

cases. See § 225.39 and above discussion of covered data at section “III.H.” of this preamble. The definitions have been adopted as proposed, except for the modifications made to the description of covered data cases.

Section 225.5 Definitions

Proposal

“Accident/incident” for purposes of FRA’s accident/incident reporting rule was redefined to conform to OSHA’s final rule. Under FRA’s 1997 rule, “accident/incident” is defined in part as,

(3) Any event arising from the operation of a railroad which results in:

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

(The designation “(4)” in the definition above should read “(iv).” See § 225.19(d)(3).) The parallel language in FRA’s proposed definition read as follows:

“Accident/incident” means:

* * * * *

(3) Any event or exposure arising from the operation of a railroad, if the event or exposure is a discernable cause of one or more of the following outcomes, and this outcome is a new case or a significant aggravation of a pre-existing injury or illness:

- (i) Death to any person;
- (ii) Injury to any person that results in medical treatment;
- (iii) Injury to a railroad employee that results in:
 - (A) A day away from work;
 - (B) Restricted work activity or job transfer;
- or
- (C) Loss of consciousness;
- (iv) Occupational illness of a railroad employee that results in any of the following:
 - (A) A day away from work;
 - (B) Restricted work activity or job transfer;
 - (C) Loss of consciousness; or
 - (D) Medical treatment;
- (v) A significant injury to or significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness;
- (vi) An illness or injury that meets the application of the following specific case criteria:
 - (A) A needlestick or sharps injury to a railroad employee;
 - (B) Medical removal of a railroad employee;
 - (C) Occupational hearing loss of a railroad employee;

(D) Occupational tuberculosis of a railroad employee; or

(E) An occupational musculoskeletal disorder of a railroad employee that is independently reportable under one or more of the general reporting criteria.

The phrase “discernable cause” was included in the proposed definition, and the words “or exposure” were added before the word “arising.” The addition of the word “discernable” was intended to take into account the OSHA–NAM settlement agreement, which also uses “discernable” to describe “cause.” As defined in *Webster’s Third New International Dictionary, Unabridged* (1971), “discernable” means “capable of being discerned by the senses or the understanding: distinguishable (a ~ trend) (there was ~ the outline of an old trunk-Floyd Dell).” FRA understands why some Working Group members requested this change as a matter of conformity and to emphasize that the employer is not required to speculate regarding work-relatedness. By the same token, FRA emphasizes that when confronted with specific claims regarding work-relatedness, it is the employer’s responsibility to fairly evaluate those claims and opt for reporting if an event, exposure, or series of exposures in the workplace likely contributed to the cause or significantly aggravated the illness.

The Working Group agreed that the definition of “accident/incident” also needed to include that the case had to be a new case, or a significant aggravation of a pre-existing condition. This reference to a “new case” was added to conform to 29 CFR 1904.4(a)(2) of OSHA’s final rule, and the reference to “significant” aggravation of a pre-existing condition was added to conform to the OSHA–NAM settlement agreement.

The inclusion of “death to any person” remained the same. “[I]njury to any person which requires medical treatment” was changed to “Injury to any person that results in medical treatment”; no substantive change was proposed. Injury to a railroad employee that results in “(A) A day away from work; (B) Restricted work activity or job transfer; or (C) Loss of consciousness” was not changed. FRA did, however, propose a change to the 1997 rule that all occupational illnesses of railroad employees are to be reported and required that they be reported only under certain enumerated conditions. This also made it clear that an occupational illness of an employee to a contractor to a railroad is not to be reported. Further, FRA proposed to add to its criteria for reportability

“significant injuries or illnesses,” “needlestick or sharps injuries,” “medical removal,” “occupational hearing loss,” “occupational tuberculosis,” and an independently reportable “occupational musculoskeletal disorder” to railroad employees to track OSHA’s Final Rule. Finally, as previously discussed, a three-tier definition of “event or exposure arising from the operation of a railroad” was added.

Comments and Final Rule/Decision

No specific comments were received on this definition. For the reasons stated above, the amendments have been adopted as proposed.

Proposal

The definition of “accountable injury or illness” was revised by substituting the words “railroad employee” for “railroad worker,” and by adding the word “discernably” before the word “associated.” These were technical changes to bring the language into conformity with the rest of the regulatory text.

Comments and Final Rule/Decision

No specific comments were received on this definition. For the reasons stated above, the amendments have been adopted as proposed.

Proposal

Under the 1997 rule, the definition of “day away from work” meant “any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad employee does not report to work for reasons associated with his or her condition.” § 225.5. Under the 1997 *Guide*, “If the days away from work were entirely unconnected with the injury (e.g., plant closing or scheduled seasonal layoff), then the count can cease at this time.” 1997 *Guide*, Ch. 6, p. 31, question 34. FRA proposed to come closer to following OSHA’s general recording criteria under 29 CFR 1904.7 of “day away from work” by proposing that the definition be “any calendar day subsequent to the day of the injury or the diagnosis of the illness that a railroad employee does not report to work, or was recommended by a physician or other licensed health care professional not to return to work, as applicable, even if the employee was not scheduled to work on that day.” Under the 1997 rule, if a doctor recommended that an employee not return to work, but the employee ignored the doctor’s advice and returned to work anyway, this would not count as a day away from work. Under OSHA’s Final Rule, however, the