

the definition in advance of OSHA's defining the term, a result that may not have been contemplated by the Working Group when it agreed to follow OSHA on this issue prior to issuance of the proposed delay. *See* discussion concerning reporting criteria for MSDs at section "III.D.1." of the preamble, above. Even if OSHA chose not to delay the effective date of this provision, FRA sought comment on whether or not FRA should even adopt OSHA's definition for calendar year 2003, since it stated that there were no special criteria beyond the general recording criteria for determining which MSDs to record and because OSHA's definition appeared to be used primarily as guidance for when to check the MSD column on the 300 Log. *See* 66 FR 6129–6130. It was noted that choosing to exclude this definition from FRA's final rule would not have affected an employer's obligation to report work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness. FRA also sought comment on whether or not this definition should "float" with OSHA's. *See* discussion of "float" vs. "fixed" at section "III.D.1." of the preamble, above.

Comments

Although no specific comments were received regarding the adoption of a definition of an MSD, FRA raised the issue at the post-NPRM Working Group meeting. FRA pointed out that there were no special reporting criteria for MSDs and that there may be more problems in trying to delete the definition than to leave it in. Because MSDs must be independently reportable, there seemed to be little or no effect on the regulated community by retaining the proposed definition. AAR indicated that it was inclined to leave the definition in, but might reconsider the issue and provide us with a position after the meeting. However, no further comments were received.

Final Rule/Decision

For the reasons stated above, FRA has adopted the MSD definition as proposed. *See also* the discussion of MSDs in section "III.D.1." of this preamble, and the discussion of deleting the exclusion of MSDs from the definition of "privacy concern case" at section "III.G.1." of this preamble. Because FRA has adopted a requirement beyond what OSHA requires, this difference will be addressed in an MOU with OSHA, if necessary.

Proposal

"Occupational tuberculosis" was defined in general conformity with OSHA's recording criteria under 29 CFR 1904.11 for work-related tuberculosis cases. The word "occupational" was included in the term because the term is intended to cover only the occupational illness; it would be confusing to define simply "tuberculosis" when the unmodified term would seem to call for a medical definition of tuberculosis in general.

Comments and Final Rule/Decision

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

Proposal

"Significant change in the number of reportable days away from work" was defined as a 10-percent or greater change in the number of days away from work that the railroad would have to report. FRA decided on 10 percent as the threshold so that railroads would not have to submit amended reports for *de minimis* changes in data. For example, if a railroad estimated that an employee would be away from work for 30 days and reported the 30-day estimate to FRA, but the employee was actually away from work for 32 days, the railroad would not have to amend its accident report to reflect this change. Moreover, FRA uses a 10-percent threshold for amending rail equipment accident reports. Specifically, if a railroad estimates the damage from a rail equipment accident to be \$7,000, a railroad need not amend that report unless the actual damage exceeds \$7,700. If on the other hand, the actual damage is less than the reporting threshold, but less than 10-percent difference from the estimate, the railroad would be allowed to amend the report to indicate that the incident was not a reportable accident. For example, in the scenario above, if the actual damage was \$6,400 (less than 10-percent difference from the \$7,000 estimate), the railroad would nevertheless be permitted to withdraw its report of that accident. While the 10-percent threshold was included in Chapter 6 of the 1997 *Guide*, FRA proposed to create a definition in the regulatory text since the General Accounting Office recommended that FRA define this term. For clarification of the terms "significant illness" and "significant injury," *see* discussion in section "III.D.1." of the preamble, above.

Comments and Final Rule/Decision

No specific comments were received on this definition, 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 found that the rule text definition concerning a "significant change in the number of days away from work" did not express FRA's policy that the 10-percent threshold also applies to days of restricted work activity. Given that this policy was set forth in the 1997 *Guide* and was re-approved by the Working Group and the full RSAC for the 2003 *Guide*, FRA concluded that the definition should be amended to clarify that the same 10-percent threshold policy that applies to amending reports with respect to days away from work also applies with respect to days of restricted work activity.

Similarly, as noted in the preambles of the NPRM and this final rule, FRA uses a 10-percent threshold for amending rail equipment accident reports. Both the 1997 *Guide* and the 2003 *Guide* explain a railroad's duty to amend its rail equipment accident reports when an estimated value of the damage costs is significantly in error. A significant difference is defined as a 10-percent variance. Because FRA and the Working Group agreed that the *Guide's* explanation of "significant change in the number of reportable days away from work" should be included in the rule text as a definition, FRA concluded that it would be equally appropriate to include the *Guide's* explanation concerning a significant change for purposes of amending rail equipment accident reports. Accordingly, FRA has added a definition of "significant change in the damage costs for reportable rail equipment accidents/incidents" that conforms to FRA's previous policy on this matter.

Section 225.9 Telephonic Reports of Certain Accidents/Incidents and Other Events

Proposal

Under the 1997 rule, § 225.9 required a railroad to report immediately by telephone any accident/incident arising from the operation of the railroad that resulted in the death of a railroad employee or railroad passenger or the