

reporting entity would still have to count all the days the doctor recommended that the employee not work. As a compromise, FRA proposed that the railroad be required to report as covered data one day away from work, even if the employee did not actually miss a day of work subsequent to the day of the injury or diagnosis of the illness, as discussed previously in the preamble. The revision of the definition of "day away from work" was intended to take into account the new rule for reporting the number of days away from work.

The definition of "day of restricted work activity" was revised for the same reason that FRA revised the definition of "day away from work."

Comments and Final Rule/Decision

No specific comments were received on these definitions, however in its comments with respect to covered data cases, AAR sought clarification as to whether the same principles that applied to counting days away from work would apply to counting days of restricted work. At the post-NPRM Working Group meeting, FRA explained that the same principles would apply and agreed to edit the *Guide* to clarify that these cases are to be handled in the same manner. Upon further review of the *Guide* and the rule text definitions, FRA concluded that although all of the information concerning the reporting of days away from work and days of restricted work were present in the *Guide* and rule text collectively, the rule text definitions were not as clear as they could be in setting forth FRA's interpretation, as agreed upon by the Working Group. In an effort to avoid confusion and misinterpretation, FRA has amended the rule text definitions of "day away from work" and "day of restricted work activity," and the corresponding discussions in the *Guide*, for clarification. *See also* comments and related discussion on change in method of counting days and 180 day cap at sections "III.J.1." and "III.J.2." of this preamble.

Proposal

The definition of "event or exposure arising from the operation of a railroad" was added to include the following: (1) With respect to a person who is on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to the activity; (2) with respect to an employee of the railroad (whether on or off property owned, leased, or maintained by the railroad), an activity of the

railroad that is related to the performance of its rail transportation business or an exposure related to the activity; and (3) with respect to a person who is not a railroad employee and not on property owned, leased, or maintained by the railroad—(i) a train accident; a train incident; a highway-rail crossing accident/incident involving the railroad; or (ii) a release of a hazardous material from a railcar in the railroad's possession or a release of other dangerous commodity that is related to the performance of the railroad's rail transportation business. Accordingly, with respect to a person who is not a railroad employee and not on property owned, leased, or maintained by the railroad, the definition of "event or exposure arising from the operation of a railroad" is more narrow, covering a more limited number of circumstances than for persons who are either on railroad property, or for railroad employees whether on or off property owned, leased or maintained by the railroad. The justification for narrowing the set of circumstances in which a railroad is required to report certain injuries and illnesses for events that occur off railroad property is that it is difficult for railroads to know about, and follow up on, injuries off railroad property to persons who are not railroad employees, including employees of railroad contractors. Railroads simply have more limited opportunity to know about injuries and illnesses to persons other than those who are injured on their property or who are employed by the railroad. Accordingly, injuries to such persons are not to be considered for reporting purposes as events or exposures arising from the operation of the railroad.

Comments

Although no specific comments were received on the substance of the definition or proposal itself, AAR commented that the *Guide's* discussion of contractors did not reflect FRA's proposed approach and should be amended to do so.

Final Rule/Decision

FRA has adopted the proposal as stated and has amended the *Guide* to reflect this new approach. FRA intends to address the divergence from OSHA on the issue of the employee of a contractor in the MOU. *See also* earlier discussion of this issue at section "III.D.2." of this preamble.

Proposal

The definition of "medical treatment" was revised, as discussed earlier in the preamble, to conform generally to

OSHA's new definition under 29 CFR 1904.7(b)(5)(i) of "medical treatment." The proposed definition read,

any medical care or treatment beyond "first aid" regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include counseling.

FRA proposed that any type of counseling, in and of itself, is not considered to be medical treatment. If, for example, a locomotive engineer witnesses a grade crossing fatality and subsequently receives counseling after being diagnosed as suffering from Post Traumatic Stress Syndrome, the case is not reportable. The only factors that would make the case reportable would be if, in addition to the counseling, the employee receives prescription medication (such as tranquilizers) has a day away from work, is placed on restricted work, is transferred to another job, or meets one of the other criteria for reportability in § 225.19(d). In addition to the general objective of inter-industry conformity, this change is supported by the absence of meaningful interventions available to prevent such disorders. Although involvement in highway-rail grade crossing and trespass casualties is a known cause of stress in the railroad industry, FRA and the regulated community are already aware of that fact and are making every effort to prevent these occurrences. Further, the industry is actively engaged in preventive post-event counseling.

Comments and Final Rule/Decision

No specific comments were received concerning the definition of "medical treatment." The definition of "medical treatment" has been adopted as proposed. However, the issue of what constitutes medical treatment was raised with respect to the classification of the administration of oxygen and one-time dosages of prescription medication. These issues were resolved by FRA, and the provisions have been amended accordingly. For a more detailed discussion, please see sections "III.J.3." and "III.H." of the preamble, above.

Proposal

"General reportability criteria" was defined as the criteria set forth in § 225.19(d)(1)–(5).

Comments and Final Rule/Decision

No specific comments were received on this definition. FRA has adopted the definition as proposed.

Proposal

"Medical removal" was defined as it is described in OSHA's recording