

presented to the Administrator for resolution.

With respect to one-time dosages of a prescription medication, FRA concluded that the one-time treatment of *topical* medication should be a "covered data" case, because prescription strength Neosporin is often what is available to, and applied by, the treating medical professional, even when over-the-counter Neosporin would likely suffice. Prescription medication that is ingested is a different matter. Since the original OSHA regulation, major advances have been made with designer drugs and time-release medications. The single dosage prescription medicines have replaced medicine that previously would have required multiple dosages. Accordingly, FRA has concluded that medication *ingested*, even as a *single* dosage not be listed as a "covered data" case. The definition of "covered data" in § 225.39 and the corresponding discussion of "covered data" in the *Guide* have been amended to address AAR's concerns regarding clarity and to reflect the addition of one-time dosages of *topical* prescription medication.

With respect to the administration of oxygen issue, FRA has determined that the administration of oxygen should not be treated as "covered data" cases, even if such administration was for a short time, if there were "signs and symptoms" that triggered the administration of oxygen. This is consistent with other parts of the OSHA/FRA reporting requirements, such as the administration of a vaccine due to exposure to a contagious disease. If the employee does not exhibit any "signs or symptoms," then the case is not reportable; however, if the employee does exhibit signs, then the administration of the vaccine becomes reportable.

As discussed earlier in section "III.D.1." of the preamble, FRA decided *not* to classify new hearing loss cases as "covered data." FRA has an interest in maintaining the integrity and value of its database.

I. Revisions to Chapter 1 of the Guide, "Overview of Accident/Incident Reporting and Recordkeeping Requirements"

Proposal

Chapter 1 of the *Guide* was revised to reflect the major changes to part 225 and the rest of the *Guide*, such as important definitions, the revision of the telephonic reporting requirement, and the revision of the reportability criteria in § 225.19(d). In addition, Chapter 1 has been revised to change the closeout

date for the reporting year. Under FRA's reporting requirements, in effect since 1997, railroads were permitted until April 15 to close out their accident/incident records for the previous reporting year. *1997 Guide*, Ch. 1, p. 11. FRA has amended its *Guide* to extend the deadline for completing such accident/incident reporting records until December 1, and will extend the deadline even beyond that date on a case-by-case basis for individual records or cases, if warranted.

Comments and Final Rule/Decision

Comments received will be discussed in context with the issues as stated elsewhere in this preamble.

J. Revisions to Chapter 6 of the Guide, Pertaining to Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"

FRA has amended its *Guide* to bring it, for the most part, into conformity with OSHA's recently published Final Rule on recordkeeping and reporting. The Working Group also wanted to make it clear, by noting in Chapter 6, that railroads are not required to report occupational fatalities, injuries, and illnesses to OSHA if FRA and OSHA have entered into an MOU that so provides.

Under OSHA's Final Rule, reporting requirements have changed in many ways, several of which are described below. *See also* § 225.39 regarding FRA's treatment of cases reportable under proposed part 225 solely because of, *e.g.*, recommended days away from work that are not actually taken.

1. Changes in How Days Away from Work and Days of Restricted Work Are Counted

Proposal

Under OSHA's Final Rule, if a doctor orders a patient to rest and not return to work for a number of days, or recommends that an employee engage only in restricted work, for purposes of reporting days away from work or restricted work, an employer must report the actual number of days that the employee was ordered not to return to work or ordered to restrict the type of work performed, even if the employee decides to ignore the doctor's orders by opting to return to work or to work without restriction. Specifically, under OSHA's Final Rule,

If a physician or other licensed health care professional recommends days away, you should encourage your employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or

licensed health care professional's recommendation or not.

29 CFR 1904.7(b)(3)(ii). FRA agrees with the position taken by OSHA, that the employee should be encouraged to follow the doctor's advice about not reporting to work and/or taking restricted time to allow the employee to heal from the injury.

OSHA states a similar rule with respect to reporting the number of days of recommended restricted duty. Specifically, OSHA's final rule states,

May I stop counting days if an employee who is away from work because of an injury or illness retires or leaves my company? Yes, if the employee leaves your company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restricted/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

29 CFR 1904.7(b)(3)(viii). In contrast, under FRA's *1997 Guide*, a railroad was only required to report the actual number of days that the employee did not return to work or was on restricted work duty due to a work-related injury or illness: "A record of the actual count of these days must be maintained for the affected employee." *See 1997 Guide*, Ch. 6, pp. 13–14.

There was much discussion at the Working Group meetings as to whether FRA should conform to OSHA's final rule with respect to reporting the number of days away from work or number of days of restricted duty. Some Working Group members wanted to leave FRA's current reporting system in place, while others saw merit in OSHA's approach. FRA representatives met with OSHA representatives to address this issue. OSHA insisted that since it tracks an index of the severity of injuries, with days away from work being the most severe non-fatal injuries and illnesses, it was important to OSHA to maintain a uniform database and have those types of injuries captured in its statistics.

A compromise was reached on the issue of reporting the number of days away and number of days of restricted work activity that was acceptable both to the Working Group and, preliminarily, to OSHA. Specifically, FRA proposed that if no other reporting criteria apply but a doctor orders a patient to rest and not to report to work for a number of days because of a work-related injury or illness, the railroad must report the case under a special category called "covered data." The *Guide* would explain how this covered data would be coded. The principal