

provisions, OSHA's final rule became effective on January 1, 2002. *See* 66 FR 52031; *see also* 67 FR 44037 (July 1, 2002) and 67 FR 44124 (July 1, 2002).

FRA's railroad accident/incident reporting regulations, which are codified at part 225, include, among other provisions, sections that pertain to railroad occupational fatalities, injuries, and illnesses; these sections are consistent with prior OSHA regulations, with minor exceptions. These sections of FRA's accident/incident regulations that concern railroad occupational casualties should be maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations to permit comparability of data on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents. Accordingly, through this final rule, FRA makes conforming amendments to its existing accident/incident reporting regulations and *Guide*. Further, FRA makes minor amendments to its alcohol and drug regulations (part 219) and locomotive engineer qualifications regulations (part 240) in those areas that incorporate terms from part 225.

Note: Throughout this preamble to the final rule, excerpts from OSHA regulations are provided for the convenience of the reader. The official version of the OSHA regulations appears in 29 CFR part 1904.

In addition, FRA will draft a memorandum of understanding (MOU) between FRA and OSHA to address specific areas that are unique to the railroad industry, and where it was not practical for FRA's regulations to be maintained in conformity with OSHA's final rule. Such divergence from OSHA's Final Rule is permitted under a provision of the rule:

If you create records to comply with another government agency's injury and illness recordkeeping requirements, *OSHA will consider those records as meeting OSHA's Part 1904 recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this Part 1904 requires you to record.*

Emphasis added. *See* 29 CFR 1904.3. Specific provisions of part 225 that do not conform to OSHA's final rule are discussed in detail in the preamble.

Finally, FRA makes other miscellaneous amendments to part 225 and the *Guide*, including revisions not solely related to railroad occupational casualties, such as the telephonic

reporting of a train accident that fouls a main line track used for scheduled passenger service.

II. Proceedings and Summary of Issues Addressed by the Working Group

A. The Development of the Railroad Safety Advisory Committee (RSAC) Accident/Incident Reporting Working Group

FRA developed the Notice of Proposed Rulemaking (NPRM), published October 9, 2002, and this final rule through its Railroad Safety Advisory Committee (RSAC). *See* 67 FR 63022. RSAC was formed by FRA in March of 1996 to provide a forum for consensual rulemaking and program development. The Committee has representatives from all of the agency's major interest groups, including railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. FRA typically proposes to assign a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If a working group is unable to reach consensus on recommendations for action, FRA will move ahead to resolve the issue through traditional rulemaking proceedings.

On April 23, 2001, FRA presented task statement 2001-1, regarding accident/incident reporting conformity, to the full RSAC. When FRA presented the subject of revising its accident reporting regulations and *Guide* to RSAC, the agency stated that the purpose of the task was to bring FRA's regulations and *Guide* into conformity with OSHA's final rule, and to make certain other technical amendments. The task was accepted, and a working group was established to complete the task.

Members of the Working Group, in addition to FRA, include representatives of the following 26 entities: the American Public Transportation Association (APTA); the National Railroad Passenger Corporation (Amtrak); the Association of American Railroads (AAR); The American Short Line and Regional Railroad Association (ASLRRA); the Brotherhood of

Locomotive Engineers (BLE); the Brotherhood of Railroad Signalmen (BRS); Transportation Communications International Union/Brotherhood Railway Carmen (TCIU/BRC); Canadian National Railway Company (CN) and Illinois Central Railroad Company (IC); the Sheet Metal Workers International Association; the Brotherhood of Maintenance of Way Employees (BMWE); The Burlington Northern and Santa Fe Railway Company (BNSF); Canadian Pacific Railway Company (CP); Consolidated Rail Corporation-Shared Assets (CR); CSX Transportation, Inc. (CSX); Norfolk Southern Railway Company (NS); Union Pacific Railroad Company (UP); The Long Island Rail Road (LIRR); Maryland Transit Administration (MARC); Southern California Regional Rail Authority (Metrolink); Virginia Railway Express (VRE); Trinity Rail (TR); North Carolina Department of Transportation (NCDOT); Northeast Illinois Regional Commuter Rail Corp. (Metra); the United Transportation Union (UTU); and Wisconsin Central Ltd. (WC).

B. The Working Group's Resolution of Issues Prior to Publication of the NPRM

Prior to the publication of the NPRM, the Working Group held a total of eight meetings related to this task statement. As a result of these meetings, the Working Group developed consensus recommendations proposing to change the FRA regulations and *Guide* with respect to all issues presented except for one. Consensus could not be reached on whether railroads should be required to report deaths and injuries of the employees of railroad contractors who are killed or injured while off railroad property. Prior to this rulemaking, FRA had interpreted part 225 as not requiring the reporting of such cases. After the last Working Group session before publication of the NPRM, FRA developed a compromise position, proposing that railroads not be required to report deaths or injuries to persons who are not railroad employees that occur while off railroad property unless they result from a train accident, a train incident, a highway-rail grade crossing accident/incident, or a release of a hazardous material or other dangerous commodity related to the railroad's rail transportation business. To accomplish this result, FRA proposed a three-tier definition of the term "event or exposure arising from the operation of a railroad." *See* proposed § 225.5.

The NPRM intended to reflect a Working Group consensus on all other issues that were summarized in the preamble. With regard to part 225, the Working Group recommended