

Accident or Incident, that is the Question

By Dennis R. Haber Attorney at Law ©

Recently, while participating at an on-line aviation forum, one of our participants posted an issue about an “event”-- a “mishap” in which he was involved while flying. In his particular case, he had an Alt 1 failure (in a 2 alternator aircraft) and a questionably defective MFD. In any given day, a number of “mishaps” occur to pilots each and every day that they fly. (Blessed are the aircraft that we fly) Some of these events are serious. Some incidents are innocuous. Some are downright scary. Some happen in the air while flying. Some happen on the ground. All of these distracting events must be addressed by the pilot’s decisions to do nothing, or to do something.

Making the wrong decision could endanger your life and your license to fly.

Flying through these experiences is not all we might have to experience. Sometimes, there is paperwork awaiting us when we get on the ground. So, what’s a crew to do, just sit there and stew? Well, the reality of aviation is that flying is not all just punching holes in the sky. Sometimes, through necessity and legal obligation, we find ourselves punching holes in paperwork too, because we have to.

OK, let’s get back to the on-line aviation forum conversation. At the time, I pointed out that it might be worthwhile reading up on Federal Rule 49 CFR 830, also known by the cool “in crowd” as NTSB Rule 830. I refer to these difficult occasions that happen to us while aviating as an “event” or “mishap” because in my business the art of “*the word*” is everything, and until you clearly understand the word usage of what has happened, you will not know how to address the occasion. If this is all sounding like legal double talk, just bear with me a while longer; it’s important.

I certainly could call a “difficult in-flight happening” an “accident” or an “incident,” however to do so would have its legal consequences requiring certain activities on the part of *the person to whom it happened*.

Do you have a headache yet? Read on. It’s making me dizzy too!!!

As much as it may pain you to learn another rule of aviation, becoming familiar with Rule 830 is an unfortunate rule of aviation law with which every aviator and all maintenance personal should become familiar.

WHY BOTHER?

What might constitute an “accident” or an “incident” is everything in the world of aviation and to those who license aviators and aviation maintenance personal. On one hand, filing an accident or incident report when none is required will likely raise the attention of the FAA to matters that I for one would rather not bring to the FAA’s attention if it is not required. A broad variety of pain and suffering could result from an investigation that was unnecessary in the first place. Keep in mind that the FAA is very good at looking under aviation rocks.

On the other hand, not reporting an accident or incident that by definition must be reported creates its own violation for which penalties are freely given. The issue here turns on the definition of exactly what is an “accident” or “incident”.

After all, if someone hits my car, my insurance company will, or should, pay. Life is much simpler with your car; you know an accident when you see one, or are in one. Ironically, with an aircraft, you could have some very noticeable and substantive damage, and yet never have an official “accident” which must be reported. But, far be it from me to belabor this issue since as everyone knows, lawyers are always clear and to the point, so let’s get this all out on the table.

WHO MUST DO THE NOTIFYING, AND WHO MUST BE NOTIFIED?

Federal Rule 49 CFR 830.5 lays out your obligations and responsibilities. It requires that the “operator” of an aircraft provide notification of any “accident” and **certain “incidents”** *immediately*. Now, this begs the question and creates its own problem because we now have to define who “the operator” of the aircraft is. Is it the owner, the flight school renting out the aircraft, the leasee, the lessor, or the pilot? Does a renter have an obligation to notify? Will the real “operator” please stand up.

WHO IS REQUIRED TO PROVIDE NOTIFICATION?

The rule defines an “operator” as “*any person who causes or authorizes the operation of an aircraft*” which can include the owner, lessee, or anyone flying or using the aircraft. Also note that this does not necessarily mean the pilot. An aircraft owner, FBO, or lessor can make the report even if the pilot does not. However, if someone other than the pilot makes the report, Part 830.15(b) requires that the crewmembers, if they are physically able at the time the report is submitted, attach a statement providing the facts, conditions, and circumstances relating to the accident or incident as they appear to him or her. (Be careful what you say as it can be used against you in an administrative hearing.) If the crewmember is incapacitated, he or she must submit the statement as soon as they are physically able.

Now that you are confused, let’s add some more confusion. It is important to note that you must notify the NTSB, not the FAA. The NTSB is a federal agency that is separate and apart from the FAA and it has the authority and the obligation to investigate aircraft accidents and reportable incidents. The NTSB often delegates some accident investigation to the FAA. The notification required by Part 830 must be made to the NTSB on its own special forms available from the NTSB.

Notification must be given to the NTSB *immediately*. Rule 830.6 states that the initial notification must include the following information:

- 1) Type, nationality, and registration marks of the aircraft;
- 2) Name of owner, and operator of the aircraft;
- 3) Name of the pilot-in-command;
- 4) Date and time of the accident;

- 5) Last point of departure and point of intended landing of the aircraft;
- 6) Position of the aircraft with reference to some easily defined geographical point;
- 7) Number of persons aboard, number killed, and number seriously injured;
- 8) Nature of the accident, the weather and the extent of damage to the aircraft, so far as is known; and
- 9) A description of any explosives, radioactive materials, or other dangerous articles carried.

And, if that weren't enough, in addition to the initial notification, a written report of an accident must be submitted on NTSB Form 6120 and filed with the nearest NTSB field office within 10 days of the accident, or for a reportable incident only as requested by an authorized representative of the NTSB. The form is available from the NTSB field offices and can also be obtained from the local FAA FSDO. (Again, be careful that you know what an "accident" is before you report it.)

ACCIDENT, INCIDENT, OR NEITHER?

This is all very interesting. Now we know who must report something and how soon, but what must be reported, if anything at all?

Although the terms "accident" and "incident" have a commonly understood meaning, for purposes of this rule it is worth understanding the meanings as defined in Part 830.2 in order to determine whether you are dealing with an accident, a reportable incident, or neither.

Under the Rule, an "**accident**" is "*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.*"

Although "**death**" is easily to understand, the rule goes on to provide very clear definitions for the terms "serious injury" and "substantial damage".

A "**serious injury**" is defined as "*any injury which:*

- 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.*

"Substantial damage" means: *damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component.*

Substantial damage does not include 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.

An **"incident"** is defined as *"an occurrence other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of operations."* You do not need to report an incident involving a small aircraft except when it involves:

- 1) Flight control system malfunction or failure;
- 2) Inability of any required flight crewmember to perform normal flight duties as a result of injury or illness;
- 3) Failure of structural components of a turbine engine excluding compressor and turbine blades and vanes;
- 4) In-flight fire; or
- 5) Aircraft collide in flight;
- 6) Damage to property, other than the aircraft, estimated to exceed \$25,000 for repair (including materials and labor) or fair market value in the event of total loss, whichever is less.

So, arguably, you do not need to report the goose that came through your window, nearly killing you and your passengers, unless of course the goose actually does come through the window and kill you or your passenger, or otherwise cause sufficient damage or injury as described above.

Incidents involving large, multiengine aircraft (more than 12,500 pounds maximum certificated takeoff weight) must be reported if they involve:

- 1) In-flight failure of electrical systems which requires the sustained use of an emergency bus powered by a back-up source such as a battery, auxiliary power unit, or air-driven generator to retain flight control or essential instruments;
 - 2) In-flight failure of hydraulic systems that results in sustained reliance on the sole remaining hydraulic or mechanical system for movement of flight control surfaces;
 - 3) Sustained loss of the power or thrust produced by two or more engines; and
 - 4) An evacuation of an aircraft in which an emergency egress system is utilized.
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As you can see from the rule, the definitions are very specific. Under the rule's definitions, minimally bent metal or the typical gear-up landings does not necessarily trigger the notification and reporting requirements. However, should you find yourself in a situation in which a "mishap" has occurred, it is important that you familiarize yourself with and compare the facts of your situation to Rule 830.

Why is all of this important?

First, it is your legal obligation under the terms of your pilots license that you follow the law and therefore, must comply. Although a search of the supporting and relevant law did not reveal any enforcement or civil penalty actions based upon a failure to provide notification of an accident or incident, such an action is possible. In fact, I can almost assure you that if someone complains, be it ATC, or the injured person, somebody is going to be asking questions.

Second, an aircraft mishap can be costly and embarrassing enough without drawing undue attention to it with an unnecessary report to the NTSB or FAA. Certainly if your "mishap" fits within the definition of an accident or reportable incident, you need to provide notification as required by the rule. However, if it does not, you do not need to report it to the NTSB.

The FAA has pursued enforcement actions against airmen arising out of reported aircraft "mishaps" that Rule 830 did not require that the airmen report. By understanding the obligations imposed by Rule 830 you can ensure your compliance and avoid any unnecessary attention from the FAA if you are involved in an aircraft "mishap".

NOTE: The NTSB has changed and added to its rules in order to keep up with modern technology. The final rule document is published in the *Federal Register* modifies when a pilot must report an accident or incident to the [NTSB](#) in accordance with [49 CFR Part 830](#). This change, effective March 8, 2010, specifies the sort of accidents and incidents that must be reported immediately.

Added to the list of incidents to be reported immediately:

A complete loss of information, excluding flickering, from more than 50 percent of an aircraft's

- Electronic Flight Instrument System [EFIS](#) displays;
- Engine Indication and Crew Alerting System [EICAS](#) displays;
- Electronic Centralized Aircraft Monitor [ECAM](#) displays; or
- Other displays of this type, which generally include a primary flight display [PFD](#) , primary navigation display [PND](#) , and other integrated displays;
- Airborne Collision and Avoidance System [ACAS](#)

Failure of any internal turbine engine component that results in the escape of debris other than out the exhaust path must also be reported to the [NTSB](#) immediately.

In addition, release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact; and Damage to helicopter tail or main rotor blades (including ground damage) that requires major repair or replacement of the blade(s) must be reported immediately.

All aircraft accident/incident reporting to the [NTSB](#) should be completed using [NTSB Form 6120.1](#) – Pilot/Operator Aircraft Accident/Incident Report. To locate your closest [NTSB](#) office for filing the accident/incident report, visit the [NTSB website](#).

For those of you who are still with me and haven't fall asleep, here is the final sleeping pill. Take a look at these definition

§ 830.2 Definitions.

As used in this part the following words or phrases are defined as follows:

Aircraft accident means 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. For purposes of this part, the definition of “aircraft accident” includes “unmanned aircraft accident,” as defined herein.

Civil aircraft means any aircraft other than a public aircraft.

Fatal injury means any injury which results in death within 30 days of the accident.

Incident means an occurrence other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of operations.

Operator means any person who causes or authorizes the operation of an aircraft, such as the owner, lessee, or bailee of an aircraft.

Public aircraft means an aircraft used only for the United States Government, or an aircraft owned and operated (except for commercial purposes) or exclusively leased for at least 90 continuous days by a government other than the United States Government, including a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of that government. “Public aircraft” does not include a government-owned aircraft transporting property for commercial purposes and does not include a government-owned aircraft transporting passengers other than: transporting (for other than commercial purposes) crewmembers or other persons aboard the aircraft whose presence is required to perform, or is associated with the performance of, a governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management; or transporting (for other than commercial purposes) persons aboard the aircraft if the aircraft is operated by the Armed Forces or an intelligence agency of the United States. Notwithstanding any limitation relating to use of the aircraft for commercial purposes, an aircraft shall be considered to be a public aircraft without

regard to whether it is operated by a unit of government on behalf of another unit of government pursuant to a cost reimbursement agreement, if the unit of government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation was necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator was reasonably available to meet the threat.

Serious injury means any injury which: (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.

Substantial damage means damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. 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.

Unmanned aircraft accident means an occurrence associated with the operation of any public or civil unmanned aircraft system that takes place between the time that the system is activated with the purpose of flight and the time that the system is deactivated at the conclusion of its mission, in which:

- (1) Any person suffers death or serious injury; or
- (2) The aircraft has a maximum gross takeoff weight of 300 pounds or greater and sustains substantial damage.

In conclusion, I am genuinely sorry for having to bore you with all of this legalese. But then again, as my mother often said, if you want to be a pilot, you can't just do the fun stuff.

BIOGRAPHY FOR DENNIS R. HABER

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A graduate of the **University of Miami School of Law**, Dennis R. Haber also received his **Masters of Business Administration in Marketing from Embry Riddle Aeronautical University**. Prior to attending Law School, Mr. Haber spent **25 years in the aviation & business industries** working as an aviation business consultant, where he functioned in various phases of marketing, business development and entrepreneurial ventures.

Currently the President of his firm, Mr. Haber practices Aviation and Business law in New York, Washington D.C. and Florida principally in the areas of Aviation Law, Commercial, Corporate, real estate litigation as well as International tax and trade law.

Mr. Haber founded Law CAATS (Lawyers for Aviation and Allied Technical Sciences), has been a member of the Lawyer Pilot Bar Association, and serves as a Panel Attorney with Aircraft Owners & Pilots Association, (AOPA) as well as being a member of the National Business Aviation Association (NBAA), and FATA.

In the business world, Mr. Haber has been the past Vice President of **South Florida Entrepreneurial Consortium**, the Vice President of Wings Over Miami Air Museum, and appeared as the **feature legal keynote speaker on Commercial Real Estate Development and Construction Law at the Construction Worlds Fair at the Miami Radisson Center Complex**. Recently, Mr. Haber was asked to join Paul Kangus of the Nightly Business Report on the Panel of Experts in business sponsored by The Miami Herald.

In the International arena, Mr. Haber, has, in the recent past, assisted the City of Miami and Dade County in international business development by joining **The Beacon Counsel** on their trade missions to Italy, France, and Spain. He has also served as the **International business development coordinator for the South Miami/Greater South Dade Chamber of Commerce**. Most recently, Mr. Haber has been appointed to the **Business Impact Committee** which reports directly to the Dade County Commission, making recommendations relating to new and proposed ordinances and their impact on Dade County business.

Mr. Haber is also a member of the Florida Bar Aviation Law Committee and a candidate for Aviation Law Certification. His firm operates as independent general counsel for many business and aviation firms.

Prior to his current positions, he served our country during the Viet-Nam era as a Naval Aviator and will fly anything for which he can afford the gas, and therefore, restricts his flying to his Cirrus SR22. He is an involved member of NBAA, and has been a Commercial Instrument rated single and multi-engine pilot for more than 42 years.