ACCIDENT REPORTS ACT AND ACCIDENT/INCIDENT REPORTING REGULATIONS

Monthly Report by Carrier

Each railroad must file with the Secretary of Transportation a monthly report of all collisions, derailments or other accidents or incidents resulting in injury to any person or in damage to equipment or roadbed. The report must state the nature and cause of all such accidents.

It should be pointed out that the requirement for reporting "accidents" is contained in the statute. However, in 1974 the FRA added the word "incident" which also is required to be reported under the regulations. The FRA stated that the term "incidents" is more descriptive of both accidents and occupational illnesses than the word "accident."

Train accidents are events, with or without casualties, arising in connection with the operation of railroad on-track equipment where there is a collision, derailment, fire, explosion, or any event which results in more than $6,700 in damages to railroad on-track equipment, signals, track, track structures and roadbed. Train incidents are events arising in connection with the movement of railroad on-track equipment which result in a reportable death, injury or illness, but do not result in damage to railroad, track or roadbed of more than $6,700.

Determination of the Reporting Threshold

In calculating the accident reporting dollar threshold, the FRA will review the Producer Price Index and the National Employment Hours and Earnings figures from the Bureau of Labor Statistics. The components will be Class 1 railroads average hourly earnings as reported to the Department of Labor, and the Producer Price Index will be determined for railroad equipment. Such equipment cost data would be indexed to a base year of 1982.

In calculating the damages threshold as to whether an accident must be reported, the labor costs reported are only the direct labor costs to the railroad (i.e., hourly wages, transportation cost and hotel expenses). The cost of fringe benefits and overhead are excluded when calculating these costs. For services performed by a contractor, the direct hourly labor cost is calculated by multiplying the contractor's total labor hours charged to the railroad by the hourly wage rate for the railroad worker in that particular craft.

Material costs are not to be based upon the cost of acquiring new material, if the railroad chooses to use refurbished or used material in its actual repairs.

Internal Control Plan

Railroads are required to prepare and maintain an Internal Control Plan, which requires various departments within a railroad to coordinate accidents/incidents information. The office which is responsible for reporting to the FRA shall have access
to all claims records, medical records, payroll records, and be notified by claims and medical departments of each new case opened by a railroad worker. The ICP shall include the following 10 components: 1/

1) A policy statement indicating the railroad’s commitment to complete an accurate reporting of all accidents/incidents, injuries, and occupational illnesses. The statement shall include, in absolute terms, that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting an accident, incident, injury or illness will not be permitted or tolerated and will result in disciplinary action against such person committing the harassment or intimidation.

2) All employees shall be provided a copy of the ICP. Any person complaining about a violation of the policy must be provided “whistle blower” protection.

3) Copies of all internal forms and the computer reporting system.

4) A description of the internal procedures used to process forms and computer data.

5) Procedures applicable to the accident and incident information which is collected, and the reports prepared by each of the railroads various departments engaged in collecting and reporting accident and incident information.

6) Procedures for collecting cost data.

7) Procedures for ensuring adequate communication between the railroad department responsible for submitting accident/ incident reports to FRA and any other department within the railroad which collects, receives, processes and reports accidents and incidents.

8) Procedures for updating accident and incident information prior to reporting to FRA.

9) Name and title of the railroad officer responsible for auditing the reporting.

10) An organization chart of the railroad.

1/ Shortlines are exempted from the requirements of 3 through 10. However, the shortlines must still adopt and comply with the intimidation and harassment requirements of subparts one and two which require the railroads to prepare a policy statement setting forth each railroad’s commitment to complete and accurate reporting of all accidents, etc., and which contains harassment and intimidation provisions. Also, a copy of such plan must be delivered to each employee.
The penalty schedule is amended to include that a railroad may be fined for both the failure to accurately report a violation, and any departure from the ICP. The civil penalty is $2,500 or, if willful, $5,000 for each violation.

**Report Not Evidence In Suits for Damages**

No carrier's monthly accident report or any report of an investigation by the NTSB, or any part thereof, shall be admitted as evidence or shall be used for any other purpose in any suit for damages growing out of any matter mentioned therein.

**Definitions**

**Contractor:** Is an employee of a contractor for a railroad who does not receive direct monetary compensation from the railroad and who, while on railroad property, is engaged in either (i) the operation of on-track equipment or (ii) any other safety sensitive function for the railroad. There is no requirement for the railroad to report injuries to contractor employees.

**Day away from work:** Any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad worker does not report to work for reasons associated with his or her condition.

**Day of Restricted Work Activity:** Any day that a worker is restricted in his or her job following the day of the injury or diagnosis of occupational illness.

**Establishment:** A single physical location where workers report to work, where business is conducted or where services or operations are performed. (At a minimum, it is a location where railroad employees could reasonably expect to report during a 12 month period).

**First Aid Treatment:** Simple procedures used to treat minor conditions, such as abrasions, cuts, bruises, or splinters. First aid treatment is typically confined to a single treatment and does not require special skills or procedures.

**Medical Treatment:** Any medical care or treatment beyond “first aid” regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does not include preventive emotional trauma counseling provided by the railroad’s employee counseling and assistance office unless the participating worker has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident and this condition requires a regimen of treatment to correct.

**Non-Train Incident:** An event that results in a reportable casualty, but does not involve the movement of on-track equipment, nor cause reportable damage above the threshold established for train accidents.
Person: Any system of surface transportation of persons or property over rails. It includes line haul freight and passenger railroads, switching and terminal railroads and passenger-carrying railroads including, but not limited to, rapid transit, commuter, scenic, subway, elevated, cable and cog railways. Also, covered are independent contractors and their employees and workers, as well as volunteers.

Qualified Health Care Professional: Includes a professional operating within the scope of his or her license, registration or certification. (The railroad’s employee assistance officer is considered a qualified health care professional when he/she provides counseling to an employee who has been diagnosed as having a mental disorder that was caused or aggravated by an accident/incident.

Train Accident: Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in reportable damages greater than the current reporting threshold (currently $6,700) to railroad on-track equipment, signals, track, track structures, and roadbed.

Train Incident: An event involving the movement of on-track equipment that results in a reportable casualty but does not cause reportable damage above the threshold established for train accidents.

Volunteer: Includes individuals who willingly perform a service for the reporting railroad, who do not receive direct monetary compensation from the railroad and who are not involved in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the reporting railroad as described in § 209.303.

Worker On Duty: Is defined as one who receives direct monetary compensation from a railroad or who is engaged in either (i) the operation of on-track equipment or (ii) any other safety sensitive function for the railroad.

Applicability

The accident/incident reporting requirements will apply to all railroads and independent contractors except:

(a) A railroad that operates freight trains only on track inside an installation which is not part of the general railroad system of transportation or that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation;

(b) rail mass transit operations in an urban area that are not connected with the general railroad system of transportation; and

(c) a railroad that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of
passengers inside an installation that is insular.

An operation will not be considered insular if one or more of the following exists on its line: (1) A public highway-rail grade crossing that is in use; (2) an at-grade rail crossing that is in use; (3) a bridge over a public road or waters used for commercial navigation; or (4) a common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

Investigation

It is the policy of the FRA to investigate rail transportation accidents/incidents which result in the death of a railroad employee or the injury of 5 or more persons. Other accidents/incidents are investigated when it appears an investigation would substantially serve to promote railroad safety.

FRA representatives are authorized to investigate accidents/incidents and have been issued credentials authorizing them to inspect railroad reports and property. They are authorized to obtain all relevant information concerning accidents/incidents under investigation, to make inquiries of persons having knowledge of the facts, conduct interviews and inquiries and to attend as an observer hearings conducted by railroads.

Whenever necessary the FRA will schedule a public hearing before an authorized hearing officer in which event testimony will be taken under oath, a record made and the opportunity provided to question witnesses.

When necessary in the conduct of an investigation the Federal Railroad Administrator may require autopsies and other tests of the remains of railroad employees who die as of the result of an accident/incident.

Information obtained through FRA investigations may be published in public reports or used for other purposes FRA deems to be appropriate.

Where An Employee is Alleged to Have Caused Accident/Incident:

In the Rail Safety Improvement Act of 1988, Congress made changes in the accident reporting requirements. If human error is assigned as a cause of an accident or incident, the employee may explain any factors he or she alleges contributed to the accident or incident. The FRA is required to file such statement with the report it receives from the railroad.

1. If a railroad cites an employee human factor as the primary cause or a contributing cause of an accident, then the railroad is required to fill out a new form titled Employee Human Factor Attachment. On a separate form, the railroad must notify the employee(s) of the allegations involved within 45 days after the end of the month in which the accident occurred.
2. If joint rail operations are involved, the railroad which makes the allegations concerning the employee of another railroad, the employing railroad is required to promptly provide the name, job title, address and medical status of the employee identified. Where the railroad is initially unable to identify a particular employee, but subsequently makes such identification, a revised report must be immediately submitted to the FRA, with a copy to the employee within fifteen days after the report is filed with the FRA. The railroad which is reporting the accident may defer notification of an implicated employee on medical grounds where the employee is seriously injured in the accident.

3. If the employee has been killed as a result of an accident, no notice is required to be sent by the railroad to any person (FRA's rationale is that they investigate every accident which an employee is killed).

4. The regulation makes it clear that the employee's statement is completely voluntary. The failure of the employee to respond to a charge that he caused the accident does not imply that the employee either admits or denies the railroad's conclusion as to the cause of an accident.

5. The employee's statement must be submitted to the FRA, as well as to the railroad, within 35 days after the employee was notified of the allegation. If an employee wishes to provide confidential information to the FRA, the employee should not use the form that is provided under this regulation. Rather, the employee should provide the confidential information by other means, such as a letter to the collective bargaining representative or to the office of safety at the FRA.

6. A person who willfully files a false statement with the FRA is subject to a civil penalty up to $5,000. If a person knowingly and willfully files a false statement he is subject to a $5,000 fine or two years imprisonment, or both, under the Federal Railroad Safety Act provisions.

7. Once the railroad receives the employee's analysis of the accident, the railroad must make all justified revisions to the original accident report forms. (The railroad is not required to send the employee a copy of the revised forms).

8. The accident report form shall be submitted by the railroad within 30 days after the expiration of the month in which the accident/incident occurred.

FORMS:

1. FRA Form F 6180-54---Rail Equipment Accident/Incident Report

This is the basic form which must be filed for all accidents or incidents. Amended reports must be filed if the damages are at least 10% higher than the amount originally reported to the FRA.
2. **FRA Form F6180-55a---Railroad Injury and Illness summary:**

(a) In hazardous materials accidents, the railroad shall submit the number of persons injured and the type of injury resulting from exposure.

(b) It requires information as to the county where the incident occurred, as well as the day of the month and the time of day.

(c) Additional information on the form concerning injuries and illnesses include physical acts, location, event, result, and cause.

(d) A railroad is given an opportunity to provide details on any unusual circumstance surrounding the worker’s injury or illness.

(e) The FRA has expanded the classifications of persons for reporting purposes:

   1. Worker on Duty - Employee (Class A),
   2. Employee not on Duty (Class B),
   3. Passengers on Trains (Class C),
   4. Non trespassers - On Railroad Property (Class D),
   5. Trespassers (Class E),
   6. Worker on Duty - Contractor (Class F),
   7. Contractor - Other (Class G),
   8. Worker on Duty - Volunteer (Class H),
   9. Volunteer - Other (Class I), and

3. **FRA Form F 6180.57---Highway-Rail Grade Crossing Accident/Incident Report**

(a) The railroads must include the number of highway-rail grade crossing users (i.e., pedestrians and vehicle occupants) killed and injured; the total number of crossing users involved in the incident (including the driver); the number of railroad employees killed and injured; the total number of people on the train at the time of the incident (including passengers and train crew); the number of train passengers killed and injured.

(b) The FRA has eliminated the distinction involving Amtrak and Autotrain accidents at crossings.

(c) The FRA clarified a problem under the existing form as to whether or not the warning signal was operating. The problem arises where there is a passive device and the railroad reported it as not operating.

(d) A narrative description is required in order to gather information on unusual causes or circumstances surrounding the grade crossing accidents.
There is a special study block set aside so that FRA can obtain information on particular trends or initiate corrections of identified problems.

There is a section requiring information on whether whistle bans were in effect and observed at the time of the accident/incident.

The requirement to add the drivers age and gender on the form is optional with the railroad.

The form also contains a block which would allow for the collection of information regarding situations where motorists are trapped by other vehicle traffic at crossings.

4. **FRA Form F 6180.78---Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor**

A railroad is required to notify an employee if he or she is determined by the railroad to be a contributing cause to an accident. This was discussed on a previous page in some detail, and this form is to be completed by the employee.

5. **FRA Form F 6180.98---Record Keeping: Railroad Employee Injury and/or Illness Record**

All injuries and illnesses to a railroad employee that arises from the operation of the railroad and causes the employee to be examined or treated by a qualified health care professional must be recorded on this form, or an alternative railroad-designated record form. It should be noted that this form is to record an injury or illness. It may become reportable if certain consequences later occur. For example, a minor cut may become infected and require medical treatment. The record of all injuries and illnesses must be maintained at each railroad establishment where such employees report to work. (That is, an establishment where workers report to work at an operating division, general office, or major installation such as a locomotive or car repair or construction facility). The railroad is required to provide an employee a copy of the record of the illness or injury.

6. **FRA Form F 6180.97---Initial Rail Equipment Accident/Incident Record**

This form is used to record equipment accidents and incidents which are not reportable to FRA, but are required to be recorded. Both reportable and accountable (i.e., recordable) rail equipment accidents and incidents must be listed on this form. The railroads can design and use its own form as an alternative to Form 6180.97, so long as the same information is provided.

**Updating Forms 6180.97 and 6180.98**
The railroad is required to record or report injuries, illnesses, accidents, and incidents no later than 7 working days after receiving information or acquiring knowledge of the occurrence. Additionally, if either record is maintained at a centralized location, but not through electronic means, then a paper copy of the record or report must be current within 35 days of the month to which it applies and be available at the appropriate establishment. If the record for an establishment is maintained at a centralized location through electronic means, such record must be available for review in a hard copy format within 4 business hours of the request.

**Logging Accountable Accident/Incident or Injury/Illness**

The current regulation requires a railroad to log each reportable and each "accountable" rail equipment accident/incident and injury or illness not later than 7 days after receiving knowledge of the event. An "accountable injury or illness" includes "any condition, not otherwise reportable, of a railroad worker that is associated with an event, exposure, or activity in the work environment that causes or requires the worker to be examined or treated by a qualified health care professional..." An "accountable rail accident/incident" is defined as a "any event, not otherwise reportable, involving the operation of on-track equipment that causes physical damage to either the on-track equipment or the track upon which such equipment was operated and that requires the removal or the repair rail equipment from the track before any rail operations over the track can continue..." The shortlines, and the tourist and museum railroads petitioned to eliminate the "accountable" recording keeping requirements as it applies to them. The FRA has granted partial relief to those railroads which have 15 or fewer employees and those railroads which operate or own track exclusively of the general system. Those railroads will not be required to log "accountable" injuries/illnesses or accidents/incidents. However, they will be required to log "reportable" events.

**Posting Monthly List Of Injuries and Illnesses**

The railroad shall post a listing of all injuries and occupational illnesses in a conspicuous location at each railroad establishment within 30 days after the end of the month during which the injury and illness occurred. (This posting will be necessary only for those establishments that are in continual operation for a minimum of 90 calendar days or more. For those locations that are not in continual operation, the posting of the injuries and illnesses must be made at the next higher organizational level). The posting shall remain continually displayed for twelve months. § 225.25(h) sets out what must be contained in the information that is posted.

**Retention of Records**

The railroads are required to retain injury and illness records for 5 years, and the accident and incident records for 2 years.

**Access To Records Reports**
Any representative of a state agency participating in investigative and surveillance activities under the Federal railroad safety laws and regulations shall have access to all records, reports, logs, and supplementary information filed in accordance with the regulations.

The railroads shall have at least one location where both Federal and State inspectors will have centralized access to a copy of all records and reports.

Upon request, the railroad is required to provide the employee either a copy of the completed Form 6180.98, or the alternative railroad designed form, which is the employee injury and/or illness record. A railroad is required to grant access only to forms or reports required to be maintained or filed under the accident reporting regulations which pertain to that employee’s on work-related injury or illness. In other words, the rule does not require the railroads to produce privileged documents. However, this does not mean that the employee, under the appropriate circumstances, would be unable to obtain such documents. For example, in an FELA action, an employee may seek production of records in a railroad’s files, and if privilege is asserted, then this matter would be dealt with by the judge. It should be kept in mind that the Accident Reports Act does not preclude disclosure of documents; rather, it precludes the “use” of such documents in court.

Magnetic Media Transfer and Electronic Submission

Railroads are allowed to submit accident reporting data to FRA by two alternate means: (1) magnetic media (computer diskette or magnetic tape), or (2) electronically, over telephonic lines. Using either option, the railroad must submit monthly reporting data to FRA in a cumulative year-to-date file format. If the railroad utilizes the magnetic media, it must submit the disk or tape, the batch control form, and a notarized hard copy signed by the railroad’s reporting officer. The notarization is required by statute.

The requirement for electronic submission is similar to the magnetic media submissions, except that the year-to-date information must be transmitted to an FRA-designated computer. Still the railroad must submit the notarized hard copy. If the magnetic media or electronic submission is in total agreement with the hard copies that are submitted for 3 consecutive reporting months, FRA will notify the railroad that the hard copy reports will no longer be required. Still, the notarization on the railroad injury and illness summary is required.

Tourist and Museum Railroads

The tourist and museum railroads sought an exemption from the reporting requirements. The FRA granted them partial relief. They will not be required to report non-train incidents, unless the non-train incidents involve in-service on track railroad equipment. They must still comply with the requirement of recording injuries and illnesses resulting from a train accident, a train incident, or a non-train incident that
involves railroad equipment in operation but not moving. The tourist railroads, which operate on the general system of railroads, must post the monthly list of reportable injuries and illnesses for each establishment. Plant railroads and insular of the general system tourist railroads are not required to post.

Appendix A-Schedule of Penalties
Appendix B-Procedure For Determining Reporting Threshold

49 U.S.C. §§ 20901-20903, 21302-21304
49 C.F.R. §§ 225.1-.31