



Disclaimer

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Bipartisan Infrastructure Law Section 22417 – FRA Accident and Incident Investigations – Policy for Gathering Information and Consulting with Stakeholders

“(1) The Secretary shall create a standard process for investigators to use during accident and incident investigations for determining when it is appropriate and the appropriate method for

“(A) gathering information about an accident or incident under investigation from railroad carriers, contractors or employees of railroad carriers or representatives of employees of railroad carriers, and others, as determined relevant by the Secretary and

“(B) consulting with railroad carriers, contractors or employees of railroad carriers or representatives of employees of railroad carriers, and others, as determined relevant by the Secretary, for technical expertise on the facts of the accident or incident under investigation.

“(2) CONFIDENTIALITY.—In developing the process required under paragraph (1), the Secretary shall factor in ways to maintain the confidentiality of any entity identified under paragraph (1) if—

“(A) such entity requests confidentiality;

“(B) such entity was not involved in the accident or incident; and

“(C) maintaining such entity's confidentiality does not adversely affect an investigation of the Federal Railroad Administration.

“(3) APPLICABILITY.—This subsection shall not apply to any investigation carried out by the National Transportation Safety Board.”

I. General:

A. Inclusion of stakeholders in the information gathering and consultation process in FRA accident/incident investigations.

1. Section 22417 of the Infrastructure Investment and Jobs Act directs the FRA to create a standard process for gathering information and consulting with stakeholders about an accident/incident under investigation. “Stakeholders” include railroad carriers, contractors or employees of railroad carriers, or representatives of employees of railroad carriers, or



industry associations, academia, the Volpe Center, and others as FRA may determine are relevant.

2. This policy document provides the process by which FRA expects to work with stakeholders to gather information or consult with stakeholders on accident/incident investigations.
3. This process is premised upon the legislative directive to ensure that FRA establishes a standard process for determining when it is appropriate to gather information from and consult with stakeholders about an accident or incident under investigation, and the appropriate method for doing so.

B. Expectations of stakeholders.

1. Stakeholders should cooperate with investigators by following the procedures contained in this policy.
2. Stakeholders may only gain access to the accident site through the incident command or on-site railroad personnel. When investigations occur on railroad property, FRA encourages railroads to permit on-site access to stakeholders participating in the process described in this policy, and expects that railroads will grant such access.

C. Disclaimers.

1. The process described here is not a “party system” investigation equivalent to that used by the National Transportation Safety Board (NTSB). FRA and the NTSB are subject to distinct statutory requirements concerning the participation of external parties in accident investigations. Nothing in this document impacts an NTSB investigation.
2. Stakeholders will not be included in FRA deliberations addressing the potential scope of enforcement.
3. Stakeholders shall not be construed as actual or implied agents of the FRA. FRA is not responsible for the safety of stakeholders.
4. “Confidential information” shall consist of personally identifiable information¹ or sensitive security information as defined at 49 Code of Federal Regulations (CFR) 1520.5. Any stakeholder participating in an investigation may not disseminate any confidential information to non-stakeholders.

¹ Personally identifiable information (PII) is information that can be used to distinguish or trace an individual’s identity, such as that person’s name, social security number, or address, either alone or when combined with other information that is linked or linkable to a specific individual. 2 CFR 200.1.



5. Until FRA publishes its report on the investigation, a stakeholder participating in an investigation may not disseminate any information or comment on an investigation to non-stakeholders through any means. If necessary for public safety, and with the Chief Safety Officer's written permission, stakeholders may release information to non-stakeholders if the information is factual, neutral and objective in tone, and without purported FRA characterization of the matter's contribution to the underlying accident/incident.
6. Nothing in this policy may be construed to reduce in any way the protections afforded to individuals who exercise the conduct protected by the following requirements:
 - 49 CFR § 225.33, *Internal Control Plans*.
"Each railroad shall adopt and comply with a written Internal Control Plan . . . [that includes a policy statement declaring that] harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting such accident, incident, injury or illness will not be permitted or tolerated and will result in some stated disciplinary action against any employee, supervisor, manager, or officer of the railroad committing such harassment or intimidation . . . The railroad shall [also] provide 'whistle blower' protection to any person subject to this policy, and such policy shall be disclosed to all railroad employees, supervisors and management."
 - 49 United States Code (USC) § 20109, *Federal Railroad Safety Act, Whistleblower Protections*.
"(i) Disclosure of identity.--(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or a regulation prescribed or order issued under any of those provisions."
 - Any other whistleblower protection statute or regulation such as but not limited to 29 USC § 660(c), § 11(c) (Occupational Safety and Health Act).

II. Procedures:

A. Response Planning Phase, Notifications.

1. Accident notification is received by Duty Officer (DO) from National Response Center or other internal and external sources.



2. DO notifies the on-duty Discipline Accident Lead or alternate from FRA Duty Officer Contacts List, or Accident Chief (AC), via phone call of the accident. DO follows up with an email notification to include the FRA's internal Accident Notification Group (FRAAccidentNotificationGroup@dot.gov).
3. On-duty Discipline Accident Lead, in consultation with the Deputy Staff Director (DSD) or Staff Director (SD) if necessary, determines the initial level of response. If the response is a Level 2 or 3, notification to stakeholders is required.
4. On-duty Discipline Accident Lead will notify (via phone call, email, or text message) the Chief Safety Officer (CSO) of a Level 2 or 3 response (based on initial information), or a response to an accident/incident involving an on-duty employee fatality, an on-duty employee amputation, or an on-duty employee suffering life-threatening injuries (based on initial information). The on-duty Discipline Accident Lead will email the CSO and DO of the initially determined response level and provide names and contact information for the investigation team members. If the CSO is unavailable, the appropriate DO will act as the alternate for the CSO for all notifications.
5. As soon as possible after receiving the notification in step 4, the CSO should send an email notification and text message of the accident/incident and FRA's intention to investigate to stakeholders.
6. For accidents/incidents occurring on railroad property, if FRA notifies stakeholders of the accident or incident investigation in which stakeholders will participate, a railroad should notify FRA in writing of any rules prohibiting a stakeholder (such as an off-duty employee) from entering the site during an investigation. If a railroad does not permit a stakeholder on site, FRA expects to communicate any such rules in writing to the stakeholder, as available, and may consult with the stakeholder by other means (e.g., Teams, phone, off site meeting, etc.) and through real-time participation in on site meetings via video or conference call where possible.
7. Stakeholders interested in participating in the investigation should communicate such interest to the CSO within 24 hours of receiving the notifications in step 5.
8. CSO sends an email to the DO, interested stakeholders, AC, Inspector-in-charge (IIC), and responding team members to initiate the sharing of names and contact information among stakeholders and FRA.
9. Each stakeholder should provide the name and contact information for that stakeholder's onsite representative. The DO may follow up with a telephone



call (voicemail is acceptable) to the AC to inform the AC of stakeholder representative participation, including name and represented organization.

10. The AC will follow-up with a telephone call (voice mail is acceptable) to the IIC and FRA field personnel to confirm the identity and contact information of stakeholder representatives. This internal information sharing is critical. It is the AC's responsibility to ensure the IIC and responding team has this information and is aware of all stakeholder representatives' anticipated arrival at the site.
11. The stakeholders should inform their representatives if any railroad rules limit such representatives' onsite access and should instruct their representatives to contact FRA's AC for the specific incident in which they wish to participate. If the stakeholder representative and the FRA's AC are unable to make contact, the stakeholder should contact the CSO. The CSO should advise stakeholders, who were notified in step 5, of any such rules restricting access.
12. The initial point of contact for all stakeholder representatives will be the AC, and their initial point of contact on site will be the IIC.
 - a. The AC should advise representatives of the IIC's estimated time of arrival and estimated time the investigation will begin. In addition, the AC should provide directions and status, as necessary, to stakeholder representatives.
 - b. The AC will notify the IIC which stakeholder representatives are arriving on the scene.
 - c. The AC should ensure stakeholder representatives and the IIC find each other on site. If the IIC is not available, the AC will take the place of the IIC.

B. Investigation Phase

1. Each stakeholder representative should contact the IIC upon arrival and provide photo identification to the investigation team.
2. The IIC should provide the following information to the stakeholder representatives:
 - a. The name and contact information for the incident commander.
 - b. Situation report.
 - c. The coordination process for the site.
 - d. Estimated time of arrival of respective discipline team members (e.g., BMWED will likely be interested in the ETA of the track inspector, BRS of the signal inspector, etc.).
 - e. Reiterate the role of stakeholder representatives' participation (see General Provisions above).



3. FRA will commence on-site investigation when FRA staff arrive on site and will not await the arrival of stakeholder representatives. In the event that a stakeholder, having timely indicated it would appear, does not arrive at the scene of the accident/incident during the investigation, the FRA may make a reasonable effort to provide a verbal summary of the status of the investigation before the FRA departs from the scene. The FRA team will depart the scene upon its completion of the on-site investigation.
4. Members of the investigation team should coordinate meeting(s) with stakeholder representatives and should provide, as needed, a verbal summary of the status of the investigation as stakeholders arrive to the accident site. As required by statute, this collaboration is intended for FRA to gather information from, and consult with, stakeholders for their technical expertise throughout the investigation.
5. FRA will not disclose to stakeholders its internal considerations of potential compliance or enforcement issues during its investigation.
6. Stakeholders may provide notes, drawings, or meeting minutes, and documents, including those noting that a railroad did not permit them on scene access, to investigation team members only through the iCARE Portal (once it is available). FRA expects to establish a unique iCARE Portal access point for each investigation that will only be accessible to and viewable by the stakeholders for that investigation.
7. As needed, FRA expects to advise each stakeholder representative when the FRA team is planning to leave the site.
8. After FRA's field investigation, FRA team members may review with stakeholders all information provided by the stakeholders. Upon request from a stakeholder, FRA may share certain documents, relevant to its investigation, that are not in the iCARE Portal, if any. For example, FRA may share relevant timetables or rule books that are not in the iCARE Portal. Protection of confidential information will apply to any document provided pursuant to this paragraph.
9. Stakeholders may request meetings with representatives of other non-FRA stakeholders and request participation by FRA if desired. FRA participation cannot be guaranteed. Any information pertinent to the investigation that stakeholders make available through these meetings should be documented and shared via the iCARE Portal.
10. Any whistleblower complaint or materials related to it will not be posted on the iCARE Portal. A stakeholder who provides confidential information or identifies confidential information provided by another stakeholder should



coordinate with the IIC to establish a folder within the iCARE Portal dedicated to confidential material. A stakeholder will have access only to personally identifiable information or sensitive security information the stakeholder provides.

C. Analysis Phase

1. During the analysis phase, the investigation team may consult with stakeholders to review facts gathered after the on-site investigation, FRA's analysis of those facts, and FRA's inputs and outputs of root cause analyses. FRA may solicit stakeholder thoughts of potential conclusions and potential recommendations to mitigate risk or prevent reoccurrence of the incident/accident that is the subject of the investigation.
2. If a stakeholder identifies new information following the field investigation, the stakeholder should submit such information to the FRA via the iCARE Portal for consideration during analysis. Protection of confidential information will apply to any document provided pursuant to this paragraph.
3. FRA expects to publish, on the FRA website, final accident/incident investigation reports and expects to notify stakeholder organizations that participated in the investigation that the final report is available.