

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 and used for freight operations.

(2) Rail mass transit operations in an urban area that are not connected with the general railroad system of transportation.

(3) 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 is not considered insular if one or more of the following exists on its line:

- (i) A public highway-rail grade crossing that is in use;
- (ii) An at-grade rail crossing that is in use;
- (iii) A bridge over a public road or waters used for commercial navigation; or
- (iv) A common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

Section 20901 of title 49, U.S. Code (superseding 45 U.S.C. 38 and recodifying provisions formerly contained in the Accident Reports Act, 36 Stat. 350 (1910), as amended), requires each railroad to file a monthly report of railroad accidents. *See* Public Law 103–272. Accordingly, FRA will apply its accident reporting regulations to all railroads under FRA's jurisdiction, unless the entity meets one of the exceptions noted in § 225.3. FRA will address the difference as to which entities are covered by the reporting requirements, in an MOU with OSHA.

#### *B. Revisions and Additions to Definitions in the Regulatory Text—§ 225.5*

##### Proposal

FRA proposed to amend and add certain definitions to conform to OSHA's final rule or to achieve other objectives. Specifically, FRA proposed to revise the definitions of "accident/incident," "accountable injury or illness," "day away from work," "day of restricted work activity," "medical treatment," and "occupational illness." As previously mentioned, FRA proposed to remove the term "arising from the operation of a railroad" and its definition and add the term "event or exposure arising from the operation of a railroad" and its definition. FRA proposed to create definitions of "covered data," "general reportability criteria," "medical removal," "musculoskeletal disorder," "needlestick or sharps injury," "new case," "occupational hearing loss," "occupational tuberculosis," "privacy concern case," "significant change in the number of reportable days away

from work," "significant illness," and "significant injury."

##### Comments and Final Rule/Decision

These changes will be discussed in context later in the section-by-section analysis or elsewhere in this preamble.

#### *C. Revisions to Provision on Telephonic Reporting—§ 225.9*

##### Proposal

The Working Group agreed to propose certain amendments to § 225.9, pertaining to telephonic reporting, and the corresponding instructions related to telephonic reporting in the Guide. Prior to this final rule, FRA had required immediate telephonic reporting of accidents/incidents to FRA through the National Response Center (NRC) in only a limited set of circumstances, *i.e.*, the occurrence of an accident/incident arising from the operation of a railroad that results in the death of a rail passenger or employee or the death or injury of five or more persons. *See* 1997's § 225.9(a). In contrast, under OSHA's final rule,

Within eight (8) hours after the death of any employee from a work-related incident or the *in-patient hospitalization of three or more employees* as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident.

Emphasis added. 29 CFR 1904.39(a). Further, OSHA's final rule states,

Do I have to report a fatality or hospitalization that occurs long after the incident?

No, you must only report each fatality or multiple hospitalization incident that occurs *within (30) days of an incident*.

Emphasis added. 29 CFR 1904.39(b)(6). Finally, OSHA's final rule states,

*Do I have to report a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system?* No, you do not have to call OSHA to report a fatality or multiple hospitalization incident if it involves a commercial airplane, train, subway or bus accident. \* \* \*

Emphasis added. 29 CFR 1904.39(b)(4). This provision would seem to exempt railroads from telephonically reporting to OSHA all but a very few railroad accidents/incidents. The extent of the exemption from OSHA's telephonic reporting requirement depends on how broadly "commercial or public transportation system" is interpreted.

As recommended by the Working Group, FRA proposed to broaden the set of circumstances under which a railroad would be required to report an accident/

incident telephonically to the NRC, and to make certain other refinements to the rule. Specifically, FRA first proposed to add requirements for telephonic reporting when there is a death to any employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad. Railroads are increasingly using contractors to perform work previously performed by railroad employees. When those workers are exposed, the hazards are often unique to the railroad environment or otherwise involve conditions under FRA's responsibility. Receiving these reports will assist FRA in discharging its responsibility for monitoring the safety of railroad operations.

FRA also proposed to require the telephonic reporting of certain train accidents that are relevant to the safety of railroad passenger service, including otherwise reportable collisions and derailments on lines used for scheduled passenger service and train accidents that foul such lines. These events are potentially quite significant, since they may indicate risks which affect passenger service (*e.g.*, poor track maintenance or operating practices). Further, these events often cause disruption in intercity and commuter passenger service. Major delays in commuter trains, for instance, have direct economic effects on individuals and businesses.

FRA also proposed to incorporate provisions similar to the National Transportation Safety Board's (NTSB) requirements for telephonic reporting (part 840) into its own regulations and *Guide*. The key provisions of NTSB's requirements, excerpted in the NPRM for the convenience of the reader, can be found at §§ 840.3 and 840.4. *See* also 67 FR 63025–26.

The reason FRA proposed to incorporate requirements similar to NTSB's standards for telephonic reporting into its own regulations and *Guide* is that, unlike NTSB, FRA can enforce these requirements through the use of civil penalties. FRA has long relied upon reports required to be made to NTSB as a means of alerting its own personnel who are required to respond to these events. Although most railroads are quite conscientious in making telephonic reports of significant events, including some not required to be reported, from time to time FRA does experience delays in reporting that adversely affect response times. In this regard, it should be noted that FRA conducts more investigations of railroad accidents and fatalities than any other public body, and even in the case of the