisen or been identified in the initial compressed time frame
What parties should do when faced with completing the 6120.1 form:

• Consult with counsel as quickly as possible
• Gather all even potentially relevant documents, including insurance policies, communications with broker, aircraft and Flight Operations manuals, company manuals, aircraft records, pilot training and employment records, etc.
• Be mindful of the numerous issues involved, the consequences of taking a position on one issue without considering effects on the other issues, and all the potentially differing interests
• Coordinate with insurer before submitting form to the NTSB to be sure that whatever interests the insurer chooses to assert are considered
What should an insurer do with respect to the 6120.1 form?

- Be mindful of the significant and potentially differing interests on behalf of its insured(s)
- Separate defense from coverage investigation if any question that coverage is at issue
- Assign counsel to assist the insured in preparing the 6120.1 form to insure accuracy and completeness, and avoid unintended consequences for either the insured or insurer
Why retain counsel directly when the insurer doesn’t do so immediately?

• The reasons previously mentioned - first recorded statement of the insured; admissible in subsequent tort, FAA enforcement and insurance coverage litigation

• If counsel works with the insured on drafts of the 6120.1 form, the attorney client privilege will better protect the drafts from disclosure.

• The insurer’s highest priority may not always be focusing on the 6120.1 form in this case
What to expect after submission of the 6120.1 form to the NTSB

• Interviews of pilot(s), operator and passengers, typically recorded

• 49 CFR 831.7 provides any person interviewed by a Board representative the right to counsel

• Crew can request to hear the CVR Recording (“CVR Audition”) per Section 14 of the NTSB’s Cockpit Voice Recorder Handbook
Common issues associated with NTSB interviews:

- They are often recorded. What happens to the recording?
- FAA may want to be present – but *which* FAA? (accident investigator or enforcement investigator)
- Negotiations over who is in the room during the interview
- Follow up information requested during the interview, and possible second interview based on the additional information located and produced
CVR Audition

• What is a CVR audition?
  • Opportunity for crew members to listen to the CVR and note changes or inaccuracies in the CVR transcript

• Why is a CVR audition useful?
  – Helpful in identifying/separating crew member’s voices
  – May be useful in avoiding issues created by a misunderstanding or misinterpretation:
    – Differences in regional accents and phraseology
    – NTSB personnel not necessarily rated or trained in the particular aircraft at issue, and may not be aware of either a particular manual reference or a synonym for a particular item
    – an in flight circumstance not addressed in a manual or training may result in a statement on the CVR that is other than what the investigator hears
Issues with the CVR Auditions:

• IIC responsible for notifying crew of opportunity to listen; crew review considered a courtesy, however, and not a requirement
• Crew not permitted to be part of the CVR group’s activities
• Counsel typically not permitted in the audition
• No notes leave the audition room; Handbook says any notes are destroyed
• Crew can listen together or separately
• Anyone reviewing CVR recording is bound by federal nondisclosure laws
Legal Issues Related to the Investigation that Your Emergency Response Plan (ERP) Should Address

• Documents/Records

• Statements – written and oral

• Requests for Blood Samples
ERP needs to clearly address who is responsible for maintaining and producing documents after an accident/incident.

ERP should contain a checklist of documents that need to be collected immediately after the accident, such as:

- Passenger Manifest
- Maintenance Reports and Records
- Fuel slips from the accident aircraft
  - (date / time / volume / truck number / tank number)
- Weather at the time and place of accident
- Flight Plan
- Crew training records, etc.
Document Where Records are Transmitted

• ERP should contain a checklist for document transmittal

• Legal Department or Legal Representative should sign off on all releases of records and documents if possible

• Documents should be carefully reviewed prior to sending to any outside agency
### RECORD OF DOCUMENT TRANSMITTAL

*Before releasing any documents check with Legal Representative*

<table>
<thead>
<tr>
<th>Document</th>
<th>Sent To</th>
<th>Sent By</th>
<th>Via</th>
<th>Date</th>
<th>Time</th>
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Statements

• ERP must designate a PR Representative/Company Spokesperson

• All statements need to be made by PR Representative /Company Spokesperson

• Advise employees on what can/should be said immediately after the accident

• PR Representative Initial Statement:
  – Good morning/afternoon. My name is ________________, (title) ________________ of [Organization/Operation Name]. I and the entire [Organization/Operation Name] are concerned by reports regarding ________________ (describe the incident). The company’s representative was recently dispatched to assist the authorities with the investigation. We’re saddened by this situation, and are standing by to work diligently with the authorities. Our thoughts and prayers are with the persons involved and their family members. At this time, we will/will not take questions.
Call Center/ Switchboard personnel should have a chart for where calls should be routed depending on the identity of the caller.

- Ex.

<table>
<thead>
<tr>
<th>Category</th>
<th>Contact</th>
<th>Name</th>
<th>Telephone Number</th>
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<tbody>
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<td>News Inquiries</td>
<td>Public Relations Representative</td>
<td>(Name)</td>
<td>(Telephone Number)</td>
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<tr>
<td>Family Members</td>
<td>Family Coordinator</td>
<td>(Name)</td>
<td>(Telephone Number)</td>
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<tr>
<td>NTSB, FAA, law enforcement</td>
<td>Emergency Operations Director</td>
<td>(Name)</td>
<td>(Telephone Number)</td>
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</tbody>
</table>
Prevailing Problems

• Outdated Emergency Response Plan
• Lack of Contact Information, Placement of Team Members and coordination
• Unfamiliarity with ERP - lack of table top drills/knowledge of what happens in the first few hours of an emergency response
• All the above create significant risk of conflicting evidence regarding who is the operator
Conclusion

• Involve counsel immediately, whether internal or external
• Begin sorting through the various parties and interests as quickly as possible
• Gather and evaluate documents and information as quickly as possible to be prepared for pressure by NTSB, FAA and potentially insurer
• Prepare the NTSB 6120.1 form mindful of the various interests that need protection – not only the potentially differing interests of each pilot, operator and/or owner, but also by each of those with respect to NTSB, FAA and possibly insurer
• Update, be familiar with, and practice the ERP to facilitate correct and appropriate responses to investigation