

death or injury of five or more persons. FRA proposed an amendment to this section, as recommended by the Working Group, to add new circumstances under which a railroad is to telephonically report and to clarify existing procedures for telephonic reporting of the expanded list of events.

Proposed subsection (a) listed the events that a railroad would be required to report telephonically. In proposed subsection (a)(1), "Certain deaths or injuries," FRA proposed that each railroad must report immediately, whenever it learns of the occurrence of an accident/incident that arose from the operation of the railroad, or an event or exposure that may have arisen from the operation of the railroad, that has certain specified consequences. FRA proposed to use the phrase "may have arisen" in the proposed regulatory text, instead of keeping the current language "arising from the operation of a railroad," because a railroad may not learn for some time that a particular event in fact arose from the operation of the railroad. By stating that a railroad must report an event that "may" have arisen from the operation of the railroad, FRA is assured to capture a broader group of cases. For example, if a railroad employee dies of a heart attack on the railroad's property, the railroad may not know for weeks, following a coroner's report, what the cause of death was and whether the death was work-related. This case might not get immediately reported because the railroad did not immediately learn that the death arose out of the operation of the railroad. Under the proposed change, if the death "may" have arisen out of the operation of the railroad, the case must be immediately reported, permitting FRA to commence its investigation in a timely manner. Even when death is ultimately determined to be caused by a coronary event, for instance, it is appropriate to inquire whether unusual workplace stressors (*e.g.*, extreme heat, excessive physical activity without relief) may have played a role in causing the fatality. In addition, under subsection (a)(1), FRA has added the death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad as a new category requiring telephonic reporting.

In proposed subsection (a)(2), FRA captures certain train accidents or train incidents even if death or injury does not necessarily occur as a result of the accident or incident. Under the 1997 rule, FRA did not require telephonic reporting of certain train accidents or train incidents *per se*, but required that

they be reported only if they resulted in death of a rail passenger or employee, or death or injury of five or more persons. Accordingly, FRA proposed that railroads telephonically report immediately, whenever it learns of the occurrence of any of the following events:

- (i) A train accident that results in serious injury to two or more train crewmembers or passengers requiring admission to a hospital;
- (ii) A train accident resulting in evacuation of a passenger train;
- (iii) A fatality at a highway-rail grade crossing as a result of a train accident or train incident;
- (iv) A train accident resulting in damage (based on a preliminary gross estimate) of \$150,000, to railroad and nonrailroad property; or
- (v) A train accident resulting in damage of \$25,000 or more to a passenger train, including railroad and nonrailroad property.

In proposed subsection (a)(3), FRA requires telephonic reporting of incidents in which a reportable derailment or collision occurs on, or fouls, a line used for scheduled passenger service. This final provision permits more timely initiation of investigation in cases where the underlying hazards involved could threaten the safety of passenger operations. For clarification of other aspects of this proposed section, *see* discussion at section "III.C." of this preamble, above.

#### Comments and Final Rule/Decision

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

#### Section 225.19 Primary Groups of Accidents/Incidents

##### Proposal

FRA proposed to amend subsection (d), "Group III, "Death, injury, occupational illness." See prior discussion in section-by-section analysis of the definition of "accident/incident" and "event or exposure arising from the operation of a railroad" in § 225.5.

#### Comments and Final Rule/Decision

No specific comments were received on this provision. The amendments have been adopted as proposed.

#### Section 225.23 Joint Operations

##### Proposal

FRA proposed to make technical amendments to § 225.23(a) simply to bring it into conformity with the rest of the proposed regulatory text.

#### Comments and Final Rule/Decision

No specific comments were received on this provision. The amendments have been adopted as proposed.

#### Section 225.25 Recordkeeping

##### Proposal

FRA proposed to amend this section by revising subsection 225.25(h)(15) to apply to "privacy concern cases," which would be defined in proposed § 225.5. Accordingly, under the proposed subsection, a railroad is permitted not to post information on an occupational injury or illness that is a "privacy concern case."

#### Comments and Final Rule/Decision

No specific comments were received on this provision. The amendments have been adopted as proposed.

#### Section 225.39 FRA Policy Statement on Covered Data

##### Proposal

In connection with the requirements for reporting employee illness/injury cases exclusively resulting from a written recommendation of a physician or other licensed health care provider (POLHCP) for time off when the employee instead returned to work, or a written recommendation for a work restriction when the employee instead worked unrestricted, and in connection with the provision for special reporting of cases exclusively resulting from the direction of a POLHCP in writing to take a non-prescription medication at prescription dose, FRA proposed that these cases not be included in FRA's regular statistical summaries. The data are requested by DOL to ensure comparability of employment-related safety data across industries. The data may also be utilized for other purposes as the need arises, but they would not be reported in FRA's periodic statistical summaries for the railroad industry.

#### Comments

AAR commented that the *Guide* needed to be clearer in its discussion of covered data so as to include: a definition of that term; instructions on how to report such cases; and clarification of the treatment of these cases in the questions-and-answers section of the *Guide* and in the instructions for Form FRA F 6180.55a. In its comments on the NPRM, verbal comments at the post-NPRM Working Group Meeting, and post-meeting letter and e-mail, AAR expressed a concern a concern regarding the sharp increase in the number of reportables that would result by adopting the proposed changes. In order to soften the impact of