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1.

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 225

Railroad Accident Reporting; Proposed Rule
DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA Docket No. RAR-4, Notice No. 6]
RIN 2130-AA58

Railroad Accident Reporting

AGENCY: **Federal Railroad Administration** (FRA).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend the **railroad** accident reporting rules in several ways. First, FRA would require railroads to adopt internal control procedures to ensure accurate reporting of accidents, casualties, and highway-rail grade crossing accidents. Second, FRA would allow railroads to submit and update accident, casualty, and

highway-rail accident reports through transfer of information on computer diskettes or magnetic tapes. Third, FRA would revise the accident and injury reporting forms, including definitions. Fourth, FRA would revise injury and illness, as well as derailment and collision, recordkeeping requirements. Finally, FRA would revise the method by which it will determine and periodically adjust the accident reporting threshold.

DATES: (1) **Written Comments:** Written comments must be received on or before November 17, 1994. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) **Public Hearings:** A series of public hearings on this proposal will be held on the dates and at the locations listed below to provide interested parties the opportunity to comment on specific issues addressed in the NPRM. Anyone who desires to make an oral statement at one of the hearings must notify the Docket Clerk by telephone or mail at least five working days prior to the date of the hearing and must submit three copies of the oral statement no later than the comment closing date announced in the notice.

ADDRESSES: (1) **Written Comments.** Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, **Federal Railroad Administration**, 400 Seventh Street, S.W., room 8201, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in room 8201 of the Nassif Building at the above address.

(2) **Public Hearings.** Hearings to discuss issues raised in the NPRM will be held at these locations on the following dates:

(a) Washington, D.C. on Wednesday, October 5 and Thursday, October 6, 1994.

Location: Department of Transportation, Nassif Building, room 2230, 400 Seventh Street, S.W., Washington, D.C.

Time: 9:30 a.m.-4:00 p.m.

(b) Kansas City, Missouri on Wednesday, October 19, 1994.

Location: U.S. District Court House, room 829, 811 Grand Avenue, Kansas City, Missouri.

Time: 9:30 a.m.-4:00 p.m.

(c) Old Sacramento, California on Thursday, November 3, 1994.

Location: Delta King Hotel, Delta King Theater, 1000 Front Street, Old Sacramento, California.

Time: 9:30 a.m.-4:00 p.m.

Persons desiring to make oral statements at the hearings should notify the Docket Clerk by telephone (202-366-0635) or by writing to: Docket Clerk, Office of Chief Counsel, **Federal Railroad Administration**, 400 Seventh Street SW., room 8201, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Robert Finkelstein, Chief, Systems Support Division, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-366-2760); Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-366-0628);

or Jesus Clemente, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, D.C. 20590 (telephone 202-366-0628).

SUPPLEMENTARY INFORMATION:

Background

A. Purpose and Structure of the Accident Reporting Regulations

FRA's primary function is to promote safety within the **railroad** industry. To carry out its safety mission, FRA needs information about the conditions of the nation's railroads to enforce safety regulations and to develop **railroad** injury and accident prevention programs. The injury and accident reports submitted by the railroads form a principal basis for FRA's **railroad** safety program. FRA uses injury and accident data for, among other things, establishing its inspection strategy, determining comparative trends of **railroad** safety, and calculating the costs and benefits of proposed safety rules. Because FRA uses the data in all aspects of its operations, it is important that the data it receives be as accurate and consistent as possible.

The **railroad** accident reporting regulations set forth in 49 CFR part 225 require railroads to submit monthly reports to FRA summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on **railroad** property. The regulations presently define an "accident/incident" in Sec. 225.5(b) as:

(1) Any impact between **railroad** on-track equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle or pedestrian at a rail-highway grade crossing;

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of **railroad** on-track equipment (standing or moving) that results in more than \$6,300 in damages to **railroad** on-track equipment, signals, track, track structures, and roadbed;

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

(i) Death of one or more persons;

(ii) Injury to one or more persons, other than **railroad** employees, that requires medical treatment;

(iii) Injury to one or more employees that requires medical treatment or results in restriction of work or motion for one or more days, one or more lost work days, transfer to another job, termination of employment, or loss of consciousness; or

(iv) Occupational illness of a **railroad** employee as diagnosed by a physician.

Section 225.19 of the regulations presently divides **railroad** accidents/incidents into three categories: (1) highway-rail grade crossing accidents/incidents; (2) rail equipment accidents/incidents; and (3) death, injury, or occupational illness accidents/incidents.

Every **railroad** accident/incident meeting the stated criteria for each category must be reported to FRA. 49 CFR 225.11. Because the reporting requirements and the information needed regarding each category of accident/incident are unique, a different reporting form is used for each category. If the circumstances of an accident/incident are such that it falls within two or even all three categories, then a separate reporting form for each category must be completed by the

railroad. For example, if a highway-rail grade crossing accident involves damage to rail equipment over the current reporting threshold of \$6,300, then both a ``Rail-Highway Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57) and a ``Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54) must be completed by the reporting **railroad.** (In order to conform to the grade crossing signal system safety regulations in part 234, the term ``rail-highway'' will be changed to read ``highway-rail'' throughout part 225. This NPRM will hereinafter refer to ``highway-rail'' grade crossings.) Further, if injuries are associated with the crossing accident, then the monthly ``**Railroad** Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) must also be completed.

B. General Accounting Office Study on Accident Reporting to FRA

Increasingly concerned with **railroad** safety, Congress asked the General Accounting Office (GAO) to determine whether FRA's safety programs were adequate to protect **railroad** employees and the general public from injuries associated with train accidents. GAO studied FRA's **railroad** injury and accident reporting data and issued a report (GAO/RCED-89-109) that raised important questions about the quality of **railroad** compliance with FRA's accident reporting regulations. GAO found that there was underreporting and inaccurate reporting of injury and accident data for 1987 by the railroads it audited.

GAO recommended that FRA (a) Require railroads to establish injury and accident reporting internal control procedures, (b) include an analysis of railroads' internal control procedures for reporting in FRA's safety records inspections, (c) provide inspectors with the authority to take enforcement actions against railroads with deficient internal control procedures, (d) require railroads to update reports on workdays lost due to injuries, and (e) clarify FRA's requirement for railroads to update accident reports when significant changes occur.

FRA's subsequent analysis of the findings from the 1989 GAO accident and injury reporting audit indicated that most of the missing accident reports were ``fender benders'' and that the unreported injuries were minor. Nonetheless, the accuracy of FRA's safety databases are of paramount importance, and FRA took several actions to improve railroads' accident and injury reporting.

C. Advance Notice of Proposed Rulemaking on Accident Reporting

On March 14, 1990, FRA published an advance notice of proposed rulemaking (ANPRM) soliciting comments and suggestions from the public regarding methods of improving FRA's injury and accident reporting system and its governing regulations (55 FR 9469). Interested parties were invited to participate in a public hearing held on May 17, 1990, and to file written comments prior to May 25, 1990. The responses to that public notice provided additional information and identified further issues and subissues related to the matters in the ANPRM. In order to further explore matters related to the accident/incident reporting system, FRA held informal, open meetings on June 13, 1991, August 22, 1991, and August 18, 1992, in Washington, D.C., with members of the Association of American Railroads (AAR) Committee for Uniformity in Reporting. At the request of rail labor representatives, FRA also held an informal, open meeting on October 21, 1991, in Washington, D.C., to discuss the same issues with representatives of various rail unions.

Discussion of Comments and Section Analysis

In addition to testimony from five organizations at the May 17, 1990 hearing, FRA received comments in response to the ANPRM from over 15 parties including several railroads, **railroad** unions, **railroad** trade associations, as well as two States. Discussions follow with respect to the primary issues addressed by the commenters.

A. Internal Control Procedures (Proposed Sec. 225.33)

As discussed above, GAO concluded that erroneous injury and accident reporting occurred primarily because the railroads it studied lacked adequate internal procedures for properly classifying and reporting the events. GAO believed that under a system of self-reporting such as the one FRA uses to obtain **railroad** safety data, internal control procedures would be necessary to ensure that reliable and accurate data is obtained, maintained, and disclosed by the railroads. GAO recommended that FRA mandate such internal control procedures, periodically review them, and then use its enforcement authority to cite railroads for procedural deficiencies when inaccurate reporting is found and the cause can be attributed to internal control weakness.

Of the five railroads GAO visited, the Chicago and North Western Transportation Company ('`CNW'') was found to have the most effective internal control procedures for updating injury and accident information prior to reporting to FRA. CNW's procedures involved extensive communication between its safety office, which reports accident information to FRA, and other departments within the **railroad**. CNW also centralized its reporting responsibilities and updated injury and accident information before reporting to FRA. Specifically, (a) CNW's safety office and claim office met once a month to compare lists of injuries; (b) CNW used a ``15-day'' report (this report accurately disclosed the severity of each injury) to update the status of each injury before reporting it to FRA; (c) for train accidents, initial field estimates of property damage were compared with repair shop estimates before submitting a report to FRA; and (d) CNW required a final accident report to its safety office within 20 days following the accident to allow for further updating of information on the accident/incident report and the identification of additional reportable events prior to filing a report with FRA.

In the ANPRM, comments were solicited as to whether FRA should require railroads to implement specific internal control procedures to assure proper reporting or simply establish strict performance standards and hold railroads accountable for accuracy of the submitted data.

Comments

Most commenters did not support mandated internal control procedures, primarily because each **railroad** is different organizationally. Since internal control procedures would be adapted to the organizational structures of individual railroads, most commenters felt it would be unreasonable to prescribe a rigid set of rules governing the audit function for universal application. Instead, it was proposed that each **railroad** submit their own internal control procedures to FRA for review and subsequent approval. FRA would then have the ability to audit the **railroad** based upon the **railroad**'s own operating plan.

One labor association suggested that internal control procedures that ensure accurate information should be mandated by FRA. It was proposed that this could be accomplished by requiring the railroads to update all initial information within a certain time period; i.e., after filing the initial monthly report, the **railroad** would be required to supplement any and all changes that existed at the time of filing the initial report within a specified time frame. It was also recommended that railroads should file an annual report that would supplement each monthly report and that the railroads' reporting information be crosschecked with accident data obtained from the **Railroad** Retirement Board and the Travelers Insurance Company.

One **railroad** association recommended that, if adopted, internal control procedures should apply initially to only the larger railroads (Class I railroads). It was further suggested that regulations crafted particularly for smaller railroads should be adopted in order to reduce the inequities that such railroads seemingly confront when implementing safety regulations in general.

One **railroad** opined that FRA should require railroads to implement some specific internal control procedures, i.e., reporting data should be validated by at least one other internal **railroad** department source. As an alternative to specific, prescribed procedures, it was recommended that railroads develop and file an "action plan" describing how the **railroad** would validate its data with another impartial internal source.

Most commenters did not support GAO's recommendation for civil penalties for inaccurate reporting due to internal control weakness. A few stated that civil penalties should be assessed only for violations that are recurring, willful, or grossly negligent.

Section Analysis and FRA Conclusions (Proposed Sec. 225.33)

FRA's Operating Practices inspectors have significantly increased the amount of time spent reviewing **railroad** accident reporting records. The internal control procedures of all the large railroads and a sampling of the small railroads have been reviewed and analyzed by these inspectors and the results compared with GAO's earlier findings. FRA found that these railroads have generally improved their internal control procedures and their accident/incident reporting.

FRA's recent review of the accident/incident reporting procedures of all of the major railroads and a large number of smaller railroads supports the GAO findings that errors in reporting resulted principally from the railroads' lack of internal control procedures. Railroads with specific internal control procedures in place had far more accurate reporting records. FRA also found that most non-reporting or inaccurate reporting was due to a communication breakdown between the claims department, which maintained medical records, and the other **railroad** departments, e.g., operating, mechanical, and maintenance-of-way.

FRA therefore proposes, in new Sec. 225.33(a), that each **railroad** must prepare and maintain an Internal Control Plan, that requires institution of proper internal control procedures for reporting. Such a Plan would ensure the reconciliation and incorporation of accident/incident and injury/illness data from the various departments within the **railroad** for submission to the **railroad** reporting officer. The reporting office must have access to all pertinent claims records, including medical records and payroll records. Further, the reporting office must be notified by claims and medical departments of each new case/claim opened by a **railroad** worker. Identification of offices and

responsible **railroad** officers would also aid FRA in identification of procedural weaknesses in reporting.

FRA believes that requiring railroads to establish an Internal Control Plan for reporting would ensure more accurate injury and accident reporting. Once in place, FRA inspections would focus on the procedures the railroads use to report injuries and accidents. This periodical review of the Plan by FRA would detect procedural deficiencies and would enable the **railroad** to correct any identified problems. Thus, new Sec. 225.33(b) proposes that each **railroad** not only have an Internal Control Plan, but also that all reasonable effort is made to adhere to that Plan. If FRA should find the **railroad** to be in noncompliance, FRA may cite that **railroad** for violating procedural requirements and require the **railroad** to correct the procedural weakness.

Additionally, this NPRM proposes, in new Sec. 225.41, that the Internal Control Plan shall, upon request, be made available to any FRA or State safety inspector for examination and photocopying in a reasonable manner during normal business hours. Proposed Sec. 225.41 is discussed in greater detail in this NPRM under the heading ``Miscellaneous Amendments.''

B. Computer Magnetic Media Transfer (Proposed Sec. 225.37)

In order to resolve the discrepancies between the annual report for lost workdays and the monthly submission of lost workdays, FRA began in January 1990 to allow the railroads to update their portion of the accident and casualty database using magnetic media. In this NPRM, the term ``magnetic media'' means computer diskettes and magnetic tapes. Currently, railroads are allowed to update certain fields on existing records (``Days Lost,'', ``Restricted Days,'', ``Cause Code,'', ``Alcohol and Drug Code,'', ``Damages,'', ``Total Injuries,'', and ``Total Killed''). New submissions must be submitted on existing paper forms as existing provisions of part 225 do not allow transfer of data by means of magnetic media as an alternative means of compliance. Updating the information via a magnetic medium remained voluntary on the part of the **railroad**, and this procedure, along with paper form updates, has improved the overall accuracy of information submitted monthly particularly with respect to the number of lost workdays.

Comments

FRA solicited comments in the ANPRM regarding a proposal to allow railroads the option to report accidents/incidents by way of magnetic media transfer in lieu of the paper (``hard copy'') forms currently submitted. Most commenters expressed an interest in implementing some kind of electronic transmission and exchange of data from the railroads to FRA. One **railroad** suggested that FRA implement the program to ensure timely and accurate changes to the hard copy ``Rail Equipment Accident/ Incident Report'' (Form FRA F 6180.54), rather than submitting a corrected hard copy report. Another **railroad** emphasized that implementation of a magnetic media program was a concept long overdue and predicted a reduction in the amount of annual key-punching labor cost. One rail association encouraged implementation of a magnetic media program as it would ensure timely reporting and a less expensive medium than submission of hard copies. It was also suggested that FRA should provide smaller railroads the appropriate software for their personal computers. Another **railroad** recommended that FRA review the feasibility of reporting accidents/incidents telephonically as well as by magnetic media. In reference to the initial cost to implement the

program, the majority of the railroads anticipated a one-time start-up cost which would be necessary to implement the data transfer process.

Section Analysis and FRA Conclusions (Proposed Sec. 225.37)

In light of the favorable responses to the ANPRM, FRA proposes, in new Sec. 225.37, to amend the current reporting requirements and allow railroads the option of using magnetic media to transmit both the initial and updated versions of the following reports: (a) the ``Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54), (b) the ``**Railroad** Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a), and (c) the ``Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57). Reporting requirements for magnetic media transfer would be similar to the current hard copy reporting requirements currently stated in Sec. 225.11; i.e., reports submitted via magnetic media would be due within 30 days after expiration of the month in which the accident/incident occurred.

FRA has initially determined that use of a public standard (i.e., National Institute of Standards and Technology XII Standard) electronic data interchange (EDI), whereby accident and incident data would be available to FRA in a short time period, is not only too expensive for the railroads to implement but also inefficient for the types of files that would be transferred to FRA. In order for FRA to effectively assess any modem-to-modem (computer-to-computer) private format EDI submission of accident and incident reports, many more railroads will need to submit their data on magnetic media. A decision on use of modem-to-modem submissions of accident/incident reports would be made once FRA gauges (a) the number of submissions by railroads willing to take part in this voluntary program and (b) the size (number of characters) of the submissions. In order to accomplish this, FRA will carefully monitor and assess all initial magnetic media submissions supplied by the railroads choosing the magnetic media option.

Computer Magnetic Media Transfer Option (Proposed Sec. 225.37(a))

In particular, FRA proposes, in new Sec. 225.37(a), to allow the railroads, subject to various conditions, the option to submit magnetic media that contain: (a) initial accident/incident reports, (b) updates or amendments to all reports previously submitted in hard copy, and (c) updates or amendments to reports initially transmitted on magnetic media. Railroads would be allowed to provide FRA with magnetic media in the form of either a magnetic tape (EBCDIC) fixed format, an ASCII diskette-fixed format, a DBF diskette, or a delimited diskette.

The magnetic media option also would allow railroads to continue to submit hard copy reports, as the current regulations require, but to update the data contained on the hard copy by way of magnetic media. Alternatively, railroads would have the option to utilize magnetic media exclusively for all initial reports and all updates and amendments to those reports. Further, all transmissions of updated or amended reports by means of magnetic media would be added to a year-to-date file created exclusively for each reporting **railroad**. This year-to-date file would include all updates and amendments on reported accidents and incidents and would be maintained by FRA.

Retention of Records (Proposed Sec. 225.27(c))

Railroads that choose to submit their data via magnetic media would

remain responsible for having on file hard copies of the reports identified in Sec. 225.21. Therefore, FRA proposes, in new Sec. 225.27(c), that each **railroad** must maintain on file, at a central location(s) designated by the **railroad**, a signed copy of both the ``Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54) and the ``Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57), as well as a copy of all other reports filed with FRA. This requirement is also meant to include a hard copy of any record submitted via magnetic media. Maintaining files at an identified central location would enable both **federal** and State inspectors, as well as authorized representatives, a means by which to verify whether the **railroad** reported a specific accident/incident or injury to FRA.

Computer Magnetic Media Transfer Requirements (Proposed Sec. 225.37(b))

FRA proposes, in new Sec. 225.37(b), to require that when a **railroad** utilizes the magnetic media option, whether to submit an initial report, or an updated or amended report, it shall submit along with the magnetic media: (a) a sworn report, as required by 49 U.S.C. 20901 (formerly contained at Sec. 1 of the Accident Reports Act, 45 U.S.C. 38), in the form of a notarized ``**Railroad** Injury and Illness Summary'' (Form FRA F 6180.55), and (b) a signed ``Batch Control Form'' for magnetic media. The requirement to submit a notarized Form FRA F 6180.55 would ensure that **railroad** reporting officials attest to the validity of the information reported to FRA in the magnetic media and would provide FRA with evidence necessary to hold those officials accountable for false reporting. The ``Batch Control Form'' for magnetic media, also signed by the **railroad's** reporting officer, would describe the type of report, number of reports, persons injured, rail damage, lost workdays, etc., for each type of accident/incident reported on the magnetic media. By signing the ``Batch Control Form,'' the **railroad** reporting official would attest that the data contained in the magnetic media agrees with the data forwarded by the railroads in Forms FRA F 6180.54, 6180.55a, and 6180.57. FRA proposes to print the ``Batch Control Form'' on the back of the ``**Railroad** Injury and Illness Summary'' (FRA Form F 6180.55). The format of the proposed ``Batch Control Form'' is set forth in Appendix 1 to this NPRM.

Computer Magnetic Media Assimilation Period (Proposed Sec. 225.37(c))

Since the magnetic media option is a fairly new concept, FRA proposes, in new Sec. 225.37(c), to require the railroads that utilize this medium to initially include the hard copy of the particular accident/incident report with the magnetic media. During this assimilation period, FRA will compare the data on hard copy reports to the data contained in the magnetic media to determine if the information reported via magnetic media is consistent and reliable. This requirement would ensure quality control and would provide FRA a measure by which to gauge accurate reporting. After a three-month period of 100-percent accuracy verification, FRA will notify the **railroad** that the hard copy is no longer necessary. Of course, this process may take longer than three months if the hard copy reports do not agree with the magnetic media submission. If the data in the hard copy is inconsistent with the data in the magnetic media, FRA may require that particular **railroad** to continue to submit hard copies until both the hard copy and the magnetic media reflect the same information. Once the data on both the hard copies and magnetic media

agree, FRA will notify the **railroad** reporting official to discontinue submitting hard copies. However, there would always remain the requirement that railroads submit a hard copy notarized Form FRA F 6180.55 as well as the signed hard copy ``Batch Control Form.''

FRA believes that providing the magnetic media transfer option for reporting accidents/incidents would ensure faster, more accurate reporting by railroads. The initial start-up cost to railroads is expected to be minimal. FRA would provide initial computer diskettes and technical advice to railroads that use the option. Moreover, railroads would be provided with the opportunity to correct or amend the hard copy reports or initial reports in magnetic media within the 30-day reporting period.

C. Reporting Definitions and Forms

FRA received a multitude of comments regarding the currently used reporting forms. In general, it was recommended that all forms be revised to reflect recent regulatory changes and new operating practices.

As mentioned previously, FRA has had open informal meetings with the AAR Committee for Uniformity in Reporting. The American Short Line **Railroad** Association (ASLRA) representing the small **railroad** industry as well as counsel for the Railway Labor Executives' Association (RLEA) were in attendance at these open meetings. These meetings detailed changes in cause codes for train accidents and expansion of the illness codes. Suggestions were also made to restructure the ``FRA Guide for Reporting Accidents/Incidents'' (``FRA Guide''). It was suggested that FRA should develop easy-to-follow directions for any new reporting requirements. Most of the changes were studied by FRA and implemented in 1992.

Below is a discussion of each reporting form followed by recommended changes to that form.

1. Form FRA F 6180.45--``Annual Summary Report of **Railroad** Injury and Illness'': Elimination of This Form and Transfer of Certain Information Blocks to Other Forms

Form FRA F 6180.45 has been used by the rail industry to report all deaths, injuries, and occupational illnesses of on-duty **railroad** employees that occurred during the calendar year. 49 CFR 225.21(f). FRA proposes to eliminate the requirement for submission of the ``Annual Summary Report of **Railroad** Injury and Illness'' (Form FRA F 6180.45) for the reasons set forth below.

The original instructions for reporting required railroads to make a ``good faith'' estimate of the number of days a worker was expected to be absent from work or on restricted duty following an injury or occupational illness. The annual report filed with the December submission was used to provide a summary total of the actual number of such days. FRA then used the reported information on individual incidents for its analyses. Because the total count of days found on the annual report cannot be assigned to individual cases, FRA found it necessary to amend its instructions several years ago to require railroads to provide an update for any case where the count of days on the report filed with FRA varied by more than ten percent from the actual count of such days.

FRA accepts updates made on magnetic media, i.e., diskettes and tapes. Several railroads provide monthly updates in conjunction with the report for the current month and must provide a final accounting by April 15 of the following year. With the exception of the column used

to identify terminations and permanent transfers, a duplicate of the breakdown of cases can be prepared by summarizing the individual cases.

Information regarding terminations or permanent transfers is currently found in column ``8'' on the annual summary report. This column lists the number of cases in column ``3'' (Total Lost Workday Cases) and column ``7'' (Non-fatal Cases Without Lost Workdays) that resulted in either the termination or the permanent transfer of the employee for reasons related to the sustained injury or occupational illness. Because FRA proposes to eliminate the requirement for submission of Form FRA F 6180.45, and since FRA deems the information under ``Terminations or Transfers'' important for accurate injury and illness data analysis, FRA proposes to move the block designated ``Terminations or Permanent Transfers'' over to block ``5v'' on the proposed ``**Railroad** Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a). Moving this data block to Form FRA F 6180.55a would enable FRA to continue to collect this relevant information while at the same time eliminating the requirement to complete the annual summary report (Form FRA F 6180.45).

For the same reasons set forth above, FRA is proposing to move the blocks that solicit information on ``establishments included in this report'' and ``average employment in reporting year'' on the annual summary report to the proposed ``Annual **Railroad** Report of Worker Hours and Casualties, by State'' (Form FRA F 6180.56).

2. Form FRA F 6180.54--``Rail Equipment Accident/Incident Report'': Limited Changes

Collisions, derailments, explosions, fires, acts of God, and other events involving the operation of standing or moving on-track equipment resulting in more than \$6,300 of reportable damage must be reported using Form FRA F 6180.54. 49 CFR 225.19(c) and 225.21(a).

Based on the comments received in response to the ANPRM, FRA proposes to make limited changes to the ``Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54). The purpose of these proposed changes is to improve FRA's accident analysis capability. The format of the proposed Form FRA F 6180.54 is set forth in Appendix 2 to this NPRM. The currently used Form is provided in Appendix 3 for comparison and reference purposes.

a. Special Study Blocks (SSB). The first proposed change would be the establishment of three new blocks on Form FRA F 6180.54, each designated as a ``Special Study Block'' (SSB) (see item ``49'' on the proposed Form). Over the years, FRA and other agencies and associations have frequently wanted to collect information on specific accident issues over a specified time period in response to particular risks of immediate safety concern. Because of the difficult and time-consuming task of revising and receiving approval for permanent changes to the reporting form, FRA has not been able to respond quickly in these situations and has had to rely on labor-intensive field surveys by regional FRA personnel and the informal cooperation of the industry.

FRA proposes to establish three SSB's for the purpose of temporarily collecting information on these issues of immediate safety concern. When one or more critical safety issues arise, FRA would notify the **railroad** reporting officers and request that they, for a specified time-frame, collect and report on the critical issues using the SSB. Upon expiration of the pre-defined time period, the SSB would not be used again until the next issues of immediate concern.

b. Reporting definitions. The proposed changes to the reporting definitions for Form FRA F 6180.54 address perceived deficiencies and inconsistencies regarding the area labelled ``PROPERTY DAMAGE'' on the

current form in blocks ``33'' and ``34.'' The inconsistencies result from a lack of clear direction to the industry on the issue of overhead and fringe expenses. Some railroads include overhead and fringe expenses in their estimates of damage, some include one and not the other, some include neither, and some may not even report the same way every time. These inconsistencies diminish the quality of the accident data and taint any analysis of that data.

FRA would like to improve the consistency of the information collected on damage costs. FRA proposes to make it clear that when estimating damage costs, the labor costs to be reported are only the direct labor costs to the **railroad**, e.g., hourly wages, transportation costs, and hotel expenses. Thus, for example, the cost of fringe benefits would be excluded when calculating direct labor costs. This clarification should result in greater uniformity in reporting among the railroads. For services performed by a contractor, the **railroad** would estimate a direct hourly labor cost by multiplying the contractor's total labor hours charged to the **railroad** by the applicable direct hourly wage rate for a **railroad** worker in that particular craft.

FRA also proposes to make it clear that overhead is to be excluded from damage costs. FRA does not wish to dictate a specific rate for overhead, but it also finds the non-uniform treatment of overhead under the current process to be unacceptable. Rather than have damage estimates that have an unknown level of overhead, FRA has decided to propose excluding overhead from the direct damage estimates.

Lastly, material costs would be calculated based upon the costs of acquiring new material, even if the **railroad** chooses to use refurbished or used material in their actual repairs.

In summary, the proposed changes in the reporting definitions would allow the industry maximum flexibility in cost accounting and management, and would not dictate set practices to restrict that flexibility, but would require enough disclosure of the practices used so that FRA could convert the information to common terms before any analysis is performed.

c. Filing of an Amended Form FRA F 6180.54. At the time the ANPRM for accident reporting was published, the FRA Guide provided that Form FRA F 6180.54 was to be amended if, after filing, it was determined that the damage estimate ``was significantly in error * * *.'' Since the term ``significantly'' was not defined in the FRA Guide at that time, railroads used varying definitions of ``significant'' differences and, as a result, submitted few updated accident reports. Because of the doubt as to the definition of the term, the majority of commenters proposed that ``significantly'' be defined as at least a ten-percent change in the estimated or actual damages submitted to FRA.

In response to the comments, the FRA Guide was changed to specifically provide that an amended report be filed only if subsequently acquired information showed the damage to be at least a ten-percent variance from the amount originally reported to FRA (see page V-2 of the FRA Guide). This change became effective January 1, 1993.

3. Form FRA F 6180.55a--``**Railroad** Injury and Illness (Continuation Sheet)'' : Numerous Changes

The ``**Railroad** Injury and Illness (Continuation Sheet)'' (Form FRA F 6180.55a) collects information about injuries, fatalities, and illnesses of **railroad** workers, trespassers, contractors, and passengers and about highway-rail grade crossing injuries and fatalities. 49 CFR 225.19(d) and 225.21(c). Only the barest of information is currently

available on Form FRA F 6180.55a: the **railroad** reporting the incident, the State in which the incident occurred, type of person injured or ill, age, type of injury or illness, what the person was doing at the time of the incident, and, for **railroad** workers, the number of workdays lost and restricted and the results of administered alcohol/drug tests. FRA does not believe the information currently requested on Form FRA F 6180.55a is sufficient for analyzing the causal factors related to injuries and illnesses. FRA thus proposes numerous changes to the Form in order to collect data that would aid in development of **railroad** injury and accident prevention programs.

The format of the proposed Form FRA F 6180.55a is set forth in Appendix 4 to this NPRM. Appendix 5, the currently used ``**Railroad** Injury and Illness (Continuation Sheet)'' is provided for comparison purposes.

a. Exposure to hazardous materials. When a **railroad** accident causes a release of hazardous materials, FRA cannot determine, using Form FRA F 6180.55a as it now stands, if any injuries are associated with the hazardous materials release. There is an increased need for information on the number of persons injured or killed due to exposure to hazardous materials. FRA thus proposes to add an additional block ``5u'' on Form FRA F 6180.55a to collect data on the number of injuries, as well as type of injury (e.g., burn, inhalation, rash), due to release and exposure to hazardous materials.

b. County/day of month/time of day. When there is an injury that is not caused by a train accident or highway-rail grade crossing accident, FRA presently cannot determine the county of the incident or the exact date of the incident since the current Form requires railroads to report only the month, year, and State. Requiring the county in which the incident occurred in block ``5d'' will assist FRA safety inspectors in determining which sites or **railroad** shops have more injuries or illnesses. Requiring the exact date, including the day of the month, in block ``5b'' and time of day in block ``5c'' will assist FRA safety inspectors in records inspection. It will also assist the **railroad** industry in determining whether more accidents occur on certain days or times of the week.

c. Gender/ethnicity. FRA proposes requiring the gender and ethnicity of the person injured or ill in an effort to help identify whether particular groups of individuals, particularly trespassers, are more susceptible than others to certain injuries and illnesses. Language barriers or unfamiliarity with road signs, especially **railroad** crossing signs, may contribute to many of the accidents that occur at highway-rail grade crossings. Submission of information on gender in block ``5h'' and ethnicity in ``5i'' would furnish FRA with the data relevant to demonstrate whether or not this is in fact the case. If the data collected in these blocks showed that particular ethnic groups were more prone to certain injuries and accidents, then FRA would attempt to identify what the exact problem is and then develop remedial programs or other appropriate policies and procedures to prevent recurrence of such injuries and accidents in the future.

d. Circumstance codes. When there is an injury that is not associated with a rail equipment accident, the only information about the incident currently collected is (i) what the person was doing at the time of the incident and (ii) the type of injury. This is not sufficient data for safety analysis. For example, if an individual received an electric shock while using portable power tools, there is no way to determine, under the current reporting system, whether the cause of the incident was defective equipment, improper use of

equipment, undesired contact with a power line or box, or some other circumstance such as stepping on a power line. FRA needs to collect ``cause'' or ``circumstance'' codes for such injuries and illnesses. FRA thus proposes to develop new codes, in addition to those currently used, to describe the cause and/or circumstance of such incidents. Appendix 6 to this NPRM provides a list of the proposed circumstance codes that is to be used when completing the ``**Railroad** Injury and Illness (Continuation Sheet).'' Specifically, these circumstance codes would be used to complete the information in blocks ``5m--Physical Act,'' ``5n--Location,'' ``5o--Event,'' ``5p--Result,'' and ``5q--Cause.'' Appendix 6 is merely a preliminary sample of the list of circumstance codes and should not be considered all-inclusive. The list of circumstance codes, once finalized, would be printed in the FRA Guide.

e. Terminations or permanent transfers. As discussed earlier in the NPRM, FRA proposes to eliminate the requirement for submission of the ``Annual Summary Report of **Railroad** Injury and Illness'' (Form FRA F 6180.45). Data on terminations and permanent transfers is presently collected on Form FRA F 6180.45. In order to continue to gather this data, FRA proposes collection of this information by the addition of block ``5v,'' entitled ``Terminations or Permanent Transfers,'' to Form FRA F 6180.55a.

f. Narrative on unusual circumstances. FRA also proposes the addition of a narrative block ``5w'' on Form FRA F 6180.55a that would allow the reporting **railroad** the opportunity to provide details (up to 250 characters) on any unusual circumstance(s) surrounding the **railroad** worker's injury or illness.

In summary, FRA proposes to amend Form FRA F 6180.55a to require railroads to:

- a. Note all injuries and illnesses that are due to the release of hazardous materials and the associated injury problem (burn, rash, inhalation, etc.);
- b. Record the county in which the incident occurred;
- c. Record the day of the month and time of day that an incident occurred;
- d. Record the gender and ethnic code for the ill or injured person;
- e. Determine the cause and circumstance of all reportable accidents and injuries, and then use the applicable new circumstance codes as set forth in Appendix 6 to this NPRM;
- f. Provide information on terminations or permanent transfers for reasons directly related to the injury or illness; and
- g. Provide additional information on unusual circumstances surrounding the worker's injury and/or illness in narrative form.

4. Form FRA F 6180.55--``**Railroad** Injury and Illness Summary'': Limited Changes

The ``**Railroad** Injury and Illness Summary'' (Form FRA F 6180.55) is used by the industry to summarize a **railroad**'s accidents/incidents for a given month. This report must be filed with FRA even when no accidents/incidents occurred during the reporting month. 49 CFR 225.21(b). FRA proposes to make limited changes to this form.

The format of the proposed Form FRA F 6180.55 is set forth in Appendix 7 to this NPRM. Appendix 8, the currently used ``**Railroad** Injury and Illness Summary,'' is provided for comparison purposes.

- a. Classifications of persons. The FRA Guide currently classifies persons as: (i) ``Employees on Duty'' (Class A), (ii) ``Employees Not on Duty'' (Class B), (iii) ``Passengers on Trains'' (Class C), (iv) ``Non-Trespassers'' (Class D), (v) ``Trespassers'' (Class E), and (vi)

``Contractor Employee'' (Class F). These ``person'' classifications are used by the reporting **railroad** for completing the ``**Railroad** Injury and Illness Summary'' (Form FRA F 6180.55) and the ``**Railroad** Injury and Illness (Continuation Sheet)'' (Form FRA F 6180.55(a)).

FRA proposes the addition of ``Non-Trespasser/Off **Railroad** Property'' (Class G) and ``Volunteer'' (Class H) to the classes of persons and to replace the terms ``Employee on Duty'' and ``Employee Not on Duty'' with ``Worker on Duty'' and ``Worker Not on Duty,'' respectively. Additionally, the definition of a ``Worker on Duty'' would be expanded to include individuals (including certain contractor employees and volunteers) who perform either (i) the operation of on-track equipment or (ii) any other safety-sensitive activity for the reporting **railroad**.

1. New classification: ``Non-Trespasser/Off **Railroad** Property'' (Class G)

Persons, other than **railroad** employees, passengers, trespassers or contractor employees, who are injured while on or adjacent to **railroad** property are currently coded as ``Non-Trespassers'' (Class D) on Form FRA F 6180.55a.

For reporting purposes, FRA would like to distinguish between Non-Trespassers injured while on **railroad** property and Non-Trespassers injured while off **railroad** property. FRA thus proposes to add a new classification of person to cover those individuals (non-trespassers) who are injured while off **railroad** property. It should be noted that an injury ``off **railroad** property'' would include an injury resulting from an event, such as a derailment or collision, that begins on **railroad** property but ends on public or private non-**railroad** property, so long as the injury is incurred while the person is physically located off **railroad** property. Similarly, if a derailment results in a release of hazardous materials onto public or private non-**railroad** property and the hazardous material injures a ``Non-Trespasser'' located on public or private non-**railroad** property, the injury should be reported as an injury to a ``Non-Trespasser/Off **Railroad** Property'' (Class G). ``Non-Trespasser/On **Railroad** Property'' (Class D) would be used to report injuries and illnesses sustained by such non-trespassers while on **railroad** property.

2. New Classifications: (i) ``Volunteer'' (Class H) and (ii) Volunteer or Contractor Employee Who Is Classified as a ``Worker on Duty'' (Class A)

``Volunteer'' (Class H) would be added to the classes of persons, for purposes of completing Sections A and B on Form FRA F 6180.55. ``Volunteer'' (Class H) would be defined to include an individual who willingly performs a service for the reporting **railroad**, who does not receive direct monetary compensation from that **railroad**, and who is not engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the reporting **railroad**. Injuries or illnesses sustained by such a volunteer would be reported on Form FRA F 6180.55a as injuries to a ``Volunteer'' (Class H).

In contrast, injuries or illnesses sustained by an individual, including a ``volunteer'' or ``contractor employee,'' who is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the **railroad**, would be reported as injuries/illnesses to a ``Worker on Duty'' (Class A).

3. ``Worker on Duty'' (Class A) and ``Worker Not on Duty'' (Class B)

``Worker on Duty'' (Class A) would be defined as an individual who receives direct monetary compensation from the **railroad** and who is engaged in either (i) the operation of on-track equipment or (ii) any

other safety-sensitive function for the **railroad**. ``Worker on Duty'' (Class A) and ``Worker Not on Duty'' (Class B) would replace the presently used classification of persons ``Employee on Duty'' (Class A) and ``Employee Not on Duty'' (Class B).

A ``Worker on Duty'' (Class A) would be subject to all of the applicable safety regulations in performance of his or her activities (e.g., drug and alcohol regulations, qualification and certification of locomotive engineers). When an individual is engaged in ``mixed service,'' i.e., performs both safety-sensitive functions and other functions, the **railroad** would report all the hours for that tour of service as ``**railroad** worker hours'' in block ``15'' on the proposed Form FRA F 6180.55; and all reportable injuries and illnesses would be reported as those to a ``Worker on Duty'' (Class A) in block ``5f'' on the proposed Form FRA F 6180.55a together with the applicable job code series of the service performed.

Section 209.303 describes ``safety-sensitive functions'' as applying to the following individuals:

(a) **Railroad** employees who are assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61-64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service;

(b) **Railroad** employees or agents who:

(1) Inspect, install, repair, or maintain track and roadbed;

(2) Inspect, repair, or maintain, locomotives, passenger cars, and freight cars;

(3) Conduct training and testing of employees when the training or testing is required by the FRA's safety regulations; or

(c) **Railroad** managers, supervisors, or agents when they:

(1) Perform the safety-sensitive functions listed in paragraphs (a) and (b) of this section;

(2) Supervise and otherwise direct the performance of the safety-sensitive functions listed in paragraphs (a) and (b) of this section; or

(3) Are in a position to direct the commission of violations of any of the requirements of parts 213 through 236 of this title.

Example 1. A volunteer operates a locomotive for an excursion **railroad**. Since operation of a locomotive clearly falls within the realm of operation of on-track equipment, the hours contributed to the **railroad** by the volunteer would be reported as ``**railroad** worker hours'' on the ``**Railroad** Injury and Illness Summary'' (Form FRA F 6180.55). Likewise, if the volunteer sustains a reportable injury during operation of the locomotive, then the incident would be reported on the ``**Railroad** Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) as an injury to a ``Worker on Duty'' (Class A), with the applicable job code series.

Example 2. A volunteer sells memorabilia at a historic **railroad**. Since selling memorabilia does not fall within the scope of either ``the operation of on-track equipment'' or ``any other safety-sensitive function,'' the hours contributed by such a volunteer would not be reported as ``**railroad** worker hours'' and thus would not be reported on Form FRA F 6180.55. When such a volunteer sustains a reportable injury, such injury, however, would be reported on Form FRA F 6180.55a as an injury to a ``Volunteer'' (Class H).

Example 3. A volunteer sells tickets for train rides on a tourist **railroad** and also clears vegetation adjacent to roadbed. Note that the hours spent clearing the vegetation are reportable on Form FRA F 6180.55 as ``**railroad** worker hours'' because, under 49 CFR 213.37,

vegetation is to be cleared from the roadbed for safe rail operations and is thus considered a safety-sensitive function. Any injury or illness sustained by the volunteer during the vegetation clearing would be classified as one to a ``Worker on Duty'' (Class A) with the applicable reporting requirements for purposes of Form FRA F 6180.55a. The hours donated selling tickets would not ordinarily be reportable and, if any reportable injury was sustained by the volunteer during the process of selling tickets, such injury would be classified as one to a ``Volunteer'' (Class H). If, however, the volunteer sells tickets and then clears vegetation during the same tour, then all hours are reportable as ``**railroad** worker hours,'' and all injuries are considered as those attributable to a ``Worker on Duty'' (Class A). Therefore, when an individual is engaged in ``mixed service,'' the **railroad** must report all the hours for that tour of service as ``**railroad** worker hours'' on Form FRA F 6180.55; and all reportable injuries and illnesses must be reported as those to a ``Worker on Duty'' (Class A) on Form FRA F 6180.55a, with the applicable job code series of the service performed.

Example 4. The employee of a contractor performs payroll as well as time-and-attendance functions for the **railroad** on **railroad** property. Such functions are not considered safety-sensitive because they are not related to the continued safety of the **railroad**. Thus, injuries sustained by this contractor performing those tasks would be reported on Form FRA F 6180.55a as those attributable to a ``Contractor Employee'' (Class F). Further, the hours contributed by this contractor would not be reported as ``**railroad** worker hours'' and thus would not be reported on Form FRA F 6180.55.

Example 5. A contractor employee inspects and replaces roller bearings for the reporting **railroad**. The hours worked by this contractor employee performing this function would be reported as ``**railroad** worker hours'' on Form FRA F 6180.55, and injuries sustained by this contractor would be reported as those to a ``Worker on Duty'' (Class A) on Form FRA F 6180.55a. Under 49 CFR 215.113, cars with defective roller bearings should not be in service, thus any activity associated with replacement of roller bearings is a safety-sensitive function qualifying as hours attributable to a ``Worker on Duty'' (Class A).

b. Batch control form. As discussed earlier in this NPRM, the ``Batch Control Form'' for magnetic media would appear on the back of Form FRA F 6180.55.

5. FRA Form F 6180.56--``Annual **Railroad** Report of Worker Hours and Casualties, by State'' (Revised Title): Limited Changes

A summary of all hours worked by **railroad** employees during the report year is made on Form FRA F 6180.56 and is included with the December submission. 49 CFR 225.21(d). FRA is proposing limited changes to this Form.

Information on ``establishments included in this report'' and ``average employment in reporting year,'' which previously appeared on Form FRA F 6180.45, would be moved to Form FRA F 6180.56 because, as discussed previously in this NPRM, FRA is proposing that Form FRA F 6180.45 be eliminated. In addition, a column reflecting a count for ``casualties'' would be added to Form FRA F 6180.56. Therefore, the title for Form FRA F 6180.56 would be revised to read ``Annual **Railroad** Report of Worker Hours and Casualties, by State.''

The format of the proposed Form FRA F 6180.56 is set forth in Appendix 9 to this NPRM. Appendix 10, the currently used ``Annual **Railroad** Report of Manhours by State'' is provided for comparison

purposes.

6. FRA Form F 6180.57--`Highway-Rail Grade Crossing Accident/Incident Report' (Revised Title): Limited Changes

Form FRA F 6180.57 collects information on accidents and incidents occurring at highway-rail grade crossings. Any impact, regardless of severity, between a **railroad** on-track equipment consist and any user of a public or private crossing site, including sidewalks and pathways, must be reported on this Form. 49 CFR 225.19(a) and 225.21(e). The information collected on this report is vital to identifying and resolving problems at highway-rail grade crossings.

Comments

FRA received several comments concerning Form FRA F 6180.57. Several commenters expressed concern over the question asked in block ``32,' which states, ``[w]as the signaled crossing warning identified in item 31 operating?' Item ``31' on the Form currently lists several types of signal devices, including active and passive devices. Confusion arises when the person completing the report identifies a passive device and then reports that it was not operating. To avoid this confusion, several commenters suggested that the question in item ``32' be amended to request information on whether the device was operating only if the device identified in item ``31' was an active device. The Form also makes a distinction between Amtrak and Autotrain in item one. Most commenters recommended elimination of this obsolete distinction. A few commenters stated that the grade-crossing report required no change at all since the information requested was adequate and not burdensome and that the Form itself was understandable.

Section Analysis and FRA Conclusions

The format of the proposed Form FRA F 6180.57 is set forth in Appendix 11 to this NPRM. Note that Appendix 12, the currently used Form FRA F 6180.57, is provided for comparison purposes. In order to collect more information on motorists involved in highway-rail grade crossing accidents, FRA proposes to amend Form FRA F 6180.57 to require information under the heading ``Motorist,' if known, on the motorist's age and gender, and whether the motorist was impaired by alcohol or drugs at the time of the accident/incident (see items ``39,' ``40,' and ``41' on the proposed Form). Additionally, under the heading ``Highway Vehicle Property Damage/Casualties' on the currently used Form, FRA is proposing to delete blocks ``43' through ``45,' which request information on the total number of occupants, and the total number of occupants killed and injured, and replace those blocks with several new ones (see items ``48' through ``54' on the proposed Form) to gather information on:

- (a) the number of highway-rail crossing users (i.e., pedestrians and vehicle occupants) killed,
- (b) the number of highway-rail grade crossing users injured,
- (c) the total number of highway-rail grade crossing users involved in the incident (including the driver),
- (d) the number of **railroad** workers killed,
- (e) the number of **railroad** workers injured,
- (f) the total number of people on the train at the time of the incident (including passengers and train crew),
- (g) the number of train passengers killed, and
- (h) the number of train passengers injured.

FRA also proposes to eliminate the distinction between Amtrak and Autotrain in item ``1' as such a distinction is obsolete. Additionally, FRA proposes to clarify the question in item ``32,' ``[w]as the signaled crossing warning working?' FRA agrees that the

ambiguity of this question has resulted in errors and problems because railroads report obvious contradictions. The proposed instructions for completing this question (item ``33'' on the proposed Form) are set forth in Appendix 13 to this NPRM.

FRA also proposes to add two new questions to the ``Highway-Rail Grade Crossing Accident/Incident Report'' to gather information on whistle bans and signal system failure. New block ``34'' asks whether a whistle ban was in effect and observed at the time of the accident/incident. New block ``35'' asks whether there was signal system failure within the last seven calendar days up to and including the day of the accident. The codes for completing both items would be included in the FRA Guide.

In addition, a new narrative block (item ``55'' on the proposed Form) allowing for up to 250 characters would be added to the form in order to gather information on unusual causes/circumstances surrounding the highway-rail grade crossing accident/incident.

7. Form FRA F 6180.78--``Notice to **Railroad** Worker Involved in Rail Equipment Accident/Incident Attributed to Worker Human Factor; Worker Statement Supplementing **Railroad** Accident Report'' (Revised Title): Limited Changes

If a **railroad** should cite an employee human factor as the primary or contributing cause of a rail equipment accident/incident, then current regulations require the reporting **railroad** to complete the ``**Railroad** Employee Human Factor Attachment'' (Form FRA F 6180.81), and attach it to the ``Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54). 49 CFR 225.12(a) and 225.21(g). Additionally, for each employee listed on Form FRA F 6180.81, the reporting **railroad** must complete part I, ``Notice to **Railroad** Employee Involved In Rail Equipment Accident/Incident Attributed to Employee Human Factor,'' on Form FRA F 6180.78, and must provide a copy of this form to the worker within 45 days after the end of the month in which the accident/incident occurred. 49 CFR 225.12(b) and 225.21(h). Upon receipt of Form FRA F 6180.78, the worker has the option of providing a statement in part II (entitled ``Employee Statement Supplementing **Railroad** Accident Report''). 49 CFR 225.12(g).

Recipients of the notice (Form FRA F 6180.78) are to include only those **railroad** workers who were the primary cause or a contributing cause of the rail equipment accident/incident. In order to minimize any confusion or misunderstanding for recipients of the notice, FRA proposes refinement of the language in the block entitled ``Notice to **Railroad** Employee'' to read as follows:

Notice to Recipient. An accident occurred on the above date which the **railroad** alleges was at least partially caused by an action, lack of action, or the physical condition of a **railroad** worker. The **railroad** is sending you this notice because it believes that you had a role, but may not necessarily be the primary or only person responsible for the accident's occurrence. The **railroad** has reported to FRA that the primary and/or major contributing cause(s) of this accident are those listed above. Other causal factors related to this event may be described in the narrative portion of the **railroad**'s report; a copy of which is attached.

You may submit a statement to FRA with a copy to this **railroad** and comment on any aspect of the **railroad**'s report. The decision whether to submit such a statement is entirely optional on your part. If you choose to do so, please see the additional notices and instructions on the reverse of this form.

Because FRA is proposing to replace ``employee'' with the term

``worker,'' the title of Form FRA F 6180.78 would be revised to read ``Notice to **Railroad** Worker Involved in Rail Equipment Accident/ Incident Attributed to Worker Human Factor; Worker Statement Supplementing **Railroad** Accident Report.'' Similarly, the title of Form FRA F 6180.81 would be revised to read ``Worker Human Factor Attachment.''

The format of the proposed Form FRA F 6180.78 is set forth in Appendix 14 to this NPRM. Note that Appendix 15, the currently used Form FRA F 6180.78, is provided for reference and comparison purposes.

D. Recordkeeping

1. Injury and Illness Recordkeeping

a. **Railroad** Worker Injury and Illness Log (Proposed Form FRA F 6180.xx and Proposed Sec. 225.25(a)). Section 225.25(a) refers to the log of injuries and occupational illnesses at and for each **railroad** establishment. It is silent as to whether an injury or illness has to be ``reportable'' to be included on the log. FRA has concluded that in order to effectively enforce **railroad** injury reporting, the log must contain all injuries and illnesses to **railroad** workers that arise from the operation of the **railroad**. Unless FRA has the opportunity to examine those injuries and illnesses deemed ``non-reportable'' as well as those deemed ``reportable'' by the **railroad**, it is difficult for FRA to determine whether a **railroad** is properly making the ``reportable'' decision.

Consequently, in order to accurately identify and review both reportable and non-reportable **railroad** injuries and illnesses, FRA is proposing to amend Sec. 225.25(a) to require that railroads maintain a log of all reportable and non-reportable (i.e., recordable) injuries and illnesses to **railroad** workers for each **railroad** establishment using a new form entitled ``**Railroad** Worker Injury and Illness Log'' (Form FRA F 6180.xx). The format of the proposed ``**Railroad** Worker Injury and Illness Log'' (Form FRA F 6180.xx) is set forth in Appendix 16 to this NPRM.

A ``recordable'' injury or illness is intended to encompass any condition, not otherwise reportable, of a **railroad** worker that is associated with an event, exposure, or activity in the work environment that causes or requires the worker to be examined or treated by a qualified health care professional. Such treatment would usually occur at a location other than the work environment. The ``**Railroad** Worker Injury and Illness Log'' would be maintained for each operational **railroad** establishment, i.e., an establishment wherein workers report to work. The proposed log contains all the information currently required under Sec. 225.25(a). Requiring railroads to log injury and illness data on the new Form would help alleviate the difficulty FRA inspectors encounter when attempting to locate injury and illness information at **railroad** establishments.

b. Updating the Log (Proposed Sec. 225.25(c)). Discrepancies in the log are the most recurring problems FRA inspectors encounter during an inspection. Many railroads fail to update the log in a timely manner, particularly with respect to lost/restricted workdays. Therefore, in order to assure that each **railroad** continuously updates the log (new Form), FRA proposes, in new Sec. 225.25(c), that each reportable and recordable (non-reportable) injury and illness be entered on the log as early as practicable, but in any event no later than seven working days after receiving information that an illness or injury has occurred. Additionally, new Sec. 225.25(d) provides that if the log is maintained

at a centralized location, but not through electronic means, a paper copy of the log that is current within 35 days of the month to which it applies must be available at the appropriate establishment. When the logs are maintained at a central location through electronic means, the records for that establishment must be available for review in a hard copy format (paper printout) within four business hours of the request. The ``**Railroad** Worker Injury and Illness Log'' would also be used to prepare Form FRA F 6180.55a and to update changes in the status of a particular case.

c. Elimination of supplementary record required under Sec. 225.25(b). FRA has found that much of the information requested in the supplementary record of injuries and illnesses pursuant to the present regulation set forth in Sec. 225.25(b) would be collected on the new ``**Railroad** Worker Injury and Illness Log'' as proposed in Sec. 225.25(a). Therefore, the requirement that each **railroad** maintain a supplementary record, as currently required under Sec. 225.25(b), would be eliminated.

d. Monthly list of injuries and illnesses (Proposed Sec. 225.25(e)). New Sec. 225.25(e) proposes that each **railroad** maintain a list of all reported injuries and illnesses for the previous month and that such list be posted in a conspicuous location at each **railroad** establishment within 30 days after expiration of the month during which the injuries and illnesses occurred. For example, the monthly list of injuries and illnesses for the month of May must be completed and posted no later than June 30th. Moreover, the monthly injury and illness list would be displayed for a minimum of 60 consecutive days so as to allow all workers at that establishment the opportunity to view the list. Given the example above, the list, if posted on June 30th, would remain posted for a minimum of 60 days, or until August 30th.

Proposed Sec. 225.25(e)(1) outlines the data that would be included in the list. New Sec. 225.25(e)(2) proposes that if no reportable injuries or illnesses were associated with an establishment, the posting shall make reference to that fact.

e. Employer notification (Proposed Sec. 225.39(a) and Copy of ``**Railroad** Worker Injury and Illness Log'' to worker (Proposed Sec. 225.39(b))). Rail labor organizations have repeatedly expressed concern that many injured workers fail to inform their employers of such injuries. By placing part of the burden for reporting on the individual **railroad** worker, FRA believes it could improve the general quality of the injury/illness reporting data. Consequently, proposed Sec. 225.39(a) would require that **railroad** workers notify their employer, in writing, that they have an injury and/or illness within seven calendar days of either incurring the injury or illness or obtaining knowledge that they incurred the injury or illness. A **railroad** worker must notify his or her employer of both reportable injuries and illnesses and non-reportable, i.e., ``recordable'' injuries and illnesses. As discussed previously in this NPRM, a ``recordable'' injury or illness is intended to encompass any condition, not otherwise reportable, of a **railroad** worker that is associated with an event, exposure, or activity in the work environment that causes or requires the worker to be examined or treated by a qualified health care professional.

Another concern is that injured workers do not have the opportunity to review and verify the information on the accident/illness report prior to submission of that report to FRA. FRA thus proposes, in new Sec. 225.39(b), the requirement that the reporting **railroad** must

provide the **railroad** worker with a copy of the completed ``**Railroad** Worker Injury and Illness Log'' (Form FRA F 6180.xx). FRA believes that the general quality of injury and illness data would improve by allowing the worker to participate in the reporting process as set forth above.

2. Derailment and Collision Recordkeeping

a. Rail Equipment Accident/Incident Log (Proposed Form FRA F 6180.xx(a) and Proposed Sec. 225.25(b)). At the present time railroads are required to maintain a log of only reportable rail equipment accidents. Information on non-reportable events can typically be found in ``unusual occurrence'' reports and ``morning reports'' that are maintained at various locations by the **railroad**. However, there is no guarantee that all of those reports are either available or complete. As a result, during routine accident/incident records inspections it is often difficult, if not impossible, to identify the events that were determined by the **railroad** to be non-reportable.

Consequently, in order to accurately identify and review both reportable and certain non-reportable rail equipment accident/incidents, FRA is proposing in new Sec. 225.25(b) that railroads maintain a log similar to the injury/illness log that railroads are now required to maintain pursuant to Sec. 225.25(a) using a new form entitled ``Rail Equipment Accident/Incident Log'' (Form FRA F 6180.xx(a)) (attached as Appendix 17). A ``recordable'' rail equipment accident/incident would encompass any event not otherwise reportable involving the operation of on-track equipment that causes physical damage to either the on-track equipment or the track upon which such equipment was operated and that requires the removal or repair of rail equipment before any rail operations over the track can continue. A ``recordable'' rail equipment accident/incident, if not tended to, would thus disrupt **railroad** service. A scrape or indentation to rail equipment, however, would not make a rail equipment/accident ``recordable'' if routine rail operations over the track can continue without such equipment being repaired or removed from service.

b. Property Damage Estimate Worksheet and Record (Proposed Form FRA F 6180.xx(b)). Appendix 18, entitled ``Property Damage Estimate Worksheet and Record'' (Form FRA F 6180.xx(b)) is a proposed worksheet that reporting railroads would use to determine costs associated with damage to (i) on-track equipment, (ii) signal equipment, (iii) track, and (iv) track structures and roadbed, as well as (v) costs of equipment rental and operation. These five cost categories would be totaled to derive the total accident cost. If the total accident cost meets or exceeds the reporting threshold, then the total cost for ``damage to on-track equipment'' in ``Part A'' would be transferred to ``block 25 (Equipment Damage)'' on the proposed ``Rail Equipment Accident/Incident Log'' (Form FRA F 6180.xx(a)). Likewise, the total cost for ``damage to signal equipment,'' ``damage to track,'' and ``damage to track structures and roadbed'' in ``Parts B, C, and D'' respectively, would be totaled and this amount would be transferred to ``block 26 (Track, Signal, Way & Structure Damage)'' on the ``Rail Equipment Accident/Incident Log.''

FRA proposes to print the ``Property Damage Estimate Worksheet and Record'' (Form FRA F 6180.xx(b)) on back of the ``Rail Equipment Accident/Incident Log'' (Form FRA F 6180.XX(a)).

E. Quarterly Accident Reports

FRA solicited comments in the ANPRM as to whether a quarterly

report would result in more accurate accident data being filed with FRA. There remains a problem in accurately reporting both equipment accidents and personal injuries. Railroads submit detailed information on a monthly basis, and in some instances, only 30 to 60 days have elapsed since the date of the accident/incident until the **railroad's** certified report is filed with FRA. This does not always provide sufficient time for the railroads to gather and verify statistics on repair costs and lost workdays.

These detailed monthly reports provide the data for FRA's annual Accident/Incident Bulletin. This annual Bulletin summarizes all reportable **railroad** accidents/incidents that occurred during the previous calendar year. Monthly reports are, to some extent, based on estimates rather than actual figures; therefore, the Accident/Incident Bulletin also reflects estimated data.

In order to remedy this problem and ensure more consistently accurate statistics, FRA considered requiring quarterly accident reports covering the previous quarter's occurrences. This would provide at least 90 days (and up to 180 days depending on when the accident occurred within the quarter) during which the **railroad** could obtain actual repair data and lost workday information.

Comments

Some commenters suggested that the monthly reports could serve as estimates, while a quarterly report could contain the actual costs associated with accidents. Others recommended that the monthly report be eliminated and argued that quarterly reports containing actual costs would reduce inaccuracies. It was further suggested that quarterly reports should be required to contain a detailed report for incidents where damages exceeded \$50,000.

Some commenters believed that a requirement for quarterly reporting would not remedy any problems. They recommended that the monthly reporting requirement should be retained and that railroads should provide quarterly updating of lost workdays, restricted days, equipment damage, track damage, and other changes, via magnetic media. Others suggested that the information contained in monthly reports together with the submission of the end-of-year report is sufficient and that the addition of a quarterly report requirement would create additional work without a concomitant increase in valuable information.

Finally, several railroads recommended that the deadline for submission of the annual report (Form FRA F 6180.45) be moved from January 31 to March 31. They believed this modification would enable the railroads to reconcile their actual figures with the estimated figures resulting in more accurate information.

Analysis and FRA Conclusions

FRA has concluded that substitution of quarterly reporting for monthly submission would result in very little additional accuracy of figures on repair costs and lost workdays. There would continue to be estimates involved due to the lack of completion of repairs or treatment, particularly the closer the incident to the submission date. Therefore, the discrepancies between monthly figures and the annual summary figures would continue to exist.

FRA agrees that the addition of a quarterly report would create additional work without a concomitant increase in valuable information. FRA believes that the revisions to the Forms, as proposed in this NPRM, would provide reliable and consistent injury and accident data for safety analysis.

F. Reporting Threshold

Since 1975, FRA has adjusted the reporting threshold every two years based on the prices of a market basket of **railroad** labor and materials. The purpose of these adjustments has been to maintain comparability between different years of data by having the threshold keep pace with accident costs so that each year the same groups of accidents are included in the ``reportable'' accident counts.

The current system is flawed for several reasons. First, the adjustment for the upcoming two years is made based on price levels for the previous year. This may be a good method for identifying what that previous year's threshold should have been, but is not necessarily a good method for setting the next two years' threshold. Second, the threshold adjustment has been performed only every two years instead of every year, so the comparability of annual statistics within the two-year set is less than perfect. Third, the market basket used is not necessarily representative of the labor and materials consumed in the aftermath of accidents ``at the margin''--those with damages just above or just below the reporting threshold. Thus, changes in the prices of the market basket may not be a good indicator of changes in the costs associated with accidents at the margin. Fourth, the data used to calculate the threshold adjustment (the market basket prices) is collected directly from the **railroad** industry itself, rather than public sources, which may raise the suspicion that the data may be self-serving.

Congress has given FRA some direction for modifying the procedure for calculating the threshold in 49 U.S.C. 20901(b) (formerly contained at section 15(a) of the Rail Safety Enforcement and Review Act (Pub. L. 102-365)): ``[i]n establishing or changing a monetary threshold for the reporting of a **railroad** accident or incident, * * * damage cost calculations'' shall be based ``only on publicly available information obtained from (A) the Bureau of Labor Statistics; or (B) another department, agency or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency, or instrumentality.'' Congress allows an exception to this general rule only if the necessary data is not available from the sources described, and only after public notice and comment.

FRA solicited comments in the ANPRM on the feasibility of a two-tier reporting system in which virtually all rail equipment accidents/incidents are reported to FRA, as now, but in which those involving a substantially higher damage threshold (for example, \$50,000 or \$100,000), would trigger requirements for quicker or more detailed reports.

Comments

Many commenters favored the concept of two-tier reporting for rail equipment accidents and incidents and recommended that the minimum reportable threshold be raised to \$10,000 or \$20,000 to eliminate less serious accidents from reporting requirements. A few railroads recommended that the second tier begin at \$50,000 and that the lower threshold be raised in increments of \$1,000 on a yearly basis. One **railroad** recommended that a third tier be established for reporting in greater detail those accidents that result in \$100,000 or more in damage. A few commenters did not recommend adoption of the two-tier reporting system because they believed that such a system would require more details on those accidents that fell within the second tier and thus would create a more burdensome reporting system.

Analysis and FRA Conclusions

After examining and assessing the feasibility of all comments received in response to the ANPRM, FRA has concluded that a two-tier reporting system is not warranted at this time. Adjustment of the reporting threshold, as described below, would provide FRA with the data it needs to effectively evaluate the true status of **railroad** safety.

Threshold Reporting

FRA proposes to obtain in October of 1994 the latest Producer Price Index ('`PPI'') and National Employment Hours and Earnings figures from the Department of Labor's Bureau of Labor Statistics ('`BLS''). At that time, the latest final figures, as opposed to preliminary figures, would be available to cover the period through June 1994. In October of each subsequent year, FRA would obtain the latest 12 months of final BLS figures and calculate the threshold for the upcoming year, publishing the new figure in the **Federal** Register prior to its implementation. FRA hopes to issue a final rulemaking on the new threshold effective as early as January 1, 1995.

Equation

As mentioned previously, FRA proposes to use data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), LABSTAT Series Reports for calculating the threshold. The equation used to adjust the reporting threshold would be based on the average hourly earnings reported for Class 1 railroads and an overall **railroad** equipment cost index determined by the BLS. The two factors would be weighted equally.

For the wage component, FRA would use LABSTAT Series Report, Standard Industrial Classification (SIC) code 4011 for Class 1 **Railroad** Average Hourly Earnings. For the equipment component, FRA would use LABSTAT Series Report, Producer Price Index (PPI) Series 144 for **Railroad** Equipment. In the month of October of each year, FRA would obtain from the BLS, finalized cost data covering the twelve-month period ending with the month of June. The monthly figures would then be totaled and divided by twelve to produce annual averages. The wage data would be reported in terms of dollars earned per hour, while the equipment cost data would be indexed to a base year of 1982.

The procedure for adjusting the reporting threshold is shown in the formula below. The wage component appears as a fractional change relative to the prior year, while the equipment component is a difference of two percentages which must be divided by 100 to present it in a consistent fractional form. After performing the calculation, the result would be rounded to the nearest \$100.

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Where:

Wn = New average hourly wage rate (\$)

Wp = Prior average hourly wage rate (\$)

En = New equipment average PPI value

Ep = Prior equipment average PPI value

FRA does not have data on the specific breakdown of **railroad** accident damage repairs, thus the proposed weightings are subject to adjustment should commenters choose to offer information that could provide the basis for refining the proposed formula. The current weightings represent the general assumption that damage repair costs, at levels at or near the threshold, are split approximately evenly

between labor and materials.

G. Miscellaneous Amendments

Many of the proposed changes in the rule text are self-explanatory or have been elucidated in the previous portion of the preamble. This segment of the NPRM outlines a number of proposed amendments to various sections of the rule text.

1. Applicability (Sec. 225.3)

Section 225.3 defines the applicability of the accident reporting regulations. FRA's delegated regulatory authority under 49 U.S.C. 20101 et seq. (formerly contained in the **Federal Railroad** Safety Act of 1970 (the ``Act'') (45 U.S.C. 431 et seq.) permits FRA to amend the current applicability sections of its various regulations so as to contract the populations of railroads covered by a particular set of regulations or to expand them to the full extent of that authority.

FRA, as the Secretary's delegate, has had jurisdiction over all ``railroads'' since the Act was enacted. There is a very wide range of operations that could be considered tourist railroads under the broadest reading of the term ``**railroad.**'' Tourist railroads have written several letters to members of Congress questioning the basis for FRA's assertion of jurisdiction. Additionally, in 1992, FRA received a petition from a scenic railway requesting the need for legislative and regulatory action for new regulations tailored specifically to the tourist rail industry.

In an effort to clarify the proper extent of the exercise of FRA's jurisdiction, FRA settled on several principles that will be used as current guidelines. FRA will exercise jurisdiction over all tourist operations, whether or not they operate over the general **railroad** system, except those that are (1) less than 24 inches in gage and/or (2) insular.

To determine insularity, FRA looks at various criteria that measure the likelihood that a **railroad's** operations might affect a member of the public. FRA has concluded that a tourist operation is insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public (except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser) would be affected by the operation. An operation is not considered insular if one or more of the following exists on its line: (a) a public highway-rail crossing that is in use; (b) an at-grade rail crossing that is in use; (c) a bridge over a public road or waters used for commercial navigation; or (d) a common corridor with a **railroad**, i.e., its operations are within 30 feet of those of any **railroad**. Thus, the mere fact that a tourist operation is not connected to the general system does not make it insular under these criteria. While these criteria tend to sort out the insular theme parks and museums, a need to do case-by-case analysis in certain close situations still exists.

Therefore, FRA has concluded that part 225 will apply to non-general system, non-insular tourist operations confined to an installation that is not part of the general system (i.e., it is a stand-alone with no freight traffic but has one or more features that preclude its being considered insular).

2. Definitions (Sec. 225.5)

Section 225.5 lists definitions applicable to part 225. Section 225.5 would be reorganized so that definitions would appear in alphabetical order and without paragraph designations. The definitions

of ``accident/incident,'' ``employee human factor,'' ``medical treatment,'' ``occupational illness,'' and ``**railroad**'' would be revised, and the definitions of ``day away from work,'' ``day of restricted work activity,'' ``establishment,'' ``first aid treatment,'' ``FRA representative,'' ``non-train incident,'' ``person,'' ``qualified health care professional,'' ``volunteer,'' ``work environment,'' ``worker on duty,'' and ``work related'' would be added. The definitions of ``lost workdays'' and ``restriction of work or motion'' would be deleted.

a. Revised definitions. ``Accident/Incident'' as currently defined, is the term used to describe the entire list of reportable events including fatalities, injuries and illnesses, collisions, derailments, and similar accidents involving the operation of on-track equipment causing reportable damage above an established threshold as well as impacts between **railroad** on-track equipment and highway users at grade crossings.

A ``train accident'' is reported only when reportable damages exceed the reporting threshold. In contrast, an ``incident'' is an event that results in a reportable casualty, but does not cause reportable damage above the threshold established for train accidents. In order to minimize any confusion concerning the ``accident/incident'' distinction and to bring about consistency between the FRA Guide and other rail safety regulations, FRA proposes to define ``train accident,'' ``train incident,'' and ``non-train incident'' separately.

Thus, a ``train accident'' would be defined to include any collision, derailment, fire, explosion, act of God, or other event involving operation of **railroad** on-track equipment (standing or moving) that results in reportable damages greater than the current reporting threshold to **railroad** on-track equipment, signals, track, track structures, and roadbed.

A ``train incident'' would be defined as an event involving the movement of on-track equipment that results in a reportable casualty but does not cause reportable damage above the threshold established for train accidents.

In the definition of ``employee human factor,'' the reference to ``cause code 506'' would be removed as obsolete and replaced by the term ``train accident cause codes pertaining to non-**railroad** workers.'' Additionally, the term ``employee human factor'' would be changed to ``worker human factor.''

The definition of ``medical treatment'' would be revised to include any medical care or treatment beyond ``first aid'' regardless of who provided such treatment. Medical treatment does not include diagnostic procedures, such as X-rays or drawing blood samples.

In the definition of ``occupational illness,'' the reference to ``his or her **railroad** employment'' would be replaced with the phrase ``worker's **railroad** employment.''

``**Railroad**'' would be defined as it is in 49 U.S.C. 20102 (formerly contained in the **Federal Railroad** Safety Act of 1970 (45 U.S.C. 431(e)).

b. Proposed new definitions. A ``day away from work'' would be defined as any day subsequent to the day of the injury or diagnosis of occupational illness that a **railroad** worker does not report to work for reasons associated with his or her condition.

A ``day of restricted work activity'' would be defined as any day that a worker is restricted (as defined below) in his or her job following the day of the injury or diagnosis of occupational illness.

An ``establishment'' would be defined as a physical location where

business is conducted or where services or operations are performed.

``First aid treatment'' would be defined as being limited to simple procedures used to treat minor conditions, such as abrasions, cuts, bruises, or splinters. First aid treatment is typically confined to a single treatment and does not require special skills or procedures.

``FRA representative'' would be defined to include the Associate Administrator for Safety, FRA; the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter); the Chief Counsel, FRA; or the Chief Counsel's delegate.

A ``non-train incident'' would be defined as an event that results in a reportable casualty, but does not involve the movement of on-track equipment nor cause reportable damage above the threshold established for train accidents.

In the definition of ``person,'' independent contractors and their employees and workers, as well as volunteers would be added to the current list of entities.

A ``qualified health care professional'' would be defined to include a professional operating within the scope of his or her license, registration, or certification. For example, an otolaryngologist is qualified to diagnose a case of noise-induced hearing loss and identify potential causal factors, but may not be qualified to diagnose a case of silicosis.

A ``volunteer'' would be defined to include individuals who willingly perform a service for the reporting **railroad**, who do not receive direct monetary compensation from that **railroad** and who are not involved in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the reporting **railroad** as described in Sec. 209.303.

``Work environment'' would be defined as the physical location, equipment, materials processed or used, and activities of a worker associated with his or her work, whether on or off the **railroad's** property.

``Work related'' would be defined to include any incident, activity, exposure, etc. occurring within the work environment.

A ``worker on duty'' would be defined as an individual who receives direct monetary compensation from the **railroad** and who is engaged in either (i) the operation of on-track equipment or (ii) with any other safety-sensitive function as described in Sec. 209.303.

3. Public Examination and Use of Reports (Sec. 225.7)

In Sec. 225.7(a), reference to ``Executive Director'' would be removed as obsolete, and would be replaced with ``Office of Safety.'' Thus, written requests for a copy of any report would be addressed to the Office of Safety at FRA.

In Sec. 225.7(b), ``Accident Reports Act'' would replace the erroneous reference to ``Accidents Reports Act.''

4. Reporting of Accidents/Incidents (Sec. 225.11)

Section 225.11 would be revised to reflect that reports identified in Sec. 225.19 submitted via magnetic media would be due within 30 days after the end of the month in which the accident/incident occurred.

5. Primary Groups of Accidents/Incidents (Sec. 225.19)

Proposed revisions to Sec. 225.19(a) and (b) would remove reference to the current threshold of ``\$6,300'' and would replace it with the phrase ``current reporting threshold of (insert current reporting threshold).''

In addition, Sec. 225.19(d), which identifies the third group of accidents (``death, injury or occupational illness'') that are to be reported on Form FRA F 6180.55a, would be simplified to read as

follows: ``Each event arising from the operation of a **railroad**, must be reported on Form FRA F 6180.55a, if it results in (1) death; (2) injury to any person that requires medical treatment; (3) injury to a **railroad** worker that results in (i) a day away from work; (ii) restricted work activity or job transfer; or (iii) loss of consciousness; or (4) occupational illness of a **railroad** worker.

6. Forms (Sec. 225.21)

In addition to the revisions to the titles of the Forms listed in Sec. 225.21, reference to ``Class I and II line-haul and terminal and switching railroads'' in Sec. 225.21(b), would be removed as obsolete, and replaced with ``All railroads subject to this part.''

Because FRA is proposing deletion of the annual summary report (as discussed previously in this NPRM), reference to Form FRA F 6180.45 (entitled ``Annual Summary Report of **Railroad** Injury and Illness'') in Sec. 225.25(f) would be removed.

The proposed logs/forms discussed in new Secs. 225.25(a) and (b) would be added to the list of forms as Sec. 225.21(h), (Form FRA F 6180.XX--**Railroad** Worker Injury and Illness Log), and as Sec. 225.21(i), (Form FRA F 6180.XX(a)--Rail Equipment Accident/ Incident Log). Additionally, the ``Property Damage Estimate Worksheet and Record'' (Form FRA F 6180.xx(b)) would be added to the list of forms as Sec. 225.21(j).

7. Penalties (Sec. 225.29)

Section 225.29 identifies the penalties FRA may impose upon any person that violates any requirement of this part. Any person who violates any requirement of this part or causes the violation of any such requirement of this part will be subject to a civil penalty of at least \$500 and not more than \$10,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury, a penalty not to exceed \$20,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying reports required by these regulations. Appendix A provides the revisions to the schedule of penalties under part 225.

8. Access to Records (Proposed Sec. 225.41)

FRA inspectors frequently encounter reluctance from the railroads when examining and photocopying claims department records, particularly **railroad** worker medical records. New Sec. 225.41 would provide FRA representatives, or any representative of a State participating in investigative and surveillance activities under the **Federal railroad** safety laws and regulations, access to all records, logs, and supplementary records related to (a) rail-equipments accidents/incidents, including collisions and derailments; (b) highway-rail grade crossing accidents/incidents; and (c) death, injuries, and illnesses, including claims and medical records, for examination and photocopying (at no expense to the representative) in a reasonable manner during normal business hours. Further, a penalty has been proposed for each instance the **railroad** denies a representative access to any record, log, and supplementary record identified above.

9. Schedule of Penalties (Proposed Revision to Sec. 225.33)

Appendix B would be redesignated as Appendix A and would be revised to add penalties for proposed Sec. 225.33, ``Failure to adhere to Internal Control Plan,'' proposed Sec. 225.39, ``Failure to Inform Employer of Injury and/or Illness'' and ``Failure to Provide Worker with a Copy of Form FRA F 6180.XX(a),'' and proposed Sec. 225.41,

``Access to Records.'' Additionally, the dual entries under each of paragraphs (a), (b), and (d) of Sec. 225.12 would be coded ``(1)'' and ``(2),'' respectively, to allow the proper entry of data into FRA's enforcement database. Further, the penalties for violations of Sec. 225.12(a) code (2) would be increased, in light of the 1992 amendments to the **Federal Railroad** Safety Act which increased the minimum penalty and settlement to \$500.

10. Revision of Title 49, United States Code

On July 5, 1994, all **Federal railroad** safety laws were simultaneously repealed, reenacted without substantive change, and recodified as positive law in Title 49 of the U.S. Code by Public Law 103-272. Due to this change, part 225 would be amended throughout to reference the newly codified provisions.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rulemaking has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; February 26, 1979). This NPRM also had been reviewed under Executive Order 12866 and is considered ``nonsignificant'' under that Order.

Although the rulemaking is ``nonsignificant,'' FRA nonetheless has prepared a regulatory evaluation addressing the economic impact of the proposed rule. The regulatory evaluation estimates the economic costs and consequences of this proposed rule as well as its anticipated benefits and impacts. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours in Room 8201, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires a review of proposed rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. There is no direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed rule contains proposed information collection requirements. FRA will submit these information collection requirements to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The sections that contain the new and/or revised information collection requirements and the estimated time to fulfill each requirement are set forth in the table

below. Note that for easy reference, when an information collection requirement has been revised, the old burden estimate appears in parentheses beside the new burden.

Proposed section	Brief description	New burden (estimated)	Previous burden
225.19(c), 225.21(b).	Form FRA F 6180.54-- Rail Equipment Accident/Incident Report.	2 hrs.....	(2 hrs.)
225.19(d), 225.21(c).	Form FRA F 6180.55a-- Railroad Injury and Illness Summary (Continuation Sheet).	10 min.....	(5 min.)
225.21(b).....	Form FRA F 6180.55-- Railroad Injury and Illness Summary.	45 min.....	(45 min.)
225.21(d).....	Form FRA F 6180.56-- Annual Railroad Report of Manhours and Casualties, by State.	3 hrs.....	(3 hrs.)
225.19(b), 225.21(e).	Form FRA F 6180.57-- Highway-Rail Grade Crossing Accident/ Incident Report.	4 hrs.....	(3 hrs.)
225.21(g).....	Form FRA F 6180.78-- Notice to Railroad Worker Involved in Rail Equipment Accident/Incident Attributed to Worker Human Factor; Worker Statement Supplementing Railroad Accident Report.	15 min.....	(15 min.)
225.21(h), 225.25(a).	Form FRA F 6180.xx-- Railroad Worker Injury and Illness Log.	30 min.....	(22 min.)
225.21(i), 225.25(b).	Form FRA F 6180.xx(a)--Rail Equipment Accident/ Incident Log.	30 min.....	(New)
225.21(j), 225.25(b).	Form FRA F 6180.xx-- Property Damage Estimate Worksheet and Record.	45 min.....	(New)
225.25(e).....	Monthly List of Injuries and Illnesses.	5 hrs.....	(Class I RR)
		30 min. (RR with 400,000 manhours or	

		more excluding Class I RR).	
		10 min. (RR with less than 400,000 manhours).	
		NOTE: Old burden estimate was 3 hours annually per railroad .	
225.33(a).....	Internal Control Plans.	85 hrs. (New-- Class I RR).	
		64 hrs. (New--RR with 400,000 manhours or more excluding Class I RR).	
		18 hrs. (New--RR with less than 400,000 manhours).	
225.37(b).....	FRA F Form 6180.xx-- Batch Control Form.	10 min.....	(New)
225.39(a).....	Employer Notification	15 min.....	(New)
225.39(b).....	Copy of Railroad Worker Injury and Illness Log to Worker.	5 min.....	(New)

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to Gloria D. Swanson, **Federal Railroad Administration**, 400 Seventh Street, SW., Washington DC 20590; and to the FRA Desk Officer, Regulatory Policy Branch (OMB No. 2130-0500), Office of Management and Budget, New Executive Office Bldg., 726 Jackson Place, NW., Washington, DC 20530. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

These revised and/or new information collection requirements together with the unchanged information collection requirements contained in 49 CFR part 225 will be submitted to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this proposed rule will not have any effect on the quality of the

environment.

Federalism Implications

This proposed rule should not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 225

Railroad accident reporting rules, **Railroad** safety.

Request for Public Comment

FRA proposes to amend part 225 of title 49, Code of **Federal** Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rule and the analysis advanced in the explanation of the proposed rule, whether through written submissions or participation at the public hearings, or both. FRA may make changes in the final rule based on comments received in response to this notice.

The Proposed Rule

In consideration of the foregoing, FRA amends part 225, Title 49, Code of **Federal** Regulations to read as follows:

PART 225--[AMENDED]

1. The authority citation for part 225 is amended to read as follows:

Authority: 49 U.S.C. 20901, 20102, 322(a), 21302, 21304, 20901, formerly codified at 45 U.S.C. 38, 42, 43, and 43a; 49 U.S.C. 20102-20103, 20107, 20108, 20110, 20131-20143, 21301-21302, 21304, 21311, 24902, formerly codified at 45 U.S.C. 431, 437, and 438; 49 U.S.C. 103, 49 U.S.C. 20901-20902, 21302, formerly codified at 49 App. U.S.C. 1655(e)(1)(K); Pub. L. 103-272 and 49 CFR 1.49 (c), (g), and (m).

2. By revising Sec. 225.3 to read as follows:

Sec. 225.3 Applicability.

This part applies to all railroads except--

(a) A **railroad** that operates freight trains only on track inside an installation which is not part of the general **railroad** system of transportation or an owner of **railroad** track that owns no track except for track that is inside an installation that is not part of the general **railroad** system of transportation.

(b) Rail mass transit operations in an urban area that are not connected with the general **railroad** system of transportation.

(c) A **railroad** that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation

that is insular. An operation will not be considered insular if one or more of the following exists on its line:

(1) A public highway-rail grade crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a **railroad**, i.e., its operations are within 30 feet of those of any **railroad**.

3. By revising Sec. 225.5 to read as follows:

Sec. 225.5 Definitions.

As used in this part--

Arising from the operation of a **railroad** includes all activities of a **railroad** that are related to the performance of its rail transportation business.

Day away from work is any day subsequent to the day of the injury or diagnosis of occupational illness that a **railroad** worker does not report to work for reasons associated with his or her condition.

Day of restricted work activity is any day that a worker is restricted (as defined below) in his or her job following the day of the injury or diagnosis of occupational illness.

Establishment means a single physical location where business is conducted or where services or operations are performed, for example, an operating division, general office, and major installation, such as a locomotive or car repair or construction facility.

First aid treatment means treatment limited to simple procedures used to treat minor conditions, such as abrasions, cuts, bruises, and splinters. First aid treatment is typically confined to a single treatment and does not require special skills or procedures.

FRA representative means the Associate Administrator for Safety, FRA; the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter); the Chief Counsel, FRA; or the Chief Counsel's delegate.

Highway-rail grade crossing means a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more **railroad** tracks at grade.

Joint operations means rail operations conducted on a track used jointly or in common by two or more railroads subject to this part or operation of a train, locomotive, car, or other on-track equipment by one **railroad** over the track of another **railroad**.

Medical treatment includes 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.

Non-train incident means an event that results in a reportable casualty, but does not involve the movement of on-track equipment nor cause reportable damage above the threshold established for train accidents.

Occupational illness means any abnormal condition or disorder of a **railroad** worker, other than one resulting from injury, caused by environmental factors associated with the worker's **railroad** employment, including, but not limited to, acute or chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion, or direct contact.

Person includes all categories of entities covered under 1 U.S.C.

1, including, but not limited to, a **railroad**; any manager, supervisor, official, or other employee or agent of a **railroad**; any owner, manufacturer, lessor, or lessee of **railroad** equipment, track, or facilities; any independent contractor providing goods or services to a **railroad**; any volunteer providing goods or services to a **railroad**; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Qualified health care professional is a health care professional operating within the scope of his or her license, registration, or certification. For example, an otolaryngologist is qualified to diagnose a case of noise-induced hearing loss and identify potential causal factors, but may not be qualified to diagnose a case of silicosis.

Railroad means any form of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul **railroad** passenger service in a metropolitan or suburban area, as well as any commuter **railroad** service that was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general **railroad** system of transportation.

Railroad worker human factor includes any of the accident causes signified by the train accident cause codes listed under ``Train Operation--Human Factors'' in the current ``FRA Guide for Preparing Accident/Incident Reports,'' except for those train accident cause codes pertaining to non-**railroad** workers.

Train accident means any collision, derailment, fire, explosion, act of God, or other event involving operation of **railroad** on-track equipment (standing or moving) that results in damages greater than the current reporting threshold to **railroad** on-track equipment, signals, track, track structures, and roadbed.

Train incident means any event involving the movement of on-track equipment that results in a reportable casualty but does not cause reportable damage above the current threshold established for train accidents.

Volunteer includes individuals who willingly perform some sort of service for the reporting **railroad** without receiving direct monetary compensation from that **railroad** and are not engaged in either (1) the operation of on-track equipment or (2) any other rail safety-sensitive function for the reporting **railroad** as described in Sec. 209.303 of this chapter.

Work environment is the physical location, equipment, materials processed or used, and activities of a **railroad** worker associated with his or her work, whether on or off the **railroad**'s property.

Work related means related to any incident, activity, exposure, or the like occurring within the work environment.

Worker on duty includes individuals who receive monetary compensation from the reporting **railroad**, and who are engaged in either (1) the operation of on-track equipment or (2) any other rail safety-sensitive function for the reporting **railroad** as described in Sec. 209.303.

4. By removing ``Executive Director'' in the third sentence in Sec. 225.7(a) and adding in lieu thereof ``Office of Safety'' and by removing ``Accidents Reports Act'' in the first sentence in Sec. 225.7(b) and adding in lieu thereof ``Accident Reports Act''.

5. By revising the second sentence in Sec. 225.11 to read as follows:

Sec. 225.11 Reporting of accidents/incidents.

* * * The report must be made on the forms prescribed in Sec. 225.21 in hard copy or, alternatively, by means of magnetic media, as prescribed in Sec. 225.37, and must be submitted within 30 days after expiration of the month during which the accidents/incidents occurred. * * *

6. By revising the second sentence in Sec. 225.19(b), by revising the first, third, and fifth sentences of Sec. 225.19(c), and by revising Sec. 225.19(d) to read as follows:

* * * * *

(b) * * * In addition, whenever a highway-rail grade crossing accident/incident results in damages greater than the current reporting threshold to **railroad** on-track equipment, signals, track, track structures, or roadbed, that accident/incident must be reported to the FRA on Form FRA F 6180.54. * * *

(c) * * * Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of **railroad** on-track equipment, signals, track, track equipment (standing or moving) that result in damages greater than the current reporting threshold to **railroad** on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * * If the property of more than one **railroad** is involved in an accident/incident, the reporting threshold is calculated by including the damages suffered by all of the railroads involved. * * * The reporting threshold will be reviewed periodically and will be adjusted every year.

(d) Group III--Death, injury, or occupational illness. Each event arising from the operation of a **railroad**, must be reported on Form FRA F 6180.55a, if it results in:

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

* * * * *

7. By revising the fourth sentence in Sec. 225.21(b), by removing Sec. 225.21(f) and redesignating Secs. 225.21(g) and 225.21(h) as Secs. 225.21(f) and 225.21(g), respectively and by adding new Secs. 225.21(h), (i), and (j) to read as follows:

* * * * *

(b) * * * All railroads subject to this part, must show on this form the total number of locomotive train miles, motor train miles, and yard switching miles run during the month, computed in accordance with Train-Mile, Locomotive-Mile, Car-Mile, and Yard Switching accounts in the Uniform System of Accounts for **Railroad** Companies prescribed by the Interstate Commerce Commission in 49 CFR part 1200.

* * * * *

(h) Form FRA F 6180.xx--**Railroad** Worker Injury and Illness Log. Form FRA F 6180.xx shall be used by the railroads to record all reportable and recordable injuries and illnesses to **railroad** workers

for each establishment. This form shall be completed and maintained in accordance with the requirements set forth in Sec. 225.25.

(i) Form FRA F 6180.xx(a)--Rail Equipment Accident/Incident Log. Form FRA F 6180.xx(a) shall be used by the railroads to record all reportable and recordable rail equipment accidents/incidents for each establishment. This form shall be completed and maintained in accordance with the requirements set forth in Sec. 225.25.

(j) Form FRA F 6180.xx(b)--Property Damage Estimate Worksheet and Record. Form FRA F 6180.xx(b) shall be used by the railroads to determine the total accident cost for any rail equipment accident/incident. This form shall be completed in accordance with instructions on the form and in the current ``FRA Guide for Preparing Accident/ Incident Reports'' and shall be maintained in accordance with the requirements set forth in Sec. 225.25.

8. By revising Sec. 225.25 to read as follows:

Sec. 225.25 Recordkeeping.

(a) Each **railroad** shall maintain the **Railroad** Worker Injury and Illness Log (Form FRA F 6180.xx) of all reportable and recordable injuries and illnesses to **railroad** workers for each **railroad** establishment, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

(b) Each **railroad** shall maintain the Rail Equipment Accident/ Incident Log (Form FRA F 6180.xx(a)) and Property Damage Estimate Worksheet and Record (Form FRA F 6180.xx(b)) of reportable and recordable collisions, derailments, fires, explosions, acts of God, or other events involving the operation of **railroad** on-track equipment, signals, track, or track equipment (standing or moving) that result in damages to **railroad** on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and all other costs for repairs or replacement in kind for each **railroad** establishment.

(c) Each **railroad** must enter each reportable and recordable injury and illness and each reportable and recordable rail equipment accident/incident on the appropriate log, as required by paragraphs (a) and (b) of this section, as early as practicable but no later than seven working days after receiving information that an injury or illness or rail equipment accident/incident has occurred.

(d) The logs required under paragraphs (a) and (b) of this section may be maintained at the local establishment or alternatively, at a centralized location. If the logs are maintained at a centralized location, but not through electronic means, a paper copy of the logs that is current within 35 days of the month to which it applies must be available for that establishment. If the logs are maintained at a centralized location through electronic means, then the logs for that establishment must be available for review in a hard copy format within four business hours of FRA's request.

(e) A listing of all reported injuries and occupational illnesses for the previous month shall be posted in a conspicuous location at each **railroad** establishment within 30 days after expiration of the month during which the injuries and illnesses occurred. This listing shall be posted in a conspicuous location so that it may be observed by workers at that establishment and shall remain continuously displayed for at least 60 consecutive days. Incidents reported for workers at that establishment shall be displayed in date sequence.

- (1) The listing shall contain the following information:
- (i) Name and address of the establishment;
 - (ii) Calendar year of the cases being displayed;
 - (iii) Incident number used to report case;
 - (iv) Date of injury or illness;
 - (v) Location of incident;
 - (vi) Regular job title of worker injured or ill;
 - (vii) Description of the injury/condition;
 - (viii) Number of days absent from work at time of posting;
 - (ix) Number of days of work restriction at time of posting;
 - (x) Date of death, if worker died;
 - (xi) Annual average number of **railroad** workers reporting to this establishment;
 - (xii) Name, title, phone number, and signature of preparer; and
 - (xiii) Date of report.

(2) When there were no reportable injuries or occupational illnesses associated with an establishment, the posting shall make reference to this fact.

9. By revising the first sentence in Sec. 225.27(a) and by adding new Sec. 225.27(c) as follows:

Sec. 225.27 Retention of records.

(a) Each **railroad** must retain all logs, and listings, required by Sec. 225.25 for at least 5 years after the end of the calendar year to which they relate. * * *

* * * * *

(c) Each **railroad** must identify one or more central locations where all reports filed under Sec. 225.21 are maintained and available for photocopying as addressed in Sec. 225.41.

10. By removing ``\$250'' in the first sentence in Sec. 225.29 and adding in lieu thereof ``\$500''.

11. By adding new Sec. 225.33 as follows:

Sec. 225.33 Internal Control Plans.

(a) Each **railroad** must maintain a written Internal Control Plan that shall include, at a minimum, each of the following components:

(1) A brief description of the **railroad** organization, including identification of (i) all components that regularly come into possession of information pertinent to the preparation of reports under this part (e.g., medical, claims, and legal departments; operating, mechanical, and track structures departments; payroll, accounting, and personnel departments); (ii) the name and title of each **railroad** reporting officer; (iii) the name and title of each manager of such components, by component; and (iv) all officers to whom managers of such components are responsible, by component.

(2) Identification (categorically or individually) of all positions within the components identified in paragraph (a)(1) of this section whose incumbents have access to such information and responsibility for transferring the information to the **railroad** reporting officer.

(3) Procedures for timely, periodic transfer of information to the **railroad** reporting officer from each component identified in paragraph (a)(1) of this section, including transfer of updated or corrected information, and notification that a new claim has been opened by a

railroad worker.

(4) Specification of the **railroad** officer responsible for auditing the performance of the reporting function, a statement of the frequency (not less than once per calendar year) with which audits are conducted, and a description of the place where the most recent audit report may be found for inspection and photocopying.

(5) Identification of any computerized databases necessary or useful in gathering or verifying data required to be reported under this part, the fields within such databases that are necessary or useful for this purpose, and the officers and workers responsible for maintaining or accessing this data for purposes of this part.

(6) A description of the method by which all pertinent officers and workers of the **railroad** having responsibility for information required to be reported are apprised of their responsibilities, including any training necessary to make such officers and workers aware of the duty of the **railroad** to report the information in question.

(7) A procedure for resolving, within the **railroad**, whether conditions or events of claimed or marginal reportability are properly reportable.

(8) Procedures and assignment of responsibility for development and accurate reporting of normalizing statistics (train miles, work hours).

(b) Each **railroad** must make a reasonable and conscientious effort to adhere to the Plan.

12. By adding new Sec. 225.37 as follows:

Sec. 225.37 Computer magnetic media transfer.

(a) A **railroad** has the option of submitting the following reports, updates, and amendments by way of magnetic media (computer diskette or magnetic tape): the Rail Equipment Accident/Incident Report (Form FRA F 6180.54), the **Railroad** Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a), and the Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57).

(b) Each **railroad** utilizing the magnetic media option shall submit the following:

(1) the computer diskette or magnetic tape;

(2) a batch control form, signed by the **railroad**'s reporting officer, as prescribed in the ``FRA Guide for Preparing Accident/Incident Reports''; and

(3) a notarized hard copy of the **Railroad** Injury and Illness Summary (Form FRA F 6180.55), signed by the **railroad**'s reporting officer.

(c) In addition to fulfilling the requirements stated in paragraph (b) of this section, the **railroad** must also submit the hard copy report(s) for each accident/incident it reports by means of magnetic media during an initial three-month assimilation period. The three-month assimilation period will begin whenever the magnetic media and hard copies of the report are in total agreement, as determined in writing by FRA.

13. By adding new Sec. 225.39 to read as follows:

Sec. 225.39 Employer Notification and Copy of ``**Railroad** Worker Injury and Illness Log'' to Worker.

(a) Each **railroad** worker must notify his or her employer, in

writing, of any reportable or recordable injury or illness within seven calendar days of either incurring that reportable or recordable injury or illness or obtaining knowledge of incurring such injury or illness.

(b) Each **railroad** shall provide the worker whose injury or illness is reported on the **Railroad** Worker Injury and Illness Log, Form FRA F 6180.XX, with a copy of such log within seven calendar days of completing the log.

14. By adding new Sec. 225.41 to read as follows:

Sec. 225.41 Access to records.

All reports, logs, plans, and records (including relevant claims and medical records) provided for in this part shall, upon request, be made available to any representative of the **Federal Railroad Administration** or of a State agency participating in investigative and surveillance activities under Part 212 of this chapter, for examination and photocopying in a reasonable manner during normal business hours at a central location(s) identified pursuant to Sec. 225.27(c). Such representatives shall display proper credentials when requested.

15. By removing Appendix A.

16. By redesignating Appendix B as Appendix A and by revising newly redesignated Appendix A to read as follows:

Appendix A to Part 225.--Schedule of Civil Penalties

Section (including computer code, if applicable)	Violation	Willful violation
225.9 Telephonic reports of certain accidents/incidents.....	\$1,000	\$2,000
225.11 Reports of accidents/incidents.....	2,500	5,000
225.12(a): Failure to file Railroad Worker Human Factor Attachment properly:		
(1) Worker identified.....	2,500	5,000
(2) No worker identified.....	1,000	2,000
225.12(b):		
(1) Failure to notify worker properly.....	2,500	5,000
(2) Notification of worker not involved in accident.....	2,500	5,000
225.12(c): Failure of employing railroad to provide requested information properly.....	1,000	2,000
225.12(d):		
(1) Failure to revise report when identity becomes known.....	2,500	5,000
(2) Failure to notify after late identification.....	2,500	5,000
225.12(f)(1): Submission of notice if worker dies as result of the reported accident.....	2,500	5,000
225.12(g): Willfully false accident statement by worker.....		5,000
225.13 Late reports.....	2,500	5,000
225.17(d) Alcohol or drug involvement.....	2,500	5,000

225.23	Joint operations.....	(\)\)	(\)\)
225.25	Recordkeeping.....	2,500	5,000
225.27	Retention of records.....	1,000	2,000
225.33	Failure to adhere to Internal Control Plan.....	2,500	5,000
225.39:			
	(1) Failure to inform employer of injury/ illness.....		1,000
	(2) Failure to provide worker with a copy of Form FRA F 6180.XX(a).....	2,500	5,000
225.41	Access to records.....	2,500	5,000

\1\A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. A failure to comply with Sec. 225.23 constitutes a violation of Sec. 225.11. For purposes of Secs. 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) A missing or incomplete log entry for a particular worker's injury or illness; or (2) a missing or incomplete log record for a particular rail equipment accident or incident. Each day a violation continues is a separate offense.

17. In addition to the amendments set forth above, in 49 CFR part 225 remove the word ``rail-highway'' and add, in its place, the word ``highway-rail'' in the following places:

- (a) Secs. 225.5(b) (1) and (h);
- (b) Sec. 225.12(b)(2)(iii);
- (c) Sec. 225.13;
- (d) Sec. 225.15(a);
- (e) Secs. 225.19 (a) and (b); and
- (f) Sec. 225.21(e);

18. In part 225, all references to ``an employee'' are revised to read ``a worker''.

19. In part 225, all references to ``employee'' and ``employees'' are revised to read ``worker'' and ``workers'' respectively.

Issued in Washington, DC, on August 5, 1994.

Jolene M. Molitoris,
Federal Railroad Administrator.

Note: Appendices 1 through 18 are published for informational purposes only and will not be codified in the Code of **Federal** Regulations.

BILLING CODE 4910-06-P

<GRAPHIC><TIF1>TP19AU94.001

<GRAPHIC><TIF2>TP19AU94.002

<GRAPHIC><TIF3>TP19AU94.003

<GRAPHIC><TIF4>TP19AU94.004

<GRAPHIC><TIF5>TP19AU94.005

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Proposed Circumstance Codes--Physical Act Engaged in at Time of Incident

Examples:

Physical Act = Adjusting Coupler/Drawbar = 01

Physical Act = Standing = 60

Code List

- 01 Adjusting Coupler/Drawbar
- 02 Applying/Removing Anchors
- 03 Bending
- 04 Carrying
- 05 Chaining/Cabling Car/Locomotive
- 06 Cleaning Car
- 07 Cleaning Engine
- 08 Cleaning (Other)
- 09 Climbing
- 10 Coupling/Uncoupling Air Hoses
- 11 Coupling/Uncoupling Steam Hoses/Electric Cables
- 12 Crawling Under
- 13 Crossing
- 14 Cutting Brush
- 15 Cutting Rail
- 16 Cutting (Other)
- 17 Digging
- 18 Driving (Use for Motorized Vehicles Only)
- 19 Fueling
- 20 Getting Off
- 21 Getting On
- 22 Handling Material (General)
- 23 Handling Poles
- 24 Handling Rail
- 25 Handling Ties
- 26 Handling Tie Plates
- 27 Handling Wheels/Trucks
- 28 Handling (Other)
- 29 Horseplay
- 30 Inspecting Car
- 31 Inspecting Train
- 32 Inspecting (Other)
- 33 Jumping
- 34 Laying Material
- 35 Lifting Equipment
- 36 Lifting Material
- 37 Nipping Ties
- 38 Opening/Closing Door
- 39 Opening/Closing Window
- 40 Operating Derail

- 41 Operating Hand Brake
- 42 Operating Machinery (Except Power Tool)
- 43 Operating Power Tool
- 44 Operating Switch
- 45 Operating (Other)
- 46 Passing Signals
- 47 Performing Rerailing
- 48 Performing Maintenance (General)
- 49 Performing (Other)
- 50 Pulling
- 51 Pulling Pin Lifter/Operating Uncoupling Lever
- 52 Pulling (Other)
- 53 Pushing
- 54 Resting
- 55 Riding In/On
- 56 Running
- 57 Sitting
- 58 Sleeping
- 59 Spiking
- 60 Standing
- 61 Using Fusee
- 62 Using Hand Tool
- 63 Using Jack
- 64 Using Other Equipment
- 65 Walking
- 66 Welding
- 99 Act Not Otherwise Classified

Proposed Location of Person

Examples:

Location = Between Cars = 10
Location = Ladder = 13

Code List

- 01 On-Track Equipment in Service
 - 01 Between Cars/Locomotive
 - 02 Bunk/Outfit Car
 - 03 Caboose
 - 04 Engine-2 Locomotive
 - 05 Freight Car
 - 06 Maintenance-of-Way On-Track Equipment
 - 07 Passenger Car (Train Only)
- 10 Office Buildings, Locomotive Facilities, Car Repair Facilities,
Yard Offices (Inside or Outside)
 - 10 Between Cars/Locomotives
 - 11 Chair
 - 12 Elevator
 - 13 Ladder (Not on a Car or Locomotive)
 - 14 On Car
 - 15 On Locomotive
 - 16 Parking Lot
 - 17 Platform/Ramp
 - 18 Stairs
 - 19 Under Car

- 19a Under Locomotive
- 20 **Railroad** Yards and Right of Way
 - 20 Beside Track
 - 21 Between Rails
 - 22 Between Tracks
 - 23 Bridge/Trestle
 - 24 Excavation
 - 25 Kubota
 - 26 Track Structure
 - 27 Tunnel
- 30 **Railroad** Elevated Structures
 - 30 Pole
 - 31 Scaffold
 - 32 Tower
- 40 Specialized Operations
 - 40 Container on Flat Car/Trailer on Flat Car
 - 41 Ship/Boat/Barge
- 60 Highway Vehicles
 - 60 Company Automobile
 - 61 Company Truck
 - 62 Company Van
 - 63 Leased Automobile
 - 64 Personal Automobile
 - 65 Taxi
- 90 Location Not Otherwise Classified
 - 90 Off **Railroad** Property
 - 91 On **Railroad** Property

Proposed Unusual Event

(Initial or Outside Occurrence)

Examples:

Cause = slack action = 32
 Cause = hard coupling = 17

Code List

- 01 Animal Bite
- 02 Assaulted by Worker
- 03 Assaulted by Non-worker
- 04 Cave-in
- 05 Close Clearance
- 06 Clothing Caught In
- 07 Collision
- 08 Defective Equipment
- 09 Derailment
- 10 Electrical Shock/Flash
- 11 Emergency Application Air Brakes
- 12 Explosion/Detonation (One-time sudden event)
- 13 Fire/Violent Rupture
- 14 Hair Caught In
- 15 Hand Caught In
- 16 Harassed
- 17 Hard Coupling
- 18 High Wind

- 19 Highway Grade Crossing Incident (When casualty resulted from HGX accident)
- 20 Inadequate Ventilation
- 21 Insect Bite
- 22 Lightning
- 23 Noise (Sustained long-term)
- 24 Not Work-related
- 25 Object, Falling
- 26 Object, Thrown
- 27 Obstruction Incident
- 28 Oil/Grease on Surface
- 29 Other Slippery Substance on Surface
- 30 Other (Environmental conditions)
- 31 Overturned
- 32 Slack Action
- 33 Snow/Ice
- 34 Sudden Stop/Start
- 35 Tornado
- 36 Train/Track Motor Car Collision (Not auto and train at crossing)
- 37 Unexpected Movement
- 38 Vandalism
- 98 Event Not Otherwise Classified
- 99 None

Proposed Result of the Occurrence

Examples:

Result = struck and run over = 27
Result = slipped = 22

Code List

- 01 Aggravation of Old Injury
- 02 Caught Between Equipment
- 03 Caught Between Material
- 04 Caught Between Shifted Lading
- 05 Caught in Machinery
- 06 Caught in Switch
- 07 Contact (Electrical, with)
- 08 Emotional Stress
- 09 Exertion
- 10 Exposure (to heat, cold extremes, noise, etc.)
- 11 Fell Against
- 12 Fell From
- 13 Fell Into
- 14 Fell Onto
- 15 Fell and Run Over
- 16 Fell Through
- 17 Inhalation
- 18 Irritation
- 19 Lost Balance
- 20 Rolling Equipment
- 21 Shocked
- 22 Slipped
- 23 Slipped and Fell
- 24 Splinter

- 25 Stepped On/In
- 26 Struck Against Equipment
- 27 Struck and Run Over
- 28 Struck By Equipment
- 29 Struck By Falling Object
- 30 Struck By Flying Object
- 31 Struck By Material
- 32 Struck By On-Track Equipment
- 33 Struck By Stationary Object
- 34 Struck By Suspended Object
- 35 Struck By Thrown Object
- 36 Struck By Tool While Using
- 37 Struck By (Other)
- 38 Stumbled
- 39 Thrown Against
- 40 Thrown From
- 41 Tripped
- 42 Tripped and Fell
- 43 Twisted

Proposed Primary Cause of the Injury/Illness

Examples:

Primary Cause = Physical Condition of Person = 11
Primary Cause = Defective Equipment = 02

Code List

- 01 Actions of Another Person (other than **railroad** worker)
- 02 Defective Equipment
- 03 Employee/Worker's Attitude
- 04 Environmental Conditions Within Buildings
- 05 Environmental Conditions Outside of Buildings
- 06 Environmental Conditions on Rolling Stock
- 07 Impairment Due to Drugs or Alcohol
- 08 Inexperience With the Work Practice
- 09 Personal Protective Equipment Not Available
- 10 Personal Protective Equipment Not Worn
- 11 Physical Condition of Person (hearing, vision, etc.)
- 12 Rule Violation or Actions of Another Person (other than **railroad** worker)
- 13 Rule Violation by This Person (other than **railroad** worker)
- 14 Rule Violation or Action by Another Worker
- 15 Rule Violation by This Worker
- 99 Undetermined

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<GRAPHIC><TIF6>TP19AU94.006

<GRAPHIC><TIF7>TP19AU94.007

<GRAPHIC><TIF8>TP19AU94.008

<GRAPHIC><TIF9>TP19AU94.009

<GRAPHIC><TIF10>TP19AU94.010

<GRAPHIC><TIF11>TP19AU94.011

BILLING CODE 4910-06-C

``Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57)''

Instructions for Proposed Item 33

Only if Types 1-6, Item 32, are indicated, mark here the status of warning devices at the crossing at the time of the accident:

1. Provided minimum 20-second warning.
2. Alleged warning time greater than 60 seconds.
3. Alleged warning time less than 20 seconds.
4. Alleged no warning.
5. Confirmed warning time greater than 60 seconds.
6. Confirmed warning time less than 20 seconds.
7. Confirmed no warning.

If status code 5, 6, or 7 was entered, also enter a letter code explanation from the list below:

- A. Insulated rail vehicle.
- B. Storm/lightning damage.
- C. Vandalism.
- D. No power/batteries dead.
- E. Devices down for repair.
- F. Devices out of service.
- G. Warning time greater than 60 seconds attributed to accident-involved train stopping short of the crossing, but within track circuit limits, while warning devices remain continuously active with no other in-motion train present.
- H. Warning time greater than 60 seconds attributed to track circuit failure (e.g., insulated rail joint or rail bonding failure, track or ballast fouled, etc.).4
- J. Warning time greater than 60 seconds attributed to other train/equipment within track circuit limits.
- K. Warning time less than 20 seconds attributed to signals timing out before train's arrival at the crossing/island circuit.
- L. Warning time less than 20 seconds attributed to train operating counter to track circuit design direction.
- M. Warning time less than 20 seconds attributed to train speed in excess of track circuit's design speed.
- N. Warning time less than 20 seconds attributed to signal system's failure to detect train approach.
- P. Warning time less than 20 seconds attributed to violation of special train operating instructions.
- R. No warning attributed to signal system's failure to detect the train.
- S. Other cause(s).

