

amending § 225.5, which contains definitions; § 225.9, which pertains to telephonic reporting of certain accidents/incidents; and § 225.19(d), which pertains to reporting deaths, injuries, and occupational illnesses. To make certain other miscellaneous conforming changes, the Working Group recommended amending § 225.21, which pertains to forms; § 225.23(a), which pertains to joint operations; § 225.33, which pertains to internal control plans; and § 225.35, which pertains to access to records and reports. To address occupational illnesses and injuries that are privacy concern cases, claimed occupational illnesses, and other issues, the Working Group also recommended amending § 225.25, pertaining to recordkeeping. Finally, the Working Group recommended adding a new § 225.39, pertaining to FRA's policy on how FRA will maintain and make available to OSHA certain data FRA receives pertaining to cases that meet the criteria as recordable injuries or illnesses under OSHA's regulations and that are reportable to FRA, but that would not count towards the data in totals compiled for FRA's periodic reports on injuries and illnesses.

With regard to the *Guide*, the Working Group proposed to revise Chapter 1, pertaining to an overview of accident/incident reporting and recordkeeping requirements; Chapter 2, containing definitions; Chapter 4, pertaining to Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record"; Chapter 6, pertaining to Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"; and Chapter 7, pertaining to Form FRA F 6180.54, "Rail Equipment Accident/Incident Report"; and to create a new Chapter 12, pertaining to reporting by commuter railroads, and a new Chapter 13, pertaining to new Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to Be Work-Related." The Working Group also proposed changing various codes used in making accident/incident reports to FRA. These codes are listed in appendices of the *Guide*. The Working Group supported revising Appendix C, "Train Accident Cause Codes"; Appendix E, "Injury and Illness Codes," including revising codes related to the nature of the injury or illness, and the location of the injury; and Appendix F, "Circumstance Codes." The latter included revising codes related to the physical act the person was doing when hurt; where the person was located when injured; what, if any, type of on-track equipment was involved when the person was injured or became ill; what event was involved

that caused the person to be injured or become ill; what tools, machinery, appliances, structures, or surfaces were involved when the person was injured or became ill; and the probable reason for the injury or illness. Further, the Working Group advocated revising Appendix H, pertaining to accident/incident reporting forms, particularly Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor [and] Employee Statement Supplementing Railroad Accident Report," and Form FRA F 6180.81, "Employee Human Factor Attachment." Finally, the Working Group recommended making additional conforming changes to the *Guide*.

With regard to part 219, FRA decided that two terms used in that part, "reportable injury" and "accident or incident reportable under Part 225 of this chapter," should be given a slightly different meaning. In particular, the terms would be defined for purposes of part 219 as excluding accidents or incidents that are classified as "covered data" under proposed § 225.5 (*i.e.*, accidents or incidents that are reportable solely because a physician or other licensed health care professional recommended in writing that a railroad employee take one or more days away from work, that the employee's work activity be restricted for one or more days, or that the employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the medication was taken). In part 240, the term "accidents or incidents reportable under part 225" is used in § 240.117(e)(2). Instead of creating a separate definition of the term for purposes of part 240, an explicit exception for covered data would be added to § 240.117(e)(2) itself.

Each of these issues is described in greater detail in the next sections of the preamble. The full RSAC accepted the recommendations of the Working Group as to those changes that were proposed for part 225 and the *Guide* on which consensus was reached. With regard to the one issue on which consensus was not reached, and with regard to the minor proposed revisions to parts 219 and 240, not presented to the Working Group, the full RSAC accepted FRA staff recommendations. In turn, FRA's Administrator adopted the recommendations embodied in the proposal, and the NPRM was subsequently published.

C. Comments Received and Post-NPRM Working Group Meeting

After publication of the NPRM on October 9, 2002, FRA received comments on the proposed rule and *Guide* from AAR¹ and a private citizen.² On December 4, 2002, the Working Group held a meeting in Washington, DC to discuss the comments on the NPRM. Because the majority of AAR's comments focused on clarifying the *Guide*, many of the issues were able to be resolved at the meeting. RSAC consensus on those issues and the summary of the Working Group meeting was confirmed by ballot on January 29, 2003. For those issues where consensus could not be reached, AAR sent FRA a post-meeting letter further explaining its views. The unresolved issues were outlined and presented to the Deputy Administrator, who acted on the rulemaking under a delegation from the Administrator, along with copies of the comments and responses, for resolution.

III. Issues Addressed by the Working Group

A. Applicability of Part 225—§ 225.3

OSHA's Final Rule states, "(1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS [Bureau of Labor Statistics] informs you in writing that you must keep records under § 1904.41 or § 1904.42." 29 CFR 1904.1(a). FRA's accident reporting regulations do not have such an exemption from the central reporting requirements for railroads with ten or fewer employees at all times during the last calendar year. Rather, the extent and exercise of FRA's delegated statutory safety jurisdiction are addressed fully in part 209, Appendix A, and the applicability of part 225 in particular is addressed in § 225.3. Under § 225.3(a), the central provisions of part 225 apply to:

All railroads except—

(1) A railroad that operates freight trains only on track inside an installation which is

¹ AAR's comments on the NPRM will be discussed throughout this preamble. After the publication of the NPRM and a discussion of the comments at the final Working Group meeting, AAR submitted a letter, dated December 13, 2002, and a supplemental response that was e-mailed to FRA on January 3, 2003.

² FRA has reviewed the comments from the private citizen, which did not specifically address any of the proposed amendments and vaguely asserted that FRA was not fulfilling its duty to carry out statutory mandates. Although the commenter did not provide specific recommendations to FRA on how to revise the NPRM, FRA believes that the provisions in the final rule will improve the overall quality and integrity of FRA's accident/incident data.