

these changes on the railroad industry data, AAR requested that the covered data criteria be extended to three other areas of reporting: one-time dosages of prescription medication, oxygen therapy, and occupational hearing loss.

Final Rule/Decision

FRA determined that the definition of "covered data" in § 225.39 and the corresponding discussion of covered data in the *Guide* should be amended to address AAR's concerns regarding clarity and to reflect the addition of one-time dosages of topical prescription medication. For a more detailed discussion of FRA's policy statement on covered data, see section "III.H." of this preamble.

Section 240.117 Criteria for Consideration of Operating Rules Compliance Data

Proposal

FRA proposed a minor change to its locomotive engineer qualifications regulations, which uses a term from part 225. In particular, § 240.117(e)(2) of the locomotive engineer qualifications regulations defines one of the types of violations of railroad rules and practices for the safe operation of trains that is a basis for revoking a locomotive engineer's certification pursuant to part 240; specifically, failures to adhere to the conditional clause of a restricted speed rule "which cause reportable accidents or incidents under part 225 of this chapter. * * *" This amendment creates an exception for accidents or incidents that are classified as "covered data" under part 225. The reason that "covered data" were excluded as a partial basis for decertification under § 240.117(e)(2) is that the injuries and illnesses associated with "covered data" cases are comparatively less severe than other types of injuries and illnesses, and, as such, when coupled with a violation of restricted speed, should not trigger revocation under part 240.

Comments and Final Rule/Decision

No specific comments were received on this section. The exception has been adopted as proposed. Note, however, that comments were received on the definition of "covered data" and that the category of covered data has been expanded to include another subset of cases. See § 225.39 and above discussion of covered data at section "III.H." of this preamble.

V. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory impact analysis addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at <http://dms.dot.gov>.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of this final rule. The analysis also contains qualitative discussions of benefits that were not quantified. Over a 20-year period, the Present Value (PV) of the estimated costs is \$476,000, and the PV of the estimated benefits is \$612,000.

The major costs anticipated from adopting this final rule include those incurred in complying with additional OSHA-conformity reporting requirements, such as the covered data cases. Additional reporting burdens on railroads will also occur from an increase in telephonic reporting, an increase in reporting of occupational hearing loss cases, and from the recording of claimed occupational illnesses cases. Finally, there are costs associated with the familiarization of the railroad reporting officers with the revised *Guide*, and for revisions to FRA and railroad electronic reporting systems and databases.

The major benefits anticipated from implementing this final rule include savings from a simplification in the reporting of occupational injuries due to a new definition of "first aid." This benefit will produce a savings in the decision making process for both reportable injuries and accountable injuries. Additional savings will also occur from a reduction in the average burden time to complete a Rail Equipment Accident/Incident Report. This savings is largely a product of a revision to the train accident cause codes. The revised casualty circumstance codes will produce a

savings from a reduction in the use of the narrative block on the railroad injury and illness reports. Finally, railroads will receive a savings from a simplification in the counting of the number of days away from work or of restricted work activity. This includes a savings due to a reduction from 365 to 180 days for the maximum number of days that the railroads would have to track and report injuries and illnesses. FRA also anticipates that there will be qualitative benefits from this rulemaking from better data on railroad reports, and the increased utility that the additional data codes would provide to future analysis.

B. Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a Federal agency to review its proposed and final rules in order to assess their impact on small entities (small businesses, small organizations, and local governments). If the agency determines that its final rule would have a significant economic impact on a substantial number of small entities, then the agency must prepare an Regulatory Flexibility Analysis (RFA). If the agency determines the opposite, then the agency must certify that determination; an RFA may also provide the basis for the agency's determination that the final rule would not have a significant economic impact on a substantial number of small entities.

"Small entity" is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity" is 1,500 employees for "Line-Haul Operating" Railroads, and 500 employees for "Switching and Terminal Establishments." SBA's "size standards" may be altered by Federal agencies on consultation with SBA and in conjunction with public comment. Pursuant to section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has published an interim policy that formally establishes "small entities" as being railroads that meet the line-haulage revenue requirements of a Class III railroad. 62 FR 43024, Aug. 11, 1997. Currently, the revenue requirements are \$20 million or less in annual operating revenue. The \$20 million limit is based on the Surface Transportation Board's threshold for a Class III railroad carrier, which is