

relatively small number of accidents that NTSB selects for major investigations, FRA provides a substantial portion of the technical team participating from the public sector. Accordingly, it is appropriate that FRA take responsibility for ensuring that timely notification is provided. As can be seen by comparing the referenced NTSB regulations to § 225.9, FRA has not adopted NTSB's standards wholesale, but extracted necessary additions to FRA's existing requirements (e.g., train accident requiring evacuation of passengers), used terminology from FRA regulations to describe the triggering events (e.g., "train accident" as defined in § 225.5), and slightly modified the contents of the required report (e.g., "available estimates" instead of "estimate").

Some members of the Working Group expressed concern about which railroad should be responsible for making the telephonic report in the case of joint operations. The Working Group agreed that for purposes of telephonic reporting, the dispatching railroad, which controls the track involved, would be responsible for making the telephonic report.

There was much discussion in the Working Group regarding whether railroads should be required to telephonically report certain incidents to the NRC "immediately." One suggestion was to set a fixed period, such as three or four hours, to report an accident/incident, or in any event, to provide a reasonable amount of time in which to report. Prompt reporting permits FRA and (where applicable) NTSB to dispatch personnel quickly, thereby making it possible for them to arrive on scene before re-railing operations and track reconstruction begin and key personnel become unavailable for interview. Decades of experience in accident investigation have taught FRA that the best information is often available only very early in the investigation, before physical evidence is disturbed and memories cloud.

In addition, there was a suggestion that railroads be permitted to immediately report certain incidents by several methods other than by a telephone call, including use of a facsimile, or notification by e-mail. Railroad representatives indicated that telephonic reporting is sometimes burdensome, particularly when a busy manager must wait to speak to an emergency responder for extended periods of time. FRA rejected this suggestion, and is requiring that immediate notification be done by telephone, and only by telephone,

because FRA is concerned that if notification is given by other methods, such as facsimile or e-mail, it is possible that no one will be available to immediately receive the facsimile or e-mail message. Conversely, with a telephone call to an emergency response center, a railroad should be able to speak immediately to a person, or at the very least, should hear a recording that would immediately direct the caller to a person.

Some members of the Working Group expressed concern that continued use of the term "immediate" in conjunction with a broadening of the events subject to the FRA rule might produce harsh results, due to the need to address emergency response requirements for the safety and health of those affected and to determine the facts that are predicates for reporting. The proposed rule addressed this concern by stating that,

[t]o the extent the necessity to report an accident/incident depends upon a determination of fact or an estimate of property damage, a report would be considered immediate if made as soon as possible following the time that the determination or estimate is made, or could reasonably have been made, whichever comes first, taking into consideration the health and safety of those affected by the accident/incident, including actions to protect the environment.

§ 225.9(d). Since FRA and the Working Group believe that immediate telephonic reporting raises issues related to emergency response unique to the railroad industry, the Working Group agreed not to conform in some respects to OSHA's oral or in-person reporting requirements. Accordingly, to the extent that OSHA's requirements regarding oral reports by telephone or in person apply to the railroad industry and that part 225 diverges from those requirements, FRA will include in the MOU with OSHA a provision specifying how and why FRA has departed from OSHA's requirements in this area.

Comments and Final Rule/Decision

No specific comments were received on this issue. For the reasons stated above, FRA has adopted the language as proposed in the NPRM for this final rule.

D. Revisions to Criteria for Reporting Occupational Fatalities, Injuries, and Illnesses—§ 225.19(d)

1. FRA's Reporting Criteria Applicable to Railroad Employees

Proposal

Section 225.19(d), as in effect until May 1, 2003, reads as follows:

Group III-Death, injury, or occupational illness. Each event arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if it results in:

- (1) Death to any person;
- (2) Injury to any person that requires medical treatment;
- (3) Injury to a railroad employee that results in:
 - (i) A day away from work;
 - (ii) Restricted work activity or job transfer;
- or
- (iii) Loss of consciousness; or
- (4) Occupational illness of a railroad employee.

* * * * *

The comparable provisions of OSHA's Final Rule, excerpted in the NPRM for the convenience of the reader, can be found at 29 CFR 1904.4(a) and 1904.7(b). See also 67 FR 63026–27. As indicated in the NPRM and in the above-referenced rule text, OSHA's final rule has specific recording criteria for cases described in 29 CFR 1904.8 through 1904.12. These cases involve work-related needlestick and sharps injuries, medical removal, occupational hearing loss, work-related tuberculosis, and independently reportable work-related musculoskeletal disorders. See Web site for OSHA regulations located in the **SUPPLEMENTARY INFORMATION** section.

Comments and Final Rule/Decision

No specific comments were received on the definitions of work-related "needlestick or sharps injury" and "occupational tuberculosis." FRA has adopted these definitions as proposed. Although no specific comments were received on the definition of "medical removal," and FRA has adopted this definition almost exactly as proposed, this term will be discussed later in this section of the preamble, in context with the discussion of the "float vs. fixed" issue. Before addressing the comments received on occupational hearing loss and work-related musculoskeletal disorders, it is necessary to provide an overview of OSHA's evolved position on these issues, since OSHA had not yet adopted its position at the time that the Working Group had reached consensus.

Overview of OSHA's Position on Occupational Hearing Loss and Musculoskeletal Disorders

In response to several comments received after publication of its Final Rule, which was scheduled to take effect on January 1, 2002, OSHA delayed the effective date of three of the rule's provisions until January 1, 2003, so as to allow itself further time to evaluate 29 CFR 1904.10, regarding occupational hearing loss, and 29 CFR