

**NATIONAL WEATHER SERVICE INSTRUCTION 10-2006**  
**APRIL 15, 2024**

**Operations and Services**  
**Forensic Services, NWSPD 10-20**

**THE NWS ACCIDENT INVESTIGATION, LITIGATION,**  
**AND RECOMMENDATION PROCESS**

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**SUMMARY OF REVISIONS:** This directive supersedes NWS Instruction 10-2006, “*The Accident Investigation/Litigation Process*”, dated February 26, 2020.

Changes made in this update are:

- Updated the title to reflect the safety recommendation process adopted in the previous update.
- Moved the Safety Recommendation Process into the body of the instruction as Section 3 from Appendix A.
- Other changes were grammatical and clerical for clarification.

April 1, 2024

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**The NWS Accident Investigation, Litigation, and Recommendation Process**

<b>Table of Contents</b>	<b>Page</b>
1. Accident Investigation Support Procedures.....	2
1.1 NTSB and On-Scene Accident Investigation .....	3
1.1.1 NTSB Investigation Liaison .....	3
1.1.2 National Weather Service Participation.....	3
1.2 Weather Documentation Support to the NTSB .....	4
1.3 NTSB Public Hearings.....	4
1.3.1 Designating Parties to a Public Hearing .....	4
1.3.2 National Weather Service Representatives .....	4
1.3.3 Privileged Status of Board’s Report .....	4
1.3.4 Witnesses .....	4
1.3.5 Counseling of Witnesses.....	5
1.3.6 Conduct of Hearings .....	5
1.4 National Transportation Safety Board Depositions .....	5
1.5 U.S. Coast Guard Marine Board of Investigation.....	6
1.5.1 USCG Relationship to NTSB .....	6
1.5.2 NWS Spokesperson/Representative.....	6
1.6 Other Types of Investigations and Hearings.....	6
2. Litigation Support and Procedures.....	7
2.1 Litigation Involving the United States Government.....	7
2.1.1 Depositions and Trials .....	7
2.1.2 Selection of Witnesses .....	7
2.1.3 Designation of Witnesses.....	8
2.1.4 Counseling of Witnesses.....	8
2.2 Civil Litigation/Handling of Subpoenas .....	8
2.3 Expenses and Reimbursement .....	9
3. The NWS Safety Recommendation Process.....	9
3.1 Role of NWS Forensic Services Program Manager (FSPM).....	10
3.2 Process.....	10
3.2.1 Receipt of Recommendation.....	10
3.2.2 Assignment of Recommendation.....	11
3.2.3 Tracking and Periodic Updates.....	11
3.2.4 Official Responses.....	11
3.2.5 Closure of Recommendation.....	12
4. Recommendation Tracking Activities.....	12

## **1 Accident Investigation Support Procedures**

From time to time, the National Weather Service (NWS) is requested to provide support for accident investigations. In most cases, this will be in support of National Transportation Safety Board (NTSB) operations. However, there may be other agencies that request support or information for accidents or incidents. Those agencies include but are not limited to the U.S. Coast Guard (USCG) and the Federal Aviation Administration (FAA).

The NWS Forensic Services Program Manager (FSPM) in the Analyze, Forecast and Support Office (AFSO)/Aviation and Space Weather Support Branch (AFS24) at NWS Headquarters is the main point of contact in the NWS for transportation investigation support and information. All requests for transportation accident investigation support should be routed through the FSPM for appropriate coordination and tracking.

### **1.1 NTSB and On-Scene Accident Investigation**

The NTSB is responsible for the investigation and determination of facts, conditions, and circumstances, and the probable cause(s) and contributing factor(s) of all accidents involving civil, and certain public, aircraft, and certain highway, railroad, pipeline, and major marine accidents. The NTSB does not have the authority or regulatory power to find parties criminally or civilly liable in accidents.

#### **1.1.1 NTSB Investigation Liaison**

In circumstances where the NTSB requires meteorological information or assistance from the NWS, a member of the investigation team will contact the NWS FSPM. The FSPM will work with other NWS staff, including but not limited to, Regional Aviation Meteorologists (RAM), Regional Marine Program Managers, and National Center Points of Contact (POC), to fulfill the request. If the FSPM is unavailable, the AFS24 Chief will designate a backup who will work with the NTSB staff to fulfill the request.

#### **1.1.2 National Weather Service Participation**

At times, the NTSB will request investigation participation by NWS personnel. Such requests will be directed through the FSPM and coordinated through the appropriate region, national center, or portfolio office. The circumstances of the accident/incident will determine the type of support needed by the NWS representative(s) (e.g., meteorologist, hydrologist, information technology, systems operations). In most cases, the NWS representative serves as a member of the NTSB Meteorology Group and will work directly with the NTSB meteorologists. This person will help the NTSB Group Chairperson gather appropriate documents, interview NWS personnel and other witnesses, and participate in the development of the written factual record, as applicable, for the duration of the investigation.

In most cases, the FSPM will be the NWS Party Coordinator in NTSB investigations. The Party Coordinator is the liaison between the NWS and NTSB for the specified investigation. Instead of working with the NTSB Working Group Member, the Party Coordinator works directly with the NTSB Investigator in Charge (IIC) for the duration of the investigation.

All NWS investigation participants are required to sign a non-disclosure agreement (NDA)

furnished by the NTSB, known as a Party Form. This is to ensure all information collected in the investigation remains confidential to maintain the integrity of the investigation and protect the victims and families involved in the accident. No information gathered during an investigation may be disclosed to anyone outside the investigative party without the express consent of the IIC. NTSB will not allow participation nor disclose any information to anyone until the Party Form has been acknowledged. The FSPM will maintain a copy of the signed Party Form for NWS record management compliance.

Once NWS personnel have been identified to participate in an NTSB investigation, it is expected that they will continue in that capacity until the conclusion of the investigation. This can include travel with the NTSB to various fact-gathering locations and additional follow-up work after the on-scene portion of the investigation is complete. The NTSB strives to close investigations within 12 to 18 months; however, the complexity of the investigation will determine how long it lasts. Group member participation will wax and wane depending on the investigation phase and progress.

## **1.2 Weather Documentation Support to the NTSB**

The NWS Party Coordinator and/or NWS working group member will coordinate documentation support to the NTSB, as needed.

## **1.3 NTSB Public Hearings**

The rules of practice for transportation accident and incident hearings and reports are set out in 49 C.F.R. Part 845. The NTSB may convene a public hearing in connection with any of its investigations to create a public record of the facts, conditions, and circumstances relating to the accident. These hearings are purely fact-revealing proceedings.

### **1.3.1 Designating Parties to a Public Hearing**

The IIC may designate as parties to an investigation those persons or Government agencies, companies, and associations whose employees, functions, activities, or products were involved in the accident, or have knowledge and information pertinent to the accident. The IIC may also designate those who participated in the investigation and whose special knowledge and skills contribute to the development of pertinent evidence.

### **1.3.2 National Weather Service Representatives**

The FSPM or designee will be the NWS representative at the NTSB Public Hearing when the NWS is a designated party to the investigation.

### **1.3.3 Privileged Status of the Board's Report**

Section 701 (e) of the Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 731, 781 (1958), states an indicated intent to exclude liability questions from the NTSB's accident investigation in providing that no part of the NTSB's report relating to any accident or the investigation thereof will be used in any suit or action for damages growing out of any matter mentioned in such report. However, because of a long history of court interpretation and decisions, the only portion of NTSB reports **not** admissible as evidence in litigation is the finding

of probable cause. Furthermore, any testimony and factual information developed through the NTSB investigation may be used in subsequent litigation.

#### **1.3.4 Witnesses**

Any NWS employee requested by the NTSB, or any investigative party, to appear as a witness in any legal or investigative proceeding, will immediately refer the matter to the National Oceanic and Atmospheric Administration's (NOAA) Office of General Counsel (OGC) with concurrent notice to the appropriate Regional Headquarters (RH) or National Center staff (including the National Water Center) and the FSPM. The designation of witnesses for Public Hearings depends on the circumstances of each case and will normally be limited to factual-type witnesses. See [Section 2.1.3](#) for additional information. In some instances, the NTSB requests expert witnesses. The selection of NWS employees to participate as factual witnesses is usually decided by the NTSB, although advice or recommendations are sometimes sought from the spokesperson/representative. The witness list can be changed by the NTSB as needed. The FSPM will notify all prospective witnesses after coordination with the appropriate RH and will be the focal point for arranging their participation at the hearing.

#### **1.3.5 Counseling of Witnesses**

All NWS employees designated as witnesses will receive counseling prior to providing testimony at any investigative hearing. Pre-counseling sessions normally include a review of weather factors and services surrounding the accident in question, discussions related to procedures and general environment of the hearing, and other issues of concern.

Public Hearings are designed to be fact-finding. However, when a hearing is convened as a result of a major accident involving considerable loss of life or unusual public interest, it frequently receives a high level of media exposure and the examination of witnesses may be intensive. It is the responsibility of the FSPM to ensure prospective NWS witnesses are prepared to testify. An attorney from the General Litigation Division, Department of Commerce (DOC) OGC, the NOAA OGC, and other appropriate representatives from NWSH or RH may assist in counseling the witness prior to the hearing.

#### **1.3.6 Conduct of Hearings**

An NTSB public hearing normally convenes within six (6) months of an accident and generally remains in session for three (3) to four (4) days. Primary participants include: the Chairperson (an appointed member of the NTSB), the IIC, the Technical Panel, the designated parties to the investigation, and the witnesses. Most of the questions addressed to the witness will originate from a member of the NTSB Technical Panel. The line of questioning initiated by the NTSB examiner is designed to bring out, in a logical sequence, certain events and facts to be established in the record. The subject material should be familiar to the witness. Spokespersons or representatives of the designated parties to the investigation may ask the witness questions after the Technical Panel examination is completed. As a party member, the NWS Party Coordinator will also be allowed to ask questions of any of the witnesses.

Any question directed to a witness beyond the scope of the accident investigation, the area of examination agreed to at the pre-hearing conference, or the witness' ability to respond

knowledgeably, will be brought to the attention of the Chairperson by the NWS spokesperson for a ruling as to materiality, relevancy, or competency.

#### **1.4 National Transportation Safety Board Depositions**

At times, the NTSB will obtain statements by deposition rather than by personal appearance at an accident investigation hearing. In such cases, an employee's testimony is given under oath in the presence of an NTSB Examiner and taken down by a court reporter for insertion into the official record of the accident investigation. The FSPM is responsible for notification, proper counseling, and appearance arrangements of any NWS employee scheduled to be deposed under NTSB auspices. A copy of the witness' testimony must be provided for review and signature. No NWS employee will waive this right or sign the testimony except on the advice of government counsel.

#### **1.5 U.S. Coast Guard (USCG) Marine Board of Investigation**

The USCG Marine Board of Investigation (MBI) is convened soon after a marine accident has occurred where an investigation is deemed as needed. The USCG, unlike the NTSB, looks to not only identify safety issues but also find liable those parties who are at fault for the accident. The USCG is empowered to: summon witnesses; require the production of books, papers, documents, and other evidence; and administer oaths. Parties in Interest (PII) to the investigation hearing may be represented by counsel, who may call and cross-examine witnesses. A formal record of the proceedings is made. The MBI may consist of one or several investigating officers, depending on the complexity of the case. Procedures for depositions, calling and counseling of witnesses, etc., are similar to those detailed in [Section 1.3.4](#).

##### **1.5.1 USCG Relationship to NTSB**

The NTSB may participate directly in a USCG MBI depending upon the circumstances of the accident. The NTSB may request the MBI to examine specific points, may actively participate in the proceedings of the MBI, or may conduct a completely separate investigation.

##### **1.5.2 NWS Spokesperson/Representative**

The FSPM or designee will be the NWS spokesperson or representative at USCG and NTSB proceedings when the NWS is designated as a PII to an MBI. An attorney from the DOC OGC General Litigation Division or NOAA OGC will be available to provide assistance.

#### **1.6 Other Types of Investigations and Hearings**

Other Federal, state, or local government agencies may initiate investigations or hold hearings related to an accident and request an NWS witness; however, proper coordination must be followed to ensure NWS staff do not inadvertently participate in or sign forms inappropriate at the federal level (e.g., state, local, or tribal level NDAs). Procedures for such hearings are too numerous to be covered in this directive but an example includes an Incident Meteorologist's (IMET) participation in state-level investigations after a wildland firefighter death.

When requests for NWS participation are received, contact the FSPM as soon as possible so that coordination can be done with NOAA GC ensuring the proper level of NWS participation is

achieved. The FSPM will also coordinate with the appropriate RH and office managers, as appropriate.

## **2 Litigation Support and Procedures**

### **2.1 Litigation Involving the United States Government**

This section references lawsuits against the U.S. Government and not requests for weather data by subpoena. For information on subpoenaed weather data, please see [NWS Instruction 10-2005, Handling and Releasing Accident-related Weather Information](#).

Any NWS office that is presented with any Notice of Claim for Damage, Injury, or Death (also referred to as an administrative claim) will notify the General Litigation Division in the DOC OGC and provide it with the original claim. The presentation of an administrative claim is the initial signal of impending litigation against the Government. The Federal Tort Claims Act (FTCA) requires a claim to be presented to the designated government agency within two (2) years of the event triggering the claim.

A complaint (lawsuit) against the Government can be filed six (6) months after an administrative claim is presented or after the agency denies the claim, whichever comes first. If the agency denies the administrative claim, the claimant has six (6) months from the date of the denial to file suit. The filing of suit is followed by the discovery phase of litigation. Depending on the scope of the case, discovery can last from one (1) to three (3) years.

#### **2.1.1 Depositions and Trials**

A deposition is pretrial testimony, taken under oath. Recorded transcripts can be used in lieu of actual testimony at trial in circumstances where the witness is unavailable, or when agreeable to both plaintiff and Government attorneys. The law requires a witness be provided a copy of the testimony for review and signature. This offers the opportunity to verify the accuracy of the deposition transcript. No NWS witness will waive the right to examine and sign the testimony, except on the advice of Government counsel.

If a trial occurs, it may be well after the event triggering the litigation. The trial date will depend on the scope of discovery, the court's calendar, and a number of other intangibles. All persons previously deposed in connection with the case are potential trial witnesses. An FTCA trial against the Government differs from a corresponding civil proceeding because there is no jury.

#### **2.1.2 Selection of Witnesses**

Participation of NWS personnel as witnesses in litigation involving the Government is determined either by the plaintiff's or the government's attorneys, by agreement between the above, or on the recommendation of NWSH and the appropriate RH.

Witness selection depends on the nature of the case. In cases where witness selection is made by parties solely outside the NWS, the involved Department of Justice (DOJ) trial attorney (frequently through the General Litigation Division, DOC OGC's Office) will notify the FSPM, who will in turn inform the NWS employee and the appropriate RH. The FSPM will be

informed when such notification is received directly by a RH or NWS employee. In accordance with DOC regulations (15 C.F.R. Part 15, Subpart B), NWS employees are prohibited from testifying for a private litigant against the United States. Any employee who is served with a subpoena will immediately contact a NOAA OGC staff attorney, directly, or through the FSPM.

### **2.1.3 Designation of Witnesses**

Prospective NWS witnesses may be designated either as fact or, in exceptional cases, as expert witnesses. Fact witnesses are normally those employees whose duties are tangibly involved in the event motivating the litigation (e.g., duty forecasters). Testimony by fact witnesses should be limited to their duties and performance during the timeframe of reference.

On occasion, the DOJ will solicit recommendations from the NWS for prospective expert witnesses. Expert witnesses are acknowledged experts in their fields, and their testimony will include opinion-type responses. The designation of an NWS employee as an expert witness will be coordinated between the FSPM, the DOC OGC, NOAA OGC, and the appropriate RH or National Center prior to forwarding a recommendation to the DOJ. No NWS employee can be unilaterally designated as an expert witness by a plaintiff's attorney.

### **2.1.4 Counseling of Witnesses**

All NWS employees will receive counseling prior to providing testimony at depositions or trials. The DOJ trial attorney has responsibility for managing the Government's defense. The attorney will prepare prospective witnesses to ensure their testimony is credible and contributes to the success of the Government's defense.

The DOJ trial attorneys require considerable assistance and support due to the complex and time-consuming nature of most Government-related litigation. Although the trial attorneys are proficient in the general field they are defending (e.g., aviation, marine), their knowledge may be limited regarding technical aspects of weather and NWS operations. The FSPM, or designee, and an attorney from the DOC OGC will assist the DOJ trial attorney in preparing for the Government's defense. The assistance will include the preparation of NWS witnesses designated to testify at depositions and trials. Although technically and operationally proficient, most NWS employees are not accustomed to serving as witnesses in legal proceedings. Additionally, the witness will be asked about an accident/event that has likely occurred two (2) or more years previous to the date of the trial. As in preparing for NTSB public hearings, a primary objective of pre-counseling is to make the prospective witness as comfortable and relaxed as possible and enhance the witness' capability to provide credible testimony. Pre-counseling sessions will include a review of weather factors and services surrounding the accident in question, NWS operations and procedures as they existed at the time of the accident, discussions related to rules, procedures, and the general environment of the deposition/trial, and other issues of concern.

## **2.2 Civil Litigation/Handling of Subpoenas**

NWS personnel are occasionally subpoenaed to appear in their official capacity by private litigants, either to testify or to present official records in evidence. Under DOC regulations, NWS employees cannot produce records or testify in litigation not involving the Government

without the consent of the NOAA OGC or the DOC OGC. Any NWS employee served with a subpoena, will immediately notify a NOAA OGC staff attorney and the FSPM, either directly, or through the appropriate RH or the FSPM. If a NOAA OGC attorney is not available, employees may seek advice on how to proceed from the General Litigation Division, DOC OGC's office or the nearest Office of the United States Attorney, DOJ. However, the subpoena MUST be honored in the event the employee is unable to reach any of the above. In such a circumstance, the employee must appear at the time and place set in the subpoena, provide a copy of the regulations to the legal tribunal, and respectfully decline to testify. The employee will notify the NOAA OGC as soon as possible.

### **2.3 Expenses and Reimbursement**

Expenses and reimbursements related to the appearance of NWS employees as court witnesses are listed below.

- a. Personnel who appear on behalf of the Government, as part of their official duties as employees of the DOC, are entitled to be paid for their travel expenses and per diem in lieu of subsistence. NWSH, the appropriate RH, or National Center will process travel requirements, as applicable.
- b. In private litigation cases, where the value of the witnesses' testimony arises from their official capacity, and they are subpoenaed solely because of, and to testify in that capacity, or to produce official records, and they receive necessary NOAA OGC clearance pursuant to the requirements of 15 C.F.R. § 15.13, they are considered on duty and in pay status during the period of necessary absence in response to such subpoena. Under such circumstances, the employees will receive allowances for expenses of travel and subsistence.
- c. Employees subpoenaed to testify as witnesses in private litigation cases, in an unofficial capacity, while on leave status, regarding facts or events that are unrelated to the official business of DOC, are not entitled to fees and expenses from the Government. It is the responsibility of the employee to arrange for payment of witness fees and personal expenses related to their appearance in court. Arrangements may be made with the court or litigants. Time absent will be charged to annual leave or leave without pay.

### **3 The NWS Safety Recommendation Process**

The NWS routinely responds to safety recommendations provided by the NTSB. However, recommendations may originate from other entities (e.g., the USCG, the Government Accountability Office [GAO], the National Science Foundation [NSF], and the National Academy of Public Administration [NAPA]). When these recommendations are sent to the NWS for review and action, they need to be triaged, vetted, assigned, tracked, and closed in a timely and coordinated fashion. This section outlines the NWS response process regarding Safety Recommendations from receipt to closure.

It should be noted that safety recommendations provided to NWS are not mandates for change. With few exceptions, most agencies do not have the authority to require the NWS to change operations in order to close a recommendation. However, it is in NWS' best interest to correspond with the recommending agency to understand the concerns and, at a minimum,

address any limitations the NWS may have towards addressing the concern. In some cases, citing a limitation can be enough to result in the closure of a recommendation without additional work or investment.

By adopting and following this process, all recommendations that are introduced to the NWS will be properly accepted, vetted, logged, and tracked until they are closed at the recommending agency's discretion. This process allows for senior leadership to remain updated while the work is being performed by staff within an office or service program. This process will also keep recommendations from getting lost and ultimately going unanswered, which could result in negative attention if the recommending agency must report publicly that the recommendations have gone unanswered.

### **3.1 Role of NWS Forensic Services Program Manager (FSPM)**

Due to regular communication and coordination between transportation agencies and federal attorneys, the FSPM is in a unique position to maintain awareness on recommendations as they proceed through the recommendation process. In many cases, the FSPM will already be aware of forthcoming recommendations before they are officially issued to the NWS. Due to this awareness, the FSPM is charged with coordinating responses to and from the issuing agency(ies) and maintaining the Forensics Database where information related to the recommendations is contained in one place for easy retrieval and updates.

The FSPM is usually copied on safety recommendations that come to the NWS from transportation incidents and associated agencies. However, this might not always be the case. The Office of the Chief Operations Officer (OCOO) will ensure that the FSPM is made aware of any transportation safety recommendations that enter the NWS. This will assist with the proper tracking of the recommendation until its closure and final communication.

If the FSPM is unavailable, the AFS24 Chief will designate someone to act on behalf of the FSPM to maintain awareness of communications regarding any recommendations as well as logging and updating them in the Forensics Database during the FSPM absence. This FSPM backup will also be coordinated with the AFSO Director, AFSO Executive Officer (XO) and the OCOO XO as appropriate.

### **3.2 Process**

#### **3.2.1 Receipt of Recommendation**

The majority of recommendations come to the NWS from the NTSB as safety recommendations resulting from transportation accident investigations. However, other entities provide similar recommendations for transportation and public safety interests, such as the USCG. While each entity may have a different process for how recommendations are delivered to the intended recipient(s), it is NWS policy that all recommendations be directed to the COO for senior leadership awareness and official response and communication. All recommendations, regardless of their entry point, will be sent immediately to the COO to initiate the NWS process. The FSPM should always be copied for tracking and records management.

Upon receipt of a recommendation, the COO will copy the NWS Office of the Chief of Staff

(OCOS) for awareness and the two offices will then work on a quick response letting the recommending agency know that the recommendation has been received and is being worked. From that point, the recommendation will then be moved to vetting and assignment through the OCOO.

### **3.2.2 Assignment of Recommendation**

The COO will determine the proper routing and owner of the tasker related to the safety recommendations and have this communicated to the FSPM. If the recommendation is programmatic or related to a National Service Program (NSP), the OCOO will coordinate the recommendation with the NWS' AFSSO Director and AFSSO XO to ensure it is properly assigned. The AFSSO Director will work with the AFSSO XO, the supervisory chain, and the FSPM to ensure the recommendation is properly assigned and logged for future tracking and closure. A POC will be identified to work the recommendation within the appropriate NWS Portfolio Office, AFSSO service program, or appropriate branch. This POC should also be logged in the FSPM tracking log and will become the liaison between the FSPM and tracking updates to the ultimate closure of the recommendation.

This same methodology will be followed if the safety recommendation is directly related to infrastructure or systems and will be routed through the Office of Planning and Programming for Service Delivery (OPPSD) XO for tasking.

### **3.2.3 Tracking and Periodic Updates**

Once the recommendation has been assigned and a POC identified, work can begin to properly address the concerns in the recommendation. While the work is being done, the appropriate XO or the FSPM may ask for periodic updates either to keep the NWS information up-to-date or to satisfy update requests from the recommending agency. In most cases, this update can be "unofficial" in nature and completed via emails between the FSPM and the recommending agency. However, any official correspondence or information that could be considered controversial or result in media or negative attention to the NWS will be coordinated through the appropriate HQ Office Director, OCOS, and OCOO for an official response (see [Section 3.2.4](#)).

Throughout this process, the FSPM will provide periodic updates to the AFSSO Director and COO for their awareness. In many cases, this coordination will occur naturally as part of the completion process. However, there will likely be times when the work being done is "simple" enough that senior leadership input is not necessary. In these cases, additional effort will be taken by the FSPM to keep senior leaders updated on the progress of the work and unofficial responses going back to the recommending agency.

### **3.2.4 Official Responses**

Throughout the lifespan of a safety recommendation, it may be necessary to produce official responses back to the recommending agency prior to the final response that ultimately closes out the recommendation. These responses may result from the recommending agency asking for an update or because work at NWS has reached a point to where an update is appropriate for awareness. The identified POC should work with the appropriate staff, workgroup, or team to coordinate wording for this response. Once the response has been drafted, it will need to be

reviewed by the AFSO Director for coordination with the COO for the official response.

If the POC drafting the response is part of AFS, the appropriate AFS process should be followed for the drafted document to pass to the AFSO XO and Director for approval. If the POC is not part of AFS, then the appropriate office protocol for document approval should be followed and then coordinated with the AFSO XO and FSPM to pass the response to the AFSO Director for review and OCOO coordination and approval. A case-by-case determination will be made if a OGC review is required. After the AFSO Director and OCOO have reviewed and approved, the AFSO XO will coordinate with the OCOS for their awareness.

Once the response has been approved by the AFSO Director and OCOO, the AFSO XO and FSPM will coordinate to prepare the response on the OCOO letterhead and the FSPM will send the response to the recommending agency as official correspondence from the NWS (usually electronically). Once the response has been sent to the recommending agency, the action will be documented in the tracking software by the FSPM or designee (see [Section 4](#)).

If the NWS has been tasked to lead efforts on a safety recommendation that is issued to NOAA, the FSPM and AFSO XO will coordinate with the appropriate NOAA staff to ensure awareness and appropriate approvals.

### **3.2.5 Closure of Recommendation**

The recommending agency determines whether or not a recommendation should be closed. Close coordination between the recommending agency and the NWS can help move the process along quickly and efficiently as well as work through any issues that may arise while working to achieve the recommendation goals.

Once the recommendation has been closed, it should be clearly annotated in the Forensics Program database. Additionally, the closure should be reported to the appropriate HQ Office Director, the AFSO Director, the OCOS (for possible up-channel reporting), and the OCOO.

## **4. Recommendation Tracking Activities**

NWS Forensic Services maintains a repository of requests, actions, documents, deadlines, and communications regarding the progress of responses to safety recommendations received by NOAA and the NWS. Close coordination with the FSPM is needed to ensure this repository stays accurate for senior leadership reporting, Freedom of Information Act (FOIA) requests, and potential legal activities and support. Updates on the status of safety recommendations are provided to the AFSO Director quarterly.