DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA Docket No. RAR–4, Notice No. 13]

RIN 2130–AA58

Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is amending the railroad accident reporting regulations in several ways. First, railroads are required to adopt internal control procedures to ensure accurate reporting of accidents, casualties, injuries, illnesses and highway-rail grade crossing accidents. Second, railroads are allowed the option to submit, update, and amend accident, casualty, and highway-rail accident reports through transfer of information on computer diskettes, magnetic tapes, or electronically over telephone lines. Third, the accident and injury reporting forms, including definitions, are amended to allow for the collection of additional safety information. Fourth, injury and illness, as well as derailment and collision, recordkeeping requirements are amended to require the recordation of reportable and accountable, *i.e.*, nonreportable, illnesses and injuries as well as the recordation of reportable and accountable rail equipment accidents and incidents. Finally, the method for calculation of the accident reporting monetary threshold is amended to allow for use of publicly available data and statistics. The purpose of the rule is to enhance the quality of information FRA collects pertaining to rail equipment accidents and incidents, as well as illnesses, injuries and casualties to railroad employees, passengers and other persons on railroad property.

EFFECTIVE DATE: The rule is effective January 1, 1997.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–501–4863 or 202–366–0543); or Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., 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 requires information about the conditions of the nation's railroads to set safety standards, to enforce those standards, 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. FRA also uses railroad accident, injury and illness data to determine if new regulations are needed or if current regulations are in need of revision. 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.

Section 225.19 of the regulations 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 that meets the stated criteria for each category must be reported to FRA as required under 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.

B. General Accounting Office Study on Accident Reporting to FRA

During the late 1980s, Congress, increasingly concerned with railroad safety, 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 in April 1989 (GAO/RCED–89–109) that raised important questions about the quality of railroad compliance with FRA's accident reporting regulations. GAO found that there were 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.

C. Advance Notice of Proposed Rulemaking on Accident Reporting

In response to the GAO audit, FRA published an advance notice of proposed rulemaking (ANPRM) on March 14, 1990 (55 FR 9469) soliciting comments and suggestions from the public regarding methods for improving FRA's injury and accident reporting system and its governing regulations. 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.

D. Notice of Proposed Rulemaking on Accident Reporting

FRA published a notice of proposed rulemaking (NPRM) on accident reporting on August 19, 1994 (59 FR

42880), and conducted a series of public hearings to obtain the industry's views and comments on specific issues addressed in the NPRM. Public hearings were held in Washington, D.C. on October 5–6, 1994; in Kansas City, Missouri on October 19, 1994; and in Portland, Oregon on November 3, 1994. FRA examined the issues and interests involved and made a preliminary inquiry among the hearing participants to determine whether additional hearings or regulatory meetings could be successful in narrowing areas of disagreement and exploring possible accommodations. Most participants expressed interest in continuing the rulemaking process by holding additional or supplementary regulatory meetings, roundtables or workshops. After further deliberation, FRA decided that an informal public regulatory conference would prove advantageous in the development of the accident reporting regulations.

E. Public Regulatory Conference

In accordance with a notice published on December 27, 1994 (59 FR 66501), FRA held an informal public regulatory conference on January 30–February 2, 1995, in Washington, D.C. to further discuss issues related to its NPRM on railroad accident reporting. In accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the public regulatory conference was a continuation of the accident reporting rulemaking proceeding. The format of the discussions was informal and employed a topical, interactive approach. Conference participants offered various alternative approaches in response to the specific proposals set forth in the NPRM. The AAR and The American Short Line Railroad Association (ASLRA) requested that they be allowed to address specific topics by the existing comment deadline of March 10, 1995, and that such comments be incorporated into a second or supplemental NPRM. FRA believed that a decision as to whether or not to issue a supplemental NPRM was premature at this point in the rulemaking proceeding. FRA therefore requested, through publication in the Federal Register (60 FR 9001), that written comments addressing all issues in the NPRM be filed no later than March 10, 1995, as specified in FRA's December 27, 1994, notice. After thorough review and analysis of the submitted comments, FRA stated that it would decide whether a supplemental NPRM was warranted for this rulemaking and would issue a decision in the Federal Register. FRA also stated that the decision whether or not to issue a supplemental NPRM would be based primarily on the extent that written comments addressed constructive, creative solutions to the subjects and issues involved in the NPRM.

F. Supplemental Notice of Proposed Rulemaking

FRA published a notice on July 3, 1995 (60 FR 34498), which stated that a second or supplemental NPRM would be issued for the rulemaking to revise the railroad accident reporting regulations. The decision to issue a supplemental NPRM was made pursuant to requests advanced by some participants at the public regulatory conference held on January 30–February 2, 1995, in Washington, D.C., during which specific topics were discussed related to the accident reporting NPRM. It was anticipated that the supplemental NPRM would address whether or not a meaningful performance standard for accident reporting could be devised for use by the railroads. It was also anticipated that the supplemental NPRM would discuss revised documentation requirements for the proposed Internal Control Plan; calculation of damage costs for rail equipment accidents and incidents for the determination of whether the threshold is met for FRA reporting purposes; and the proposed definition for the classification ''Worker on Duty'' as it pertains to ''Contractors'' and ''Volunteers'' performing safety-sensitive functions.

FRA reviewed thoroughly the written comments received in response to the NPRM, the transcripts of the public hearings, as well as the transcripts of the public regulatory conference. This review revealed that a supplemental NPRM was not warranted. By notice published in the Federal Register on January 24, 1996 (61 FR 1892), FRA announced that it would not issue a supplemental NPRM in the rulemaking; instead, the final rule would deal fully with major alternative resolutions for the issues in the rulemaking, explaining clearly why they were endorsed or rejected in favor of the option selected.

Summary of Public Comments

FRA received comments from the AAR, ASLRA, the Brotherhood of Railway Carmen (BRC), the Brotherhood of Maintenance of Way Employes (BMWE), the Brotherhood of Locomotive Engineers (BLE), the Brotherhood of Railroad Signalmen (BRS), individual members of some of these associations, the State of California's Public Utilities Commission, the Contra Costa County Health Services Department of the State of California, the American Trucking Associations (ATA), the Tourist Railroad Association, the Association of Railway Museums, Inc. (ARM), the Illinois Railway Museum, the American Public Transit Association (APTA), the National Railroad Construction and Maintenance Association, Inc. (NRC), and individual members of the public.

Section-by-Section Analysis

A. Section 225.33 Internal Control Plan

Proposed Rule

FRA proposed that each railroad must prepare and maintain an Internal Control Plan (ICP) that required institution of proper internal control procedures for reporting. FRA believed that requiring an ICP 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's reporting officer. The proposed rule required that the reporting office have access to all pertinent claims records, including medical records and payroll records, and be notified by claims and medical departments of each new case/claim opened by a railroad worker. The proposal also stated that identification of offices and responsible railroad officers would aid FRA in identification of procedural weaknesses in reporting. FRA proposed periodical review of the ICP by FRA in order to detect procedural deficiencies. If FRA should find the railroad to be in noncompliance, the proposed regulation allowed FRA to cite that railroad for violating procedural requirements of the ICP when inaccurate reporting was found and the cause could be attributed to internal control weakness.

Comments

This proposal created significant controversy among the railroad representatives who participated in the proceeding. Most railroad commenters did not support mandated internal control procedures. Railroad representatives stated that they did not want to change or modify any internal control plan, if such a plan was already in place, to fit the ICP as proposed by FRA. Railroad members also believed that the plan was too detailed and, as such, would require constant updating in order to accommodate normal changes such as personnel changes and reorganizations. These members also perceived that the ICP would result in additional, unjust monetary penalties for steps missed in the ICP that led to

inaccurate accident reporting. As proposed, if a reporting violation was found, then the railroad might be fined for both the reporting violation and any departure from the ICP which resulted in the reporting violation. Instead of an ICP mandated by FRA, AAR and its constituent members suggested that FRA adopt a performance standard for determining and measuring a railroad's compliance with reporting requirements.

ASLRA and its members stated that the performance standard proposed by AAR should be adopted for Class I railroads, but that such a standard would be impracticable for the short line industry since each short line's sample size would be too small to make such an approach meaningful. ASLRA supported the concept of development and maintenance of an ICP by other than Class I railroads. However, ASLRA believed that elements of the ICP should be determined by each railroad to suit its unique needs and circumstances and that such elements should not be mandated by FRA.

Rail labor associations and other commenters opposed adoption of the performance standard proposed by AAR in lieu of specific ICP's because they believed that such a standard could not ensure reliable, accurate and uniform reporting data on an industry-wide basis. These commenters proposed adoption of uniform, formalized ICP's with some minor modifications to FRA's proposed ICP to allow for more flexibility in its actual requirements.

Most railroads did not support FRA's provision authorizing civil penalties for inaccurate reporting due to internal control weakness. Most other commenters favored an enforcement system in which monetary penalties might be issued against the railroad for inaccurate reporting resulting from noncompliance with procedures outlined in the ICP.

AAR's Proposed Performance Standard

AAR proposed that FRA adopt a performance standard for determining whether a railroad complied with reporting requirements. The performance standard proposed by AAR was based on methods selected from a set of statistical procedures developed for use by the U.S. Military (MIL–STD–105E, 1989) as means of statistically controlling process quality in a stable environment. Specifically, AAR proposed that:

(a) Each railroad would maintain a written ICP which would achieve a compliance rate of 99 percent for the accident and incident reports required under § 225.11. This written ICP would be developed internally by each reporting railroad.

(b) The compliance rate would be based on a reporting period covering a closed twelve-month calendar year.

(c) The compliance rate would be determined by comparing accident and incident reports filed with FRA against the railroad-maintained data base which contains information about employee injuries, employee illnesses, as well as property damage, so that determinations about reportability may be reasonably made.

(d) Audits conducted to determine the compliance rate would conform to the following procedures:

(1) Each railroad would provide FRA a list of both reportable and nonreportable accidents/incidents and illnesses/injuries for a specified calendar year and would make accident/incident and injury/illness reports available for inspection by FRA;

(2) FRA would take a random sample from the list of these reports. Sampling procedures would conform to the military performance standard. Railroads would have to achieve a compliance rate of 99 percent; for example, one rejection out of a random sample of 100 cases. A rejection would be defined as a railroad's failure to report a reportable occurrence; and

(3) Audits would be conducted by FRA personnel, and audit results would be provided in writing to the railroad.

(e) If a railroad failed to achieve a compliance rate of 99 percent, then the railroad would be subject to a monetary penalty and would have to submit an action plan within 30 days to FRA explaining what corrective action had been taken to achieve 99-percent compliance.

(f) If a railroad failed to achieve a compliance rate of 99 percent in two consecutive audits, then the railroad would be subject to another monetary penalty; would be required to submit an action plan within 30 days to FRA explaining what corrective action had been taken to achieve 99-percent compliance; and would be subject to a follow-up audit after 30 days from submission of the action plan to FRA. Further, the railroad might be directed to file with FRA an ICP detailing internal reporting processes and procedures.

FRA had an independent statistical firm examine and review the military performance standard to determine whether it was feasible to apply the standard to measure compliance with accident/incident reporting requirements. A summary of this report has been included as Attachment 1. This firm concluded that the military performance standard invoked by AAR (MIL-STD–105E, 1989) was based on sound statistical methods; however, several problems existed with the standard's application to accident reporting. A brief description of the deficiencies follows:

(a) Reporting by a railroad is not a stable process. AAR's reporting process has not been fully defined or tested in the real world; and its stability has not been demonstrated. AAR assumed that reporting would be a stable process and applied procedures appropriate only for stable processes.

(b) AAR's sample-inclusion criterion is flawed. The denominator for nonreportable accidents and incidents can be inflated to ensure that the 99-percent compliance rate is achieved. The AAR formula for determining a railroad's compliance rate is:

compliance rate = 1.00 − (number of failures to report reportable cases/(total number of reportable cases + total number of nonreportable cases)).

For determining sample size, AAR's sampling plan combines reportable and nonreportable accidents and incidents. For counting failures or rejections, AAR's sampling plan recognizes only the reporting errors in nonreportable accidents and incidents, but not the reporting errors related to reportable accidents and incidents. In this scenario, therefore, increasing the number of nonreportable cases would improve the compliance rate for that reporting railroad.

(c) AAR overstated the compliance rate. Using any reasonable definition of ''compliance rate,'' the AAR sampling plan, *at best*, achieves only a 97-percent compliance rate. See Attachment 1 for further discussion.

(d) AAR's performance standard lacks requirements for maintaining written ICPs. The Military Standard includes a general requirement for developing written procedures (such as an ICP), which FRA could require to be made available to its inspectors for review. AAR's performance standard does not permit FRA to direct a railroad to develop an ICP until after the railroad fails to demonstrate 99-percent compliance in two consecutive audits. Without written procedures, *i.e.*, an ICP, it is not possible to guarantee full implementation of management decisions by line employees.

(e) AAR's performance standard does not implement the full set of procedures prescribed in the Military Standard. Specifically, AAR's performance standard fails to implement ''switching procedures,'' which are needed when consecutive lots or batches are rejected. ''Switching procedures'' are a set of

rules that tell users when to adopt ''normal,'' ''tightened,'' or ''reduced'' inspection. AAR's performance standard lacks switching procedures and rules, and AAR has not determined the compliance rate bias resulting from this lack.

Even if the AAR's performance standard were revised to deal with some of these problems, it would still fail to meet the main objective of the ICP, which is to improve the accuracy of the submitted accident and injury reports. Hypothetically, a railroad could meet an improved version of the AAR's performance standard by reporting all of the reportable accidents and incidents, but the submitted reports could be riddled with inaccuracies that the ICP would have prevented. For example, in the case where an employee is injured, the submitted ''Railroad Injury and Illness (Continuation Sheet)'' (Form FRA F 6180.55a) may state that the employee missed five days from work because the employee's initial medical report indicated that he or she missed five work days. However, in actuality, the employee missed 20 work days for his or her injury. In this example, the failure to provide the reporting officer with the correct payroll ''time and attendance'' information resulted in an inaccurate filed report, with no harm to the railroad's compliance rate under even a modified AAR performance standard.

Final Rule

Section 225.33 Internal Control Plan

FRA believes that an Internal Control Plan (ICP) best provides the procedures necessary to ensure that complete, reliable, and accurate data is obtained, maintained, and disclosed by the railroads. FRA investigations have repeatedly found instances in which departments within the same railroad failed to provide to the railroad reporting officer information critical to determining reportability or information necessary for filing an accurate and complete report. Thus, the final rule adopts the proposed ICP with modifications recommended by various parties in this proceeding.

The ICP is not a ''command and control'' system; it is a type of performance standard which ensures the accuracy of a process and, in this case, the process is accident/incident reporting. This ICP requirement does not tell the railroad how to develop the internal control procedures; how the lines of communication should be established; the type of correspondence to be used; the forms that should be used; which executives in the company are responsible for reportability decisions; nor the periods of time necessary for information exchange. The ICP is a performance standard that dictates the necessity for communication within each railroad to ensure that proper reporting will be accomplished. The changes to the proposed ICP allow each railroad, including the short lines, the flexibility to design an ICP suitable to the needs and circumstances of the particular railroad. The ICP, therefore, may vary in size from one that is a few pages for smaller railroads and short lines, to one of considerable size for the major carriers.

In general, the ICP challenges the railroads to develop a Total Quality Management (TQM) system to ensure that there are no errors in reporting. ''No errors'' means that all reportable accidents and incidents are reported to the FRA and that each report is accurately completed prior to submission to FRA, in other words, a ''zero tolerance'' policy with respect to inaccurate reporting. TQM focuses on continuous and incremental improvements of process performance. In contrast, acceptance testing, as in AAR's proposed performance standard, judges acceptability of process output by applying predefined criteria. AAR's proposed performance standard suggests, therefore, that some defects in reporting are permissible.

The ICP also addresses intimidation and harassment of any person calculated to prevent or discourage such person from either receiving proper medical treatment for an injury or illness or from reporting an accident, incident, illness or injury. FRA has become increasingly aware that many railroad employees fail to disclose their injuries to the railroad or fail to accept reportable treatment from a physician because they wish to avoid potential harassment from management or possible discipline that is sometimes associated with the reporting of such injuries. FRA is also aware that in some instances supervisory personnel and mid-level managers are urged to engage in practices which may undermine or circumvent the reporting of injuries and illnesses. Railroads must remain proactive in accurate reporting of all reportable accidents, injuries and illnesses, and must not engage in practices that could manipulate reportability of these incidents. In some instances, railroads report an injury or illness to FRA only after FRA inspectors make management aware that a particular injury or illness was not reported. Many times FRA inspectors conduct an investigation pursuant to a complaint from an employee alleging that his or her injury/illness was not properly reported or was not reported at all. Again, the railroad usually reports this injury/illness to FRA only after FRA informs management of the situation.

FRA remains committed to improving the accuracy of the accident reporting data base and can do so only with the full cooperation of both rail workers and management. In order to address this widespread problem, the ICP mandates that each railroad adopt a policy statement which affirms that intimidation or harassment by any officer, manager, supervisor, or employee of the railroad that aims to undermine or negatively influence the treatment of persons with an injury or illness or that adversely affects the reporting of such injuries and illnesses will not be tolerated nor permitted and that appropriate prescribed disciplinary action may be taken by the railroad against such person committing the harassment or intimidation. The policy statement addressing intimidation and harassment must be disseminated to all employees, supervisors and to all levels of railroad management. Further, the railroad must have procedures in place to process complaints when the railroad's intimidation and harassment policy has been violated, and such procedures must also be disseminated to all employees and management/supervisory personnel.

Consequently, the final rule states in § 225.33(a) that each railroad shall adopt and comply with a written Internal Control Plan that must be maintained at the office where the railroad's reporting officer conducts his or her official business or duties. The ICP must be amended, as necessary, to reflect any significant changes to the railroad's internal reporting procedures. The ICP is to include, at a minimum, each of the following ten components:

(1) A policy statement indicating the railroad's commitment to complete and accurate reporting of all accidents, incidents, injuries, and occupational illnesses arising from the operation of the railroad. This statement should include, in absolute terms, that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting an accident, incident, injury or illness will not be permitted or tolerated and will result in some stated disciplinary action against such person committing the harassment or intimidation.

(2) The dissemination of the policy statement; complaint procedures. Each railroad must provide to all employees,

supervisory personnel, and management the policy statement described in paragraph (a)(1). Each railroad must have procedures to process complaints from any person when the policy stated in paragraph (a)(1) is violated, and to impose the appropriate prescribed disciplinary actions on each person found to have violated the policy. These procedures must be disclosed to railroad employees, supervisors and management. The railroad must provide ''whistle blower'' protection to any person subject to this policy, and such policy must be disclosed to all railroad employees, supervisors and management.

(3) Copies of internal forms and/or a description of the internal computer reporting system used for the collection and internal recording of accident and incident information.

(4) A description of the internal procedures used by the railroad for the processing of forms and/or computerized data regarding accident and incident information.

(5) A description of the internal review procedures applicable to accident and incident information collected, and reports prepared by, the railroad's safety, claims, medical and/or other departments engaged in collecting and reporting accident and incident information.

(6) A description of the internal procedures used for collecting cost data and compiling costs with respect to accident and incident information.

(7) A description of applicable internal procedures for ensuring adequate communication between the railroad department responsible for submitting accident and incident reports to FRA and any other department within the railroad responsible for collecting, receiving, processing and reporting accidents and incidents.

(8) A statement of applicable procedures providing for the updating of accident and incident information prior to reporting to FRA and a statement of applicable procedures providing for the amendment of accident and incident information as specified in the *FRA Guide for Preparing Accidents/Incidents Reports*.

(9) A statement that specifies the name and title 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 identification of the site where the most recent audit report may be found for inspection and photocopying.

(10) 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 and structures departments; payroll, accounting, and personnel departments); (ii) the title of each railroad reporting officer; (iii) the title of each manager of such components, by component; and (iv) all officers to whom managers of such components are responsible, by component. A current organization chart would satisfy items (iii) and (iv).

The penalty schedule is amended so that if the railroad fails to adopt the ICP, then that railroad is subject to the assessment of a civil monetary penalty in the amount of $2,500 or, if willful, $5,000. Also each railroad's reporting error arising from noncompliance with the ICP subjects that railroad to the assessment of a civil monetary penalty in the amount of $2,500 or, if willful, $5,000. Consequently, if a reporting violation is found, then the railroad may be fined for both the reporting violation and any departure from the ICP which resulted in the reporting violation. FRA may require the railroad to make modifications to its ICP to prevent such reporting errors in the future. However, if there is a reporting violation, but FRA determines that the ICP was followed by the railroad, then just one violation may be written. FRA believes that availability of a monetary civil penalty is necessary in order to compel the railroads to correct procedural deficiencies and weaknesses in their ICPs. However, in some instances FRA may employ use of a compliance order or other remedy in lieu of civil penalties where appropriate in order to promote future compliance.

Additionally, FRA may assess a civil monetary penalty against any railroad employee, manager, or supervisor who willfully causes a violation or noncompliance with any requirement of Part 225, including §§ 225.33(a) and (b), requiring adherence to the railroad's intimidation and harassment policy and noninterference with that policy. FRA may issue these civil penalties pursuant to 49 U.S.C. 21301, 21302, and 21304. Also see Appendix A to Part 209 of the Code of Federal Regulations for other sanctions. Criminal penalties and/or imprisonment provided for in 49 U.S.C. 21311 may also be imposed on any individual who knowingly and willfully makes a false entry in a record or report required by the accident reporting regulations or other regulations issued under 49 U.S.C. chapter 201; destroys, mutilates, changes, or falsifies such a record or report; does not enter required specified facts in a such record or report; makes or preserves such a record or report in violation of such a regulation or order; or who files a false record or report with FRA. FRA wants to make it clear to all railroads that it will be diligent in its efforts to ensure that all parties adhere to and comply with the intimidation and harassment policy in the ICP. It should be noted that FRA will be aggressive in pursuing enforcement sanctions against any person found to be in violation of the railroad's harassment and intimidation policy.

FRA's proposal in § 225.33(b) which stated that railroads must make ''a reasonable and conscientious effort to adhere to the Plan'' is too vague and would undoubtedly create considerable variability in perceptions of compliance. Thus, FRA has eliminated this requirement. FRA believes that imposition of a monetary penalty and other enforcement sanctions on the reporting railroad and against individuals as discussed above provides an incentive for the reporting railroad and all parties to observe and follow its internal control procedures.

B. Section 225.37 Computer Magnetic Media Transfer and Electronic Submission

Proposed Rule

FRA proposed, in § 225.37, to amend the current reporting requirements to provide railroads the option of using magnetic media (computer diskettes and magnetic tape) in lieu of the paper (''hard copy'') forms currently submitted 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). FRA proposed that reports submitted via magnetic media would be due within 30 days after expiration of the month in which the accident/incident occurred.

In particular, the proposed rule allowed railroads, in § 225.37(a), subject to various conditions, the option to submit magnetic media that would 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.

The proposed rule allowed 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, the proposal allowed railroads the option of utilizing magnetic media exclusively for all initial reports and all updates and amendments to those reports. FRA proposed that 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.

FRA also proposed, in § 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 was to submit along with the magnetic media: (a) a sworn report, as required by 49 U.S.C. 20901 (formerly contained at § 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 is necessary to ensure that railroad reporting officials attest to the validity of the information reported to FRA in the magnetic media. It also provides FRA with evidence necessary to hold those officials accountable for false reporting.

Since the magnetic media option is a fairly new concept, FRA proposed, in § 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 would compare the data on hard copy reports to the data contained in the magnetic media to determine if the information reported via magnetic media was 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 would notify the railroad in writing that the hard copy was no longer necessary.

Comments

Nearly all commenters expressed an interest in implementing some kind of electronic transmission and exchange of data from the railroads to FRA. Several commenters expressed the desire to have a standard, consistent format that would assure the credibility of the original report while others expressed the desire to submit data utilizing a variety of different reporting formats designed by the individual railroads. Some commenters recommended that FRA should design and make available to all railroads a software package of the formats required for transmission of all types of data in order to ensure uniformity in reporting. Several commenters suggested that FRA should examine another option for the transfer of data to FRA, *i.e.*, electronic submission of data over telephone lines.

Final Rule

Section 225.37 Magnetic Media Transfer and Electronic Submission

Section 225.37 of the final rule allows for the submission of accident reporting data to FRA by two alternate means: (1) magnetic media (computer diskette or magnetic tape), or (2) electronically, over telephonic lines. Submission of this data through either means remains *optional* for the reporting railroad.

Section 225.37(a) states that railroads utilizing either option may submit the following reports, updates to reports, and amendments to reports to FRA:

(1) the ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54);

(2) the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55);

(3) the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a);

(4) the ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57); and

(5) the ''Batch Control Form'' (Form FRA F 6180.99). Section 225.37(d) states that each railroad that employs either option must submit its monthly reporting data to FRA in a year-to-date file format. For example, the railroad's April submission must contain the reporting data for the months of January through April, including any amendments or updates for the months of January through March.

Section 225.37(b) states that each railroad utilizing the magnetic media option must submit the following:

(1) the computer diskette or magnetic tape;

(2) the ''Batch Control Form'' (Form FRA F 6180.99); and

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

Also note that each railroad need submit only one ''Batch Control Form'' (Form FRA F 6180.99) with its monthly submission since the ''Batch Control Form'' contains the sum totals for the four reports that appear on the form.

As previously stated, the notarization of Form FRA F 6180.55 is required by 49 U.S.C. 20901 and this form must continue to be submitted to FRA in hard copy format. Also note that the proposal requiring the railroad reporting officer's signature on the Batch Control Form is not adopted in the final rule. The format for the Batch Control Form is set forth in Attachment 2 to this final rule.

Legislation before Congress (the ''Department of Transportation Regulatory Reform Act of 1996'') would amend 49 U.S.C. 20901(a) to eliminate the requirement that railroads file notarized monthly reports with FRA regarding accidents and incidents on their properties. The amendment would allow the Secretary to specify the frequency with which reports must be filed; provide discretion to set different reporting requirements for different classes of railroads; and facilitate electronic filing and a corresponding reduction in paper filings. It is believed these amendments would reduce unnecessary expense and delay associated with filing monthly reports, particularly for small railroads and those railroads which may have no events to report for a particular month.

Section 225.37(c) outlines the requirements for submission of data electronically, through telephonic means. The requirements for electronic submission parallel those for magnetic media submissions. The only difference is that a railroad utilizing the electronic submission option must transmit its year-to-date file reporting data to an FRA-designated computer. Note, however, that each railroad must continue to submit the notarized hard copy of the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55).

Section 225.37(e) states that, initially, each railroad utilizing either the magnetic media or electronic submission option must submit the hard copy report(s) for each accident/incident it reports by such means. FRA will continually review the hard copy reports against the data submitted electronically or by means of magnetic media for that reporting railroad. Once the magnetic media or electronic submission is in *total* agreement with the submitted hard copies of the reports for *three* consecutive reporting months, FRA will notify the railroad, in writing, that submission of the hard copy reports is no longer required. However, note that each railroad must continue to submit the notarized hard copy of the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55) with its magnetic media or electronic submissions until such time that legislation is passed eliminating this requirement.

The next revised *FRA Guide* will contain more detail concerning the submission of data via magnetic media

or, electronically, over telephone lines or other means.

C. Section 225.27 Retention of Records

Proposed Rule

FRA proposed that railroads that chose to submit their data via magnetic media or electronically, over telephone lines, as discussed in the previous section, would remain responsible for having on file hard copies of the reports identified in the current regulations at § 225.21. Therefore, FRA proposed, in § 225.27(c), that each railroad must maintain on file, at one or more central locations 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 pursuant to Part 225. This requirement was also meant to include a hard copy of *any* record submitted via magnetic media or, electronically, over telephone lines, so as to enable both federal and State inspectors, as well as other authorized representatives, a means by which to verify whether the railroad reported a specific accident/incident or injury/illness to FRA.

Comments

Most railroads expressed concern that the requirement for records to be maintained at one or more central locations was far too stringent and impracticable. In contrast, rail labor representatives agreed with the FRA proposal that railroads should have a hard copy of all records on file at a central location designated by that railroad. With new moves by railroads to centralize functions of their operations, the State of California suggested that railroads should be required to provide a central location for retention of records within the boundaries of each State in which it operates.

Final Rule

Section 225.27 Retention of Records

Section 225.27(a) states that each railroad must retain the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) and the Monthly List of Injuries and Illnesses (both discussed in detail later in this preamble), as required by § 225.25, for at least five years after the end of the calendar year to which they relate. The ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97), as required by § 225.25, must be retained for at least two years after the end of the calendar year to which they relate. The ''Initial Rail Equipment Accident/Incident Record'' is discussed in detail later in this preamble.

Please note that maintenance and access to any record and report required under this part are discussed in this preamble in the section entitled ''Access to Records and Reports'' (§ 225.35).

D. Reporting Definitions and Forms

1. Form FRA F 6180.45—''Annual Summary Report of Railroad Injury and Illness''

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.

Proposal

FRA proposed to eliminate the requirement for submission of the ''Annual Summary Report of Railroad Injury and Illness'' (Form FRA F 6180.45). However, certain blocks of information on this form were deemed important for accurate injury and illness data analysis. Information regarding ''Terminations or Permanent Transfers'' found in column ''8'' on the annual summary report 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. FRA proposed to move the block designated ''Terminations or Permanent Transfers'' to the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a). Similarly, FRA proposed 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 ''Annual Railroad Report of Employee Hours and Casualties, by State'' (Form FRA F 6180.56).

Comments

Commenters agreed with FRA's proposal to eliminate Form FRA F 6180.45 and to transfer the information blocks pertaining to ''Terminations or Permanent Transfers,'' ''Establishments Included in this Report, and ''Average Employment in Reporting Year'' to other existing reporting forms.

Final Rule and Decision

The final rule eliminates the requirement for railroads to submit the ''Annual Summary Report of Railroad Injury and Illness'' (Form FRA F 6180.45). Blocks that solicit information on ''Establishments Included in this Report'' and ''Average Employment in Report Year'' are transferred to the ''Annual Railroad Report of Employee Hours and Casualties, by State'' (Form FRA F 6180.56) as blocks ''4'' and ''5,'' respectively. The block designated ''Termination or Permanent Transfer'' is transferred to the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) as block ''5r.''

2. Form FRA F 6180.54—''Rail Equipment Accident/Incident Report''

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 (the current reporting threshold) must be reported using Form FRA F 6180.54. FRA proposed to make limited changes to the ''Rail Equipment Accident/Incident Report.'' The format for the revised ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54) is set forth in Attachment 3 to this final rule.

a. Special Study Blocks

Proposal

FRA proposed establishment of three new blocks on Form FRA F 6180.54, each designated as a ''Special Study Block'' (SSB), to collect information on specific accident issues over a specified time period in response to particular hazards or associated railroad risks that are of safety concern.

Comments

AAR and its constituent members opposed the addition of the special study blocks to the ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54). AAR stated that gathering information, as the need may arise, would be somewhat expensive due to the computer programming necessary to complete the SSB information. These same members stated that collection of SSB information would be time consuming for the rail industry since instructions would have to be issued to the field as to what type of information is actually needed.

Several union representatives felt that the addition of the SSBs to Form FRA F 6180.54 was necessary to collect pertinent data but that FRA should be very specific in its information request.

Other parties stated that if FRA decided not to add the SSBs as proposed, then the block allowing for a narrative description of the special event should be completed by the reporting railroad only when other blocks did not define the special circumstances surrounding the accident.

Final Decision

The ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54) contains two SSBs in block ''49.'' As the need arises, FRA will notify the railroads in writing or, if appropriate, through publication in the Federal Register, of the purpose and the type of information that is to be collected. FRA will be as specific as possible in order to minimize both costs and the amount of time associated with the collection of this new information. Each SSB has 20 characters in order to standardize the data structure for computer files. FRA believes the SSBs will prove extremely valuable in collecting information to help FRA identify and evaluate issues of safety concern as well as other nonsafety issues as the need arises.

FRA anticipates that use of one or more SSBs will be occasional, rather than continuous. As appropriate, FRA will consult with the Railroad Safety Advisory Committee (RSAC) before formulating the respective information collections.

b. Reporting Definitions

Proposal

First, FRA proposed 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. The cost of fringe benefits would be *excluded* when calculating direct labor costs. Second, for services performed by a contractor, FRA proposed that 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. Third, FRA proposed to make it clear that overhead is to be *excluded* from damage costs due to the unacceptable non-uniform treatment of overhead under the current process. Lastly, FRA proposed that material costs would be calculated based upon the costs of acquiring new material, even if the railroad chose to use refurbished or used material in its actual repairs.

Comments

Most commenters favored the proposal to include only direct labor costs when estimating damage costs for labor, and to exclude overhead costs from reporting. On the other hand, most railroads did not support the proposal that material/equipment costs should be calculated based upon the costs of newly acquired material, even if the railroad chose to use refurbished or used material in its actual repairs. Railroad representatives stated that if the railroad has available, or is able to obtain, used material to repair or replace ''in kind'' the damaged material, charging the material at an artificial cost would inaccurately assess the real economic impact of the incident. Further, these commenters stated that to charge material ''incorrectly'' would require railroads to set up expensive duplicate recordkeeping. Most railroad representatives also stated that it would be difficult to derive the equivalent direct labor hours and rates from contractual services involved in railroad accident and repair costs.

Most rail labor associations stated that the costs of all materials utilized to effectuate repair (whether to new, used or refurbished equipment) should be based upon a uniform cost for new material and that such costs should be determined by FRA using a uniform scale. These commenters stated that such standardized costs based on a uniform scale would eliminate any advantage or disadvantage relative to the volume of materials purchased, the vendor or manufacturer used, or the age of equipment or materials involved in the incident. Further, rail labor representatives favored standardized person-hour costs to assure a uniform mechanism for accurate comparison of identical or similar accidents. Using this approach, these commenters stated that accident reporting would be reduced to a ''level playing field'' from one railroad to the next.

Final Decision

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. The cost of fringe benefits is *excluded* when calculating direct labor costs. Overhead is also *excluded* when calculating damage costs due to the unacceptable non-uniform treatment of overhead under the current process.

For services performed by a contractor, a direct hourly labor cost is calculated 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. However, if a railroad cannot match the equivalent craft to the labor hours spent by a contractor, then the railroad must use the loaded rate, *i.e.*, the cost by hour for labor, fringe benefits, and other costs and fees for services charged by the contractor for the tasks associated with the repair of the track, equipment, and structures due to the train accident.

Due to the controversy surrounding FRA's proposal to calculate material costs based upon the costs of acquiring new material, even if the railroad chose to use refurbished or used material in its actual repairs, FRA has decided to reexamine this issue in a subsequent rulemaking for the accident reporting regulations in consultation with the Railroad Safety Advisory Committee. Therefore, the current methodology used to calculate material costs, *i.e.*, depreciated value estimates, will continue to be used by all railroads.

c. Filing of an Amended Form FRA F 6180.54

As stated in the proposed rule, the *FRA Guide* was changed to specifically provide that amended reports are 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 Summary (Continuation Sheet)''

The ''Railroad Injury and Illness Summary (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. FRA proposed numerous changes to this form in order to collect data that would aid in development of railroad injury and accident prevention programs. The format for the revised ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) is set forth in Attachment 4 to this final rule.

a. Exposure to Hazardous Materials

Proposal

FRA proposed to add an additional block to Form FRA F 6180.55a to collect data on the number of persons injured, as well as the type of injury (*e.g.*, burn, inhalation, rash), due to release and exposure to hazardous materials.

Comments

Some commenters supported the proposal to add this block of information while others stated that this type of information would be better collected by expanding the existing injury/illness codes currently used to complete Form FRA F 6180.55a. Several commenters expressed concern with this proposal since they believed it would be difficult to obtain this information, especially in the case

where the individual does not tell the railroad that he or she was exposed to hazardous materials.

Final Decision

Form FRA F 6180.55a contains block ''5q'' entitled ''Exposure to Hazmat,'' which is used to collect data on the number of persons injured and the type of injury resulting from exposure to hazardous materials.

The Research and Special Projects Administration (RSPA) collects injury and fatality data associated with the release of hazmat. RSPA Form DOT 5800.1 counts the number of fatalities, hospitalized injuries and non-hospitalized injuries associated with a hazmat release. However, RSPA's data cannot provide FRA with the type of person injured or the type of exposure. FRA believes that collection of this information is critical to its data base. The next revised *FRA Guide* will contain the codes used to complete this block.

FRA does not agree with the comments that obtaining information on hazardous materials exposure would be very difficult for a railroad to obtain. For employees of the railroad, most would inform their employer of such exposure and, for those employees who did not inform their employer, the railroad would not have knowledge of the exposure and therefore would not be able to report it on the Form. Further, for members of the general public, the reporting railroad usually can gather information on their exposure to release of a hazardous material from the claims filed by such persons.

b. County/Day of Month/Time of Day

Proposal

FRA proposed the addition of blocks to collect information on the county where the incident occurred, as well as the day of the month and the time of day when the incident occurred.

Comments

Most commenters believed that information that would help pinpoint and identify an accident site was useful and would help identify problem areas and regional patterns. A few commenters stated that present requirements for location information provide sufficient information to identify accident sites.

Final Decision

Form FRA F 6180.55a contains blocks ''5b'' (day of the month); ''5c'' (time of day); and ''5d'' (county) in order for FRA safety inspectors to determine which sites or railroad shops have more injuries or illnesses and to assist FRA inspectors in records inspections.

c. *Gender/Ethnicity.*

Proposal

FRA proposed 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.

Comments

Almost all commenters opposed the addition of blocks to gather information on the ethnicity and gender of the injured or ill person. These commenters stated that reporting of gender and ethnicity would lead to misunderstandings between employees and supervisors as to why this information was necessary and, that for trespassers, verification of ethnicity would be difficult, if not impossible.

Final Decision

FRA agrees that collection of information, particularly with respect to ethnicity, would be difficult to collect and may be perceived as violating privacy rights of the employee, trespasser, passenger or any other individual injured in a train related accident/incident. Therefore, the proposed blocks to collect gender and ethnicity information on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' are not adopted in the final rule.

d. Circumstance Codes

Proposal

FRA proposed to develop new codes, in addition to those currently used, to describe the cause and/or circumstance of injuries and illnesses not currently covered by the regulations. Specifically, these circumstance codes would be used to complete the following blocks of information on Form FRA F 6180.55a: ''Physical Act,'' ''Location,'' ''Event,'' ''Result,'' and ''Cause.''

Comments

Most commenters agreed that the existing occurrence codes were outdated and in need of revision; however, they stated that there was no need to add an entire set of new circumstance codes. These commenters stated that some of the circumstance codes, as proposed, were redundant and lacked objectivity and thus recommended revision of the existing occurrence codes through the AAR's Uniformity in Reporting Committee. Other commenters believed that the addition of the proposed codes was necessary and desirable because such data would help identify particular hazards.

These commenters also suggested that FRA should expand the codes to include special non-employee cause codes.

Final Decision

The occurrence codes used to best describe the event or activity that caused the casualty (found in Appendix F of the *FRA Guide*) will become obsolete as of December 31, 1996. A set of codes will be developed to complete the information in blocks ''5j—Physical Act,'' ''5k—Location,'' ''5l—Event,'' ''5m—Result,'' and ''5n—Cause'' for Form FRA F 6180.55a. FRA will shortly issue a letter requesting one or more special meetings with an advisory committee or, with the AAR Committee for Uniformity in Reporting, members of ASLRA, rail labor associations, and other interested groups, to assist in the development of the new circumstance codes for reporting accidents/incidents.

e. Termination or Permanent Transfer

Since FRA eliminated the requirement for submission of the ''Annual Summary Report of Railroad Injury and Illness'' (Form FRA F 6180.45), data on ''Termination or Permanent Transfer'' is now collected in block ''5r'' on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a).

f. *Narrative on Unusual Circumstances.*

Proposal

FRA proposed the addition of a narrative block 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.

Comments

Many commenters expressed concern regarding the intended use of the narrative and questioned whether or not completion of the narrative would be optional for the reporting railroad.

Final Decision

Form FRA F 6180.55a contains a narrative block ''5s'' that allows the railroad the opportunity to further explain unusual circumstances surrounding a worker's injury or illness using up to 250 characters. Completion of this narrative is mandatory for the reporting railroad *unless* the injury or illness can be adequately described using all other entries (information blocks) on the form.

4. Form FRA F 6180.55—''Railroad Injury and Illness Summary''

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.

The *FRA Guide* currently classifies persons as:

(1) Employees on Duty (Class A),
(2) Employees Not on Duty (Class B),
(3) Passengers on Trains (Class C),
(4) Other Nontrespassers (Class D),
(5) Trespassers (All Classes)(Class E), and
(6) Contractor Employees (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 Summary (Continuation Sheet)'' (Form FRA F 6180.55a).

The format for the revised ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55) is set forth in Attachment 5 to this final rule.

a. Classifications of Persons

Proposal

1. ''Nontrespassers—Off Railroad Property'' and ''Nontrespassers—On Railroad Property''

FRA proposed to add a new classification of person entitled ''Nontrespassers—Off Railroad Property'' to include those individuals (nontrespassers) who are injured while off railroad property and to distinguish them from nontrespassers injured while on railroad property.

Comments

All commenters supported the proposal for the breakdown of the classification ''Nontrespassers'' into the classifications of ''Nontrespassers—Off Railroad Property'' and ''Nontrespassers—On Railroad Property'' and believed that these distinctions would be useful in identifying particular safety problems with these person groups.

Final Decision

The ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55) contains the classifications of persons entitled ''Nontrespassers—On Railroad Property'' (Class D) and ''Nontrespassers—Off Railroad Property'' (Class J). An injury ''off railroad property,'' includes 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 ''Nontrespasser'' located on public or private non-railroad property, the injury is reported as an injury to ''Nontrespassers—Off Railroad Property'' (Class J). Conversely, injuries to nontrespassers occurring while on public or private railroad property are reported as injuries to ''Nontrespassers—On Railroad Property'' (Class D).

2. ''Worker on Duty'' and ''Worker Not on Duty''

FRA proposed that a ''Worker on Duty'' be defined as an individual who receives direct monetary compensation from the railroad or who is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad. FRA proposed that the classifications ''Worker on Duty'' (Class A) and ''Worker Not on Duty'' (Class B) would replace the presently used classifications of persons ''Employee on Duty'' (Class A) and ''Employee Not on Duty'' (Class B), respectively. Additionally, FRA proposed that the definition of a ''Worker on Duty'' would be expanded to include individuals who do not necessarily receive direct compensation from the railroad (including certain contractor employees and volunteers) and who perform either (i) the operation of on-track equipment or (ii) any other safety-sensitive activity for the reporting railroad.

Comments

Most commenters did not object to the proposal to change the terms ''Employee on Duty'' and ''Employee not on Duty'' to ''Worker on Duty'' and ''Worker not on Duty,'' respectively. Commenters, however, did object to the proposed expansion of the definition of a ''Worker on Duty'' to include ''Contractors'' and ''Volunteers'' who perform either safety-sensitive functions for the railroad or who operate on-track equipment. Commenters did not want injuries and illnesses sustained by such contractors and volunteers to be counted under the ''Worker on Duty'' classification. Nor did commenters want the hours worked by such ''Contractors'' and ''Volunteers'' to be reported as ''railroad worker hours.''

Railroads strongly opposed the proposal to make carriers responsible for gathering and submitting information relative to hours worked by contractor employees. Railroad representatives claimed that they did not have data on contractor hours and had no process in place to accumulate and verify total hours worked by contractor employees. Railroads believed that if FRA deemed this information critical to its data base, then the contractor should be compelled to report its hours directly to FRA or other pertinent federal agencies, such as the Occupational Safety and Health Administration (OSHA).

Final Decision

A ''Worker on Duty—Employee'' (Class A) is defined as an individual who receives direct monetary compensation from the railroad. All reportable injuries and illnesses are reported as those to a ''Worker on Duty—Employee'' (Class A) in block ''5f'' on Form FRA F 6180.55a together with the applicable job code series of the service performed.

An ''Employee not on Duty'' (Class B) is defined as an individual (i) who receives direct monetary compensation from the railroad and (ii) who is on railroad property for purposes connected with his or her employment or with other railroad permission, but (iii) who is not ''on duty'' as currently defined in the *FRA Guide.*

3. (i) ''Volunteer'' and (ii) Volunteer or Contractor Employee Who Is Classified as a ''Worker on Duty''

FRA proposed that ''Volunteer'' be added to the classes of persons, for purposes of completing Sections A and B on Form FRA F 6180.55, and that ''Volunteer'' 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. As proposed, such injuries or illnesses sustained by this volunteer would be reported on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) as injuries to a ''Volunteer.'' Further, FRA proposed that the railroad report all hours for that tour of service as ''volunteer hours'' on the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55).

In contrast, FRA proposed that injuries or illnesses sustained by an individual, including a ''Volunteer'' or a ''Contractor'' who was 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) on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a). Further, FRA proposed that the railroad report all hours worked by such a ''Volunteer'' or ''Contractor'' for that tour of service as ''railroad worker hours'' on the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55).

FRA further elaborated on this issue at the public regulatory conference held in Washington, D.C. where FRA proposed development of three new subclasses of ''Worker on Duty,'' which would include (i) ''Worker on Duty—Employee,'' (ii) ''Worker on Duty—Contractor,'' and (iii) ''Worker on Duty—Volunteer.''

Comments

Many commenters supported the development of the three classifications of a ''Worker on Duty'' as proposed and discussed at the public regulatory conference. These commenters stated that the three classifications would be beneficial for recordkeeping purposes and would aid in tracking the frequency rate of accidents and injuries for each person category. Commenters agreed that the three proposed classifications of ''Worker on Duty'' were qualitatively and quantitatively different in terms of training, tenure, supervisory oversight, motivational and disciplinary regimes, and experience and, that such a distinction should be captured in FRA's database to ensure the opportunity to analyze these differences. Many railroads supported the development of the three classifications of a ''Worker on Duty'' provided that the FRA reportable injury ratio would still reflect only the classification of ''Worker on Duty—Employee'' (Class A). As stated previously, most commenters were opposed to reporting injuries and illnesses sustained by ''Contractors'' and ''Volunteers'' who perform either ''safety-sensitive functions'' or who ''operate on-track equipment'' under the classification of ''Worker on Duty.'' These commenters believed that a distinction between railroad employees and such contractors and volunteer workers should be maintained for reporting purposes and, that such a distinction would allow FRA to compare the accident/injury rates of ''Railroad Workers on Duty'' to those of ''Contractors'' and/or ''Volunteers.''

Railroads also opposed reporting hours worked by a ''Volunteer'' or ''Contractor'' who was engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as ''railroad worker hours'' on Form FRA F 6180.55.

Final Decision

A ''Worker on Duty—Volunteer'' (Class H) is a volunteer who does not receive 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 as defined in § 209.303.

Section 209.303 of title 49 of the Code of Federal Regulations 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.

Note that there have been amendments and additions to the set of railroad safety regulations found in the Code of Federal Regulations; thus, ''safety-sensitive functions'' in § 209.303(c)(3) is interpreted to include railroad managers, supervisors, etc., when they are in a position to direct the commission of violations of any of the requirements of parts 213 through 240 of title 49 of the Code of Federal Regulations.

Hours worked by a ''Worker on Duty—Volunteer'' (Class H) are not reported on any form because FRA recognizes from the comments received in response to this proposal that railroads may have difficulty in acquiring this information.

A volunteer who does not receive direct monetary compensation from the railroad and who is not engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303 is classified as a ''Volunteer—Other'' (Class I), and hours worked by this person also are not reported on any FRA form.

Similarly, a ''Worker on Duty—Contractor'' (Class F) is an employee of a contractor for a railroad who does not receive direct monetary compensation from the railroad and who, while on railroad property, is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303. Hours worked by persons in Class F are not reported on any FRA form due to the difficulty railroad representatives expressed they would have in acquiring this data.

A contractor employee for a railroad who does not receive direct monetary compensation from the railroad and who is not engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303 is classified as a ''Contractor—Other'' (Class G) and hours worked by this person are similarly not reported on any FRA form.

Also note that the FRA reportable injury ratio will continue to reflect only injuries sustained by the persons in Class A, ''Worker on Duty—Employee.'' This will preserve the bench marking tool utilized by the railroad industry while ensuring that FRA has the information necessary to distinguish injuries between railroad workers, and contractors and volunteers engaged in any safety-sensitive function or in the operation of on-track equipment.

To summarize, Form FRA F 6180.55 (Railroad Injury and Illness Summary) now contains the following classifications of persons:

(1) Worker on Duty—Employee (Class A),

(2) Employee not on Duty (Class B),

(3) Passengers on Trains (Class C),

(4) Nontrespassers—On Railroad Property (Class D),

(5) Trespassers (Class E),

(6) Worker on Duty—Contractor (Class F),

(7) Contractor—Other (Class G),

(8) Worker on Duty—Volunteer (Class H),

(9) Volunteer—Other (Class I), and

(10) Nontrespassers—Off Railroad Property (Class J).

These classifications will not be defined in the rule text for the accident reporting regulations; rather, they will be defined in the next revised *FRA Guide*.

The following are examples of situations involving reportable injuries suffered by a ''Worker on Duty—Volunteer,'' a ''Volunteer—Other,'' a

''Worker on Duty— Contractor,'' and a ''Contractor—Other'' in the course of different types of work performed:

Example 1. A volunteer operates a locomotive for an excursion railroad. Operation of a locomotive clearly falls within the realm of ''operation of on-track equipment.'' If the volunteer sustains a reportable injury during operation of the locomotive, then the incident is reported on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) as an injury to a ''Worker on Duty— Volunteer'' (Class H), with the applicable job code series.

Example 2. A volunteer sells memorabilia at a historic railroad. Selling memorabilia does not fall within the scope of either ''the operation of on-track equipment'' or ''any other safety-sensitive function.'' When such a volunteer sustains a reportable injury, such injury, is reported on Form FRA F 6180.55a as an injury to a ''Volunteer—Other'' (Class I).

Example 3. A volunteer sells tickets for train rides on a tourist railroad and also clears vegetation adjacent to roadbed. Under 49 CFR 213.37, vegetation is to be cleared from the roadbed for safe rail operations; vegetation clearing is thus an aspect of maintaining roadbed under § 209.303(b)(1) and, therefore, considered a ''safety-sensitive function.'' Any injury or illness sustained by the volunteer during the vegetation clearing is classified as one to a ''Worker on Duty—Volunteer'' (Class H) with the applicable reporting requirements for purposes of Form FRA F 6180.55a. If any reportable injury is sustained by the volunteer during the process of selling tickets, then such injury is classified as one to a ''Volunteer—Other'' (Class I). If, however, the volunteer sells tickets and then clears vegetation *during the same tour*, then all injuries are considered as those attributable to a ''Worker on Duty—Volunteer'' (Class H). Therefore, when a volunteer is engaged in ''mixed service,'' the railroad must report all reportable injuries and illnesses for that volunteer as those to a ''Worker on Duty—Volunteer'' (Class H) on Form FRA F 6180.55a. Conversely, when a contractor employee is engaged in such ''mixed service'' on railroad property, the railroad must report all reportable injuries and illnesses for that volunteer as those to a ''Worker on Duty— Contractor'' (Class F) 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 and do not fall under the definition of any ''safety-sensitive function'' as defined in § 209.303. Thus, injuries sustained by this contractor performing those tasks are reported on Form FRA F 6180.55a as those attributable to a ''Contractor—Other'' (Class G).

Example 5. A contractor employee inspects and replaces roller bearings for the reporting railroad *on the railroad's property.* Injuries sustained by this contractor are reported as those to a ''Worker on Duty—Contractor'' (Class F) on Form FRA F 6180.55a. Under 49 CFR 215.113, cars with defective roller bearings should not be in service, thus any illness or injury associated with replacement of roller bearings is a ''safety-sensitive function'' qualifying as an injury or illness attributable to a ''Worker on Duty—Contractor'' (Class F). In contrast, if this same injury was sustained by a contractor employee at the contractor's facility *off railroad property,* then such injury would not be reported to FRA.

5. FRA Form F 6180.56—''Annual Railroad Report of Employee Hours and Casualties, by State''

A summary of all hours worked by railroad employees during the report year is made on Form FRA F 6180.56. This form is submitted as part of the monthly ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55) for the month of December of each year. The format for the revised ''Annual Railroad Report of Employee Hours and Casualties, by State'' (Form FRA F 6180.56) is set forth in Attachment 6 to this final rule.

Final Decision

Information on ''Establishments Included in this Report'' and ''Average Employment in Report Year,'' which previously appeared on Form FRA F 6180.45, is now found on Form FRA F 6180.56 in blocks ''4'' and ''5'' respectively, because, as discussed previously in this preamble, FRA has eliminated the requirement to submit Form FRA F 6180.45. A column reflecting a count for ''Casualties'' is also added to Form FRA F 6180.56.

6. FRA Form F 6180.57—''Highway-Rail Grade Crossing Accident/Incident Report''

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. The information collected on this report is vital to identifying and resolving problems at highway-rail grade crossings. The format for the revised ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57) is set forth in Attachment 7 to this final rule.

a. Occupants

Proposal

Under the heading ''Highway Vehicle Property Damage/Casualties'' on the currently used form, FRA proposed to delete blocks ''43'' through ''45,'' which requested information on the total number of occupants and the total number of occupants killed and injured, and to replace those blocks with several new ones to gather additional information on the number of highway-rail crossing users killed or injured; the total number of highway-rail grade crossing users involved in the incident; the number of railroad workers killed or injured; the total number of people on the train at the time of the incident; and the number of train passengers killed or injured.

Comments

No negative comments were received in response to this proposal.

Final Decision

Form FRA F 6180.57 requests the following information under the heading ''Highway Vehicle Property Damage/Casualties'':

Block 46: the number of highway-rail crossing users (*i.e.*, pedestrians and vehicle occupants) killed; and the number of highway-rail crossing users injured;

Block 48: the total number of highway-rail crossing users involved in the incident (including the driver);

Block 49: the number of railroad employees killed; and the number of railroad employees injured;

Block 50: the total number of people on the train at the time of the incident (including passengers and train crew); and

Block 52: the number of train passengers killed; and the number of train passengers injured.

b. Amtrak/Autotrain Distinction

Proposal

FRA proposed to eliminate the distinction between Amtrak and Autotrain in item ''1'' on the current Form, as such a distinction is now obsolete.

Comments

No negative comments were received in response to this proposal.

Final Decision

The distinction between Amtrak and Autotrain is deleted from Form FRA F 6180.57.

c. Signal Crossing Warning

Proposal

FRA further proposed to clarify the question in block ''32,'' ''[w]as the signaled crossing warning identified in item ''31'' operating?'' Item ''31'' listed several types of signal devices (active and passive). Confusion existed in

completing this information when the report identified a passive device and then the railroad reported it as not operating.

Comments

Rail labor associations believed that this information would effectively capture the status of the warning device at the time of the accident and that such information was crucial to FRA's data bank to track the effectiveness of rail safety regulations pertaining to highway-rail grade crossings. Most other commenters agreed that this question was in need of further clarification by FRA.

Final Decision

Block ''32'' is now block ''33'' on Form FRA F 6180.57, is entitled ''Signaled Crossing Warning,'' and refers the reader to the reverse side of the form for instructions and codes in completing this block. The instructions for completing block ''33'' read as follows:

Only if Types 1–6, Item 32, are indicated, mark in Block 33 the status of the warning devices at the crossing at the time of the accident using the following codes:

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.).
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). Explain in Narrative Description.

d. Narrative Block

Proposal

A narrative block allowing for up to 250 characters was proposed for addition to Form FRA F 6180.57 in order to gather information on unusual causes/circumstances surrounding the highway-rail grade crossing accident/incident.

Comments

Almost all commenters requested that completion of the narrative block remain optional on their part.

Final Decision

Form FRA F 6180.57 contains block ''54'', entitled ''Narrative Description.'' Completion of this narrative is mandatory for the reporting railroad *unless* the accident/incident can be described adequately using all other informational blocks on the form.

e. Special Study Blocks

Proposal

FRA also proposed at the public regulatory conference the addition of three Special Study Blocks (SSBs) to Form FRA F 6180.57 in order to gather essential data as the need arises.

Comments

Some commenters believed that SSBs on this form would be useful for capturing specialized data which could be used, for instance, to analyze or predict trends in safety hazards or to initiate planning for correction of identified problems. The American Trucking Associations (ATA) requested that the use of the SSB should be publicly announced in the Federal Register so that affected highway users would be aware of any special study that may be undertaken, and that they be afforded an opportunity for appropriate input.

Final Decision

The ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57) contains two special study blocks (SSBs) in block ''53.'' As the need arises, FRA will notify the railroads in writing, or if appropriate, through publication in the Federal Register, of the purpose and the type of information that is to be collected. In conjunction with the Federal Highway Administration (FHWA), FRA will publish in the Federal Register any announcement affecting highway users, thus allowing motor carriers the opportunity to provide FRA pertinent special study information. FRA will be as specific as possible in order to minimize both costs and the amount of time associated with the collection of this new information. Each SSB has 20 characters in order to standardize the data structure for computer files. FRA believes the SSBs will prove extremely valuable in collecting information to help FRA identify and evaluate issues of safety concern as well as other nonsafety issues as the need arises.

f. Whistle Bans and Signal System Failure

Proposal

FRA also proposed to add two new questions to the ''Highway-Rail Grade Crossing Accident/Incident Report'' to gather information on whether whistle bans were in effect and observed at the time of the accident/incident, and 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 next revised *FRA Guide.*

Comments

Rail labor associations viewed these information blocks necessary as this information would effectively capture the status of the warning device prior to the time of the accident. Many railroads stated that the proposed question on whistle bans was necessary to collect information on this subject due to the increased focus by the media, as well as state and federal agencies, on accidents occurring at grade crossings. A few railroads opposed addition of these questions but failed to express their reasoning as to why such questions should not be added to the form. All participants at the public hearings and at the public regulatory conference acknowledged their concern in connection with whistle bans and further emphasized the need for federal regulations requiring the sounding of a locomotive horn upon approaching and entering public highway-rail grade crossings.

ATA stated that current whistle bans were unacceptable and that highway users approaching a grade crossing are fully entitled to be warned of the approach of a train by every practicable means. They further commented that active warning devices frequently

malfunction in a manner indicating the approach of a train when such is not the case. ATA stated that a specific warning of the approach of a train, through sounding of the whistle, is essential to safety and that active warning devices were not adequate substitutes for the requirement to have the engineer sound the whistle.

The proposal to add the question regarding signal system failure to Form FRA F 6180.57 had a similar response in that some commenters opposed addition of this question while others stated that the information was critical to identifying problems at highway-rail grade crossings. ATA urged that, not only should the existence of a failure be noted, but that the nature of the failure should be included in the record. ATA stated that this information could be a significant factor particularly where active warning devices falsely indicate the approach of a train.

Final Decision

It is imperative that FRA ascertain as many details concerning accidents connected with whistle bans. Thus, the ''Highway-Rail Grade Crossing Accident/Incident Form'' (Form FRA F 6180.57) contains question ''34'' to gather information on whether whistle bans were in effect and observed at the time of the accident/incident. The codes for completing this block will be included in the next revised *FRA Guide.*

However, the proposal to gather information on whether there was signal system failure within the last seven calendar days up to and including the day of the accident is not adopted. FRA collected information about signal failures and false activations for a period of 27 months over the past several years. The statistical results did not indicate a correlation between a signal failure and an accident within seven days of such failure. The burden to collect this information therefore cannot be justified based upon FRA's study. If new data should indicate that this information is needed, then FRA will gather such information using the Special Study Blocks (SSBs) on Form FRA F 6180.57.

g. Motorist Age/Gender/Impairment

Proposal

In order to collect more information on motorists involved in highway-rail grade crossing accidents, FRA proposed 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.

Comments

As to the proposed block for ''Motorist Impairment,'' most commenters believed the information was useful but preferred that reporting of this data remain optional for the reporting railroad. Since all grade crossing accidents are routinely investigated by the local police, information on motorist impairment is normally provided to the railroad only after the police conclude their investigation, which may be several weeks or months after the actual accident. Most commenters agreed that motorist age and gender information was readily available and easier to collect than information on motorist impairment.

Final Decision

Form FRA F 6180.57 does not contain a block on ''Motorist Impairment.'' If FRA deems this information necessary at some point in the future, the Special Study Blocks (SSBs) on Form FRA F 6180.57 may be utilized to collect data regarding impaired motorists.

The ''Highway-Rail Grade Crossing Accident/Incident Report'' contains block ''38'' for the driver's age, and block ''39'' for the driver's gender (sex). This information is readily available to the reporting railroad, however, completion of driver's age in block ''38'' and driver's gender in block ''39'' remains *optional* for the reporting railroad. However, FRA encourages each railroad to be as diligent as possible in completing these and any other optional information blocks.

h. Trapped Motorist

Proposal

At the public regulatory conference, FRA proposed the collection of information regarding situations where motorists are trapped by other motor vehicle traffic in order to help identify alternative grade crossing protection systems that may prevent this situation.

Comments

Rail labor associations regarded this information useful for identifying alternate grade crossing protection systems that may help prevent this type of situation. A few commenters believed that this requirement was troublesome because in most cases railroads would have to make a judgment call. These commenters requested that completion of this information remain optional for the reporting railroad. ATA supported the inclusion of this data element so that FRA receive clear information as to what actually happens in such a situation.

Final Decision

Form FRA F 6180.57 contains entry ''#4. Trapped'' in block ''16'' entitled ''Position'' to allow for the collection of information regarding situations where motorists are trapped by other motor vehicle traffic. FRA will include the codes for completion of this entry in the next revised *FRA Guide.* The narrative block (block ''54'') can also be used to explain and expand on the actual occurrence. FRA believes this information is critical to its data base in order to identify alternate grade crossing protection systems that may help prevent occurrence of this type of situation.

7. Form FRA F 6180.78—''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report''

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). 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 employee within 45 days after the end of the month in which the accident/incident occurred. Upon receipt of Form FRA F 6180.78, the employee has the option of providing a statement in part II (entitled ''Employee Statement Supplementing Railroad Accident Report''). The format for the revised ''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report'' (Form FRA F 6180.78) is set forth in Attachment 8 to this final rule.

Proposal

Recipients of the notice (Form FRA F 6180.78) are to include only those railroad employees 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 proposed refinement of the language in the block entitled ''Notice to Recipient'' so that only those railroad employees who were determined by the railroad to be the primary cause or a contributing cause of the rail equipment accident/incident receive Form FRA F 6180.78.

Comments

The few comments received in response to this proposal were favorable.

Final Decision

The block entitled ''Notice to Recipient'' on Form FRA F 6180.78 reads 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 employee. 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.

D. Recordkeeping

1. Sections 225.25(a) and (b) and the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98)

Proposal

Section 225.25(a) currently refers to the log of injuries and occupational illnesses at and for each railroad establishment. In order to accurately identify and review both reportable and nonreportable railroad injuries and illnesses, FRA proposed to amend § 225.25(a) to require that railroads maintain a log or report of all reportable and ''nonreportable'' (*i.e.*, ''recordable'') injuries and illnesses to railroad employees for each railroad establishment using a new form entitled ''Railroad Employee Injury and/or Illness Log'' (Form FRA F 6180.98). Over the years, FRA inspectors have found it increasingly difficult to ascertain whether the railroad is reaching a correct decision on whether to report a given injury or illness. Thus, the requirement was proposed in order to alleviate the problem FRA inspectors encounter during routine inspections. The format for the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) is set forth in Attachment 9 to this final rule.

Comments

Many commenters expressed concern with the proposal to add nonreportable injuries (''recordable'' injuries) to the proposed ''Railroad Employee Injury and/or Illness Log.'' Most railroad representatives stated that this proposal would create another class of reportable injuries, *i.e.*, nonreportable recordables. These commenters saw no justification for what they believed was a burdensome exercise in recordkeeping. They also stated that this proposal would create another avenue for issuance of citations and that FRA was taking another step toward classifying every injury as reportable. Some commenters suggested that the proposed definition of ''recordable'' was too stringent in that every single injury or illness, however minor, would have to be logged by the reporting railroad.

Some participants at the public regulatory conference requested that FRA use the term ''nonreportable'' instead of the proposed ''recordable'' so that FRA's proposed ''recordables'' would not be confused with OSHA's ''recordables.''

Many commenters urged FRA to allow each railroad use of a railroad-designed log or form, instead of the specific log proposed in the NPRM, as long as the railroad captured the data required on the FRA log. Other commenters favored the proposal to log all ''recordable'' injuries and illnesses, and stated that such information should be maintained on either FRA's log or some other format.

Final Rule

Recordkeeping—Sections 225.25(a) and (b) and the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98)

FRA concludes that in order to effectively enforce railroad injury reporting, *all* injuries and illnesses to railroad employees that arise from the operation of the railroad and that cause the employee to be examined or treated by a qualified health care professional must be recorded using the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98). Unless FRA has the opportunity to examine those injuries and illnesses deemed ''nonreportable'' 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.

FRA agrees that use of the terms ''recordable'' and ''nonreportable recordables'' to define those injuries and illnesses which are not reportable to FRA but are recordable on the log may be confusing for the railroad. The proposed term ''recordable'' or ''nonreportable recordables'' is replaced therefore with the term ''accountable'' so as to minimize any confusion.

An ''accountable'' injury or illness is defined as encompassing any condition, not otherwise reportable, of a railroad worker that is associated with an event, exposure, or activity in the work environment that causes 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; however, it may be provided at any location, including the work site.

Any condition initially classified as accountable, *i.e.*, ''nonreportable'' or ''recordable,'' may subsequently become reportable if certain consequences occur. For example, a minor cut that is disinfected and covered with a bandage may later become infected and require medical treatment. It would be difficult, if not impossible, for the railroad to monitor self-treatment of such minor injuries. Thus, the type of injuries that are generally expected to be recorded on the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) are those that create a ''documentation trail.'' This documentation could include records such as: incident reports; health care provider records; claim payouts; or any other records that may identify the fact that an employee has sustained physical harm while in the work environment that required treatment. This broad scope is necessary since all conditions, regardless of severity, must be evaluated to determine if the requirements necessary for reporting the injury/illness have been met.

Section 225.25(a) states that each railroad must maintain either the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98), or an alternative railroad-designed record as described in § 225.25(b), to record all reportable and accountable injuries and illnesses to railroad employees that arise from the operation of a railroad for each railroad establishment where such employees report to work. Section 225.25(b) outlines the information FRA requires on the alternative railroad-designed record used in lieu of the ''Railroad Employee Injury and/or Illness Record.'' All the information requested on ''Railroad Employee Injury and/or Illness Record'' must be present on the

alternative record. Although this information may be displayed in a different order from that on the Railroad Employee Injury and/or Illness Record, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad must be consistent for each of the railroad's reporting establishments. Also note that the reporting railroad may choose to have additional information on its record extending beyond the information required on Form FRA F 6180.98.

Section 225.25(a) states that the ''Railroad Employee Injury and/or Illness Record,'' or its alternate, must be maintained for each operational railroad establishment, *i.e.*, an establishment wherein workers report to work such as an operating division, general office, and major installations such as a locomotive or car repair or construction facility. FRA believes that this requirement will help alleviate the difficulty FRA inspectors encounter when attempting to locate injury and illness information at railroad establishments. Please refer to the discussion in § 225.25(g) regarding maintenance of these records at railroad establishments.

Section 225.25(c) states that each railroad must provide the employee a copy of either the completed ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) or the alternative railroad-designed record upon his or her request, as well as a copy of any other record or report filed with FRA or held by the railroad pertaining to the employee's injury or illness. This requirement is necessary in order to provide the injured or ill employee a means by which to review and verify the reporting status of his or her injury or illness.

2. Elimination of Supplementary Record—Former § 225.25(b) Proposal

FRA determined that much of the information requested in the supplementary record of injuries and illnesses pursuant to former § 225.25(b) would be collected on the new ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98). Thus, FRA proposed elimination of this supplementary record.

Comments

All comments received in response to this proposal were favorable.

Final Rule

The requirement that each railroad maintain a supplementary record, as required under former § 225.25(b), is eliminated in the final rule.

3. Sections 225.25 (d) and (e) and the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97)

Railroads have been required to maintain a log of only reportable rail equipment accidents. Information on nonreportable events may 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, for FRA inspectors to identify the events that were determined by the railroad to be nonreportable. The format for the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97) is set forth in Attachment 10 to this final rule.

Proposal

In order to accurately identify and review both reportable and nonreportable rail equipment accident/incidents, FRA proposed that railroads must maintain a log to list all reportable and ''recordable'' rail equipment accidents using a new form entitled ''Rail Equipment Accident/Incident Log'' (Form FRA F 6180.97). FRA proposed that 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.

Comments

Rail labor representatives supported use of the proposed standardized FRA form for reporting certain rail equipment accidents/incidents deemed nonreportable by the railroad. However, these commenters proposed that a ''recordable'' accident and incident be defined as:

> Any event not otherwise reportable, involving the operation of on-track equipment that causes personal injury requiring the worker to be examined or treated by a qualified health care professional *or* causes physical damage to either the on-track equipment or the track, roadbed, signals and/or structures which requires removal, replacement or repair of equipment, track, roadbed, signals and/or structures. Incidents arising from broken knuckles, failed journals, and dragging equipment that do not cause damage beyond that of the item of equipment that failed, are not required to be logged on Form FRA F 6180.97.

Under the definition proposed by rail labor, recordable rail equipment accidents/incidents would not be limited to those occurring exclusively on the railroad right-of-way; thus rail equipment accidents/incidents involving ''shop crafts'' in the performance of worker duties would be encompassed within the definition.

Many railroad representatives opposed a new log to record reportable and recordable rail equipment accidents. They stated that the log would create additional recordkeeping requirements with little or no real benefit to rail safety and, that the proposal would create another avenue for FRA to issue fines and penalties for what they considered to be minor paperwork entries. Railroad representatives also wanted further clarification on the definition of a ''recordable'' accident/incident especially with respect to what constituted a ''disruption'' to rail service.

Most commenters suggested that the term ''recordable'' should be replaced with the term ''nonreportable'' so as to limit confusion with the terminology.

Final Rule

Recordkeeping—Sections 225.25 (d) and (e) and the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97)

As stated previously, FRA agrees that use of the term ''recordable'' or ''nonreportable recordables'' to define those rail equipment accidents and incidents which are not reportable to FRA but are required to be recorded on the log may be confusing for the railroad. The proposed term ''recordable'' or ''nonreportable recordable'' is replaced therefore with the term ''accountable'' so as to minimize any confusion.

FRA concludes that both reportable and accountable rail equipment accidents and incidents must be recorded on the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97). FRA inspectors must have a means by which they can determine whether the reporting railroad is accurately making its ''reportability'' decision pertaining to rail equipment accidents and incidents. In addition, accountable events may be of

considerable interest in determining the safety of railroad facilities and operations.

Further, the definition of an ''accountable'' rail equipment accident/incident as proposed by rail labor is not adopted in the final rule. FRA believes that personal injuries resulting from the operation of on-track equipment do not need to be tied into the ''accountable'' rail equipment accident/incident definition since all reported injuries and illnesses will be recorded on the monthly injury/illness list. This list will be posted in a conspicuous location for and at each establishment as described and discussed in the preamble to this final rule under the section entitled ''Monthly List of Injuries and Illnesses'' (§ 225.25(h)).

Consequently, an ''accountable'' rail equipment accident/incident is defined as encompassing 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 from the track before any rail operations over the track can continue. An accountable rail equipment accident/incident, if not tended to, thus would disrupt railroad service. Examples of ''disruption of service'' would include: loss of main track; one or more derailed wheels; any train failing to arrive or depart at its scheduled time; one or more cars or locomotives taken out of service; or rerouting trains due to a damaged car or locomotive.

Section 225.25(d) states that each railroad must maintain *either* the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97), or an alternative railroad-designed record, to record all reportable and accountable rail equipment accidents and incidents for each railroad establishment. Thus, § 225.25(e) allows railroads to design and use an alternative railroad-designed record in lieu of the ''Initial Rail Equipment Accident/Incident Record.'' All the information requested on the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97) must be present on the alternative record designed and used by the railroad. Although this information may be displayed in a different order from that on the Initial Rail Equipment Accident/Incident Record, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad must also be consistent for each of the railroad's reporting establishments. Also note that the reporting railroad may choose to have additional information on its record extending beyond the information required on Form FRA F 6180.97.

Section 225.25(d) states that the ''Initial Rail Equipment Accident/Incident Record,'' or its alternate, must be maintained for each operational railroad establishment, *i.e.*, an establishment wherein workers report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility. FRA believes that this requirement will help alleviate the difficulty FRA inspectors encounter when attempting to locate rail equipment accident and incident information at railroad establishments. Please refer to § 225.25(g) for a discussion of maintenance of these records at railroad establishments.

4. Property Damage Estimate Worksheet and Record (Proposed Form FRA F 6180.xx(b))

Proposal

FRA proposed use of a ''Property Damage Estimate Worksheet and Record'' (Form FRA F 6180.xx(b)) by the reporting railroad to determine costs associated with damage to (i) on-track equipment, (ii) signal equipment, (iii) track, (iv) track structures and roadbed, and (v) costs of equipment rental and operation. These five cost categories would be totaled to derive the total accident cost. As proposed, if the total accident cost met or exceeded the reporting threshold, then the total cost for ''damage to on-track equipment'' in ''Part A'' would be transferred to a block entitled ''Equipment Damage'' on the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97). Likewise, FRA proposed that 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 that this amount would be transferred to a block entitled ''Track, Signal, Way & Structure Damage'' on the ''Initial Rail Equipment Accident/Incident Record.'' Finally, FRA proposed to print the ''Property Damage Estimate Worksheet and Record'' on the reverse side of the ''Initial Rail Equipment Accident/Incident Record.''

Comments

Most hearing participants opposed adoption of this proposal. These same participants expressed their concern with the proposed estimation of property damage at the public regulatory conference. Written comments received in response to this proposal further elucidated problems with the proposed methods of determining the cost of the damage.

Final Rule

Due to the controversy surrounding FRA's proposal to calculate costs associated with damage to (i) on-track equipment, (ii) signal equipment, (iii) track, (iv) track structures and roadbed, and (v) costs of equipment rental and operation, FRA has decided to reexamine this issue in a subsequent rulemaking for the accident reporting regulations in consultation with FRA's Railroad Safety Advisory Committee. Therefore, the final rule does not adopt the ''Property Damage Estimate Worksheet and Record.''

5. Sections 225.25 (f) and (g) Updating and Maintaining the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) and the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97)

Proposal

Discrepancies in logs are the most recurring problems FRA inspectors encounter during an inspection. FRA has found that many railroads fail to update existing logs in a timely manner, particularly with respect to lost/restricted workdays. Therefore, in order to assure that each railroad continuously updates the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) and the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97), or the alternative railroad-designed records (each record hereinafter is referred to as ''Record''), FRA proposed that each reportable and recordable injury and illness, as well as each reportable and recordable rail equipment accident/incident, must be entered on the appropriate Record as early as practicable, but in any event no later than seven working days after receiving information or acquiring knowledge that an illness or injury has occurred or, that a rail equipment accident/incident has occurred.

Additionally, FRA proposed that if either Record is maintained at a centralized location, but not through electronic means, then a paper copy of the record or report that is current within 35 days of the month to which it applies must be available at the appropriate establishment. When the Record for an establishment is maintained at a central location through electronic means, FRA proposed, the records for that establishment must be

available for review in a hard copy format (paper printout) within four business hours of the request.

Comments

The few comments received in response to these proposals were favorable. However, some commenters objected to the requirement that records maintained through electronic means must be available for review in ''hard copy'' within four business hours of the request. These commenters were concerned with what action FRA would take if the request could not be fulfilled within this prescribed time limit due to problems outside the railroad's control.

Most commenters believed that, in most cases, seven days should be sufficient to update the records. Some commenters were concerned that this proposal failed to recognize the varying factual circumstances that railroads may encounter before the initial information provided to the railroad by the employee is verified. These commenters stated that many times there are conflicting facts which must be sorted out before a determination can be made as to whether the accident/incident or the injury/illness is reportable or nonreportable.

Final Rule

Updating and Maintaining the Records—Sections 225.25 (f) and (g)

Section 225.25(f) states that each railroad must enter each reportable and accountable injury and illness on the ''Railroad Employee Injury and/or Illness Record'' or the alternative railroad-designed record, as early as practicable, but in any event, no later than seven working days after receiving information or acquiring knowledge that an illness or injury has occurred. Likewise, each railroad must enter each reportable and accountable rail equipment accident and incident on the ''Initial Rail Equipment Accident/Incident Record'' or the alternative railroad-designed record, as early as practicable, but in any event, no later than seven working days after receiving information or acquiring knowledge that a rail equipment accident or incident has occurred. FRA believes the seven-day requirement is an extremely reasonable and generous amount of time afforded railroads to enter information on the Record and to make a decision on whether the illness/injury and/or accident/incident is reportable or accountable.

Section 225.25(g) states that if either Record is maintained at a centralized location, but not through electronic means, then a paper copy of the Record that is current within 35 days of the month to which it applies must be available at the appropriate establishment. When either Record is maintained at a central location through electronic means, the Record for that establishment must be available for review in a hard copy format within four business hours of the request. Of course, FRA anticipates that railroads would be able to provide the requested information as soon as practicable. FRA believes the four-hour time limit is more than a reasonable amount of time for the railroad to provide information made pursuant to a request. FRA recognizes that this request may be impossible to fulfill if the establishment is experiencing problems with its computer or other instruments used in obtaining the information electronically. No punitive action would be taken by FRA for the railroad's failure to supply the requested documents when circumstances *outside* the control of the railroad preclude it from obtaining the information *and* the railroad has exercised reasonable effort to correct the problem.

6. Section 225.25(h) Monthly List of Injuries and Illnesses

Proposal

FRA proposed that each railroad must 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 would have to be completed and posted by the railroad no later than June 30th. Moreover, FRA proposed that 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. Further, if no reported injuries or illnesses were associated with an establishment, FRA proposed that the posting shall make reference to that fact.

Comments

Most commenters supported this proposal with some modifications. Namely, commenters stated that the proposal requiring that the list be posted within 30 days after expiration of the month during which the injuries and illnesses occurred, coupled with the proposal that the list be displayed for a minimum of 60 consecutive days was confusing. Several railroad representatives suggested that railroads should be allowed to post a ''year to date'' list of reportable and nonreportable illnesses and injuries quarterly. These commenters stated that this would provide more accurate information than a monthly listing and that it would also produce less burdensome paperwork.

Some railroad representatives expressed concern that posting this information (date, type and location of injury) in a public place may lead to identification of the injured or ill person and, that the identified person may perceive that his or her privacy rights have been violated.

Rail labor associations supported the posting of the monthly listing of injuries and illnesses and stated that ''each railroad establishment'' should be consistently interpreted to require posting at each establishment or assembly point where railroad workers report to work.

Final Rule

Monthly List of Injuries and Illnesses—Section 225.25(h)

Section 225.25(h) states that a listing of all reported injuries and occupational illnesses for the previous month shall be posted in a conspicuous location for and at each railroad establishment within 30 days after expiration of the month during which the injuries and illnesses occurred. For purposes of fulfilling this requirement, this posting will be necessary only for those establishments that are in *continual* operation for a minimum of 90 calendar days or more. For those establishments that do not meet this level of operation or time requirement, the posting of reported injuries and illnesses must be made at the next higher organizational level, *i.e.*, the establishment that controls or directs the activities that take place at the temporary work site. Further, this listing must be posted in a conspicuous location so that it may be observed by workers at that establishment and shall remain continuously displayed for the next 12 months. This requirement therefore allows the employee the opportunity to get a one-year ''snapshot'' of reportable injuries and illnesses associated with that establishment. Thus, for example, April's list of reportable injuries and illnesses must be posted by June 1, and must remain posted until May 31 of the following year. This requirement allows railroad workers the opportunity to easily and readily review reportable illnesses and injuries for that

establishment in a cumulative fashion. FRA also believes that posting of this monthly list of injuries and illnesses will improve the general quality of illness and injury data.

Section 225.25(h) further states that incidents reported for employees on the listing must be displayed in date sequence. The listing must contain, at a minimum, the following information:

- Name and address of the establishment;
- Calendar year of the cases being displayed;
- Incident number used to report case;
- Date of the injury or illness;
- Location of incident;
- Regular job title of employee injured or ill;
- Description of the injury or condition;
- Number of days employee was absent from work at time of posting; and the number of days of work restriction at time of posting;
- Date of death, if the employee died;
- Annual average number of railroad employees reporting to this establishment;
- Name, title, telephone number with area code, and signature of preparer; and
- Date the report was completed.
- When there are no reportable injuries or occupational illnesses associated with an establishment for that month, the listing must make reference to this fact.

E. Employer Notification (Proposed § 225.39(a)) and Copy of ''Railroad Employee Injury and/or Illness Record'' to Employee (Proposed § 225.39(b))

Proposal

Rail labor organizations have repeatedly expressed concern that many injured employees fail to inform their employers of injuries. By placing part of the burden for reporting on the individual railroad employee, FRA believed it could improve the general quality of the injury/illness reporting data. Consequently, FRA proposed in § 225.39(a) that railroad employees must notify their employer, in writing, that they have sustained an injury and/or illness (whether reportable or nonreportable) within seven calendar days of incurring either the injury or illness or obtaining knowledge that they incurred the injury or illness. FRA also recommended a civil monetary penalty against the railroad employee for failure to notify his or her employer of the injury or illness within the prescribed time period.

FRA also was concerned with the fact that injured workers did 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 proposed, in § 225.39(b), that the reporting railroad must provide the railroad employee with a copy of the completed ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98). FRA believed that the general quality of injury and illness data would improve by allowing the employee to participate in the reporting process as set forth above. Similarly, FRA recommended a civil monetary penalty against the railroad for its failure to issue this log to the railroad employee within the prescribed time limit.

Comments

Railroad representatives strongly opposed this proposal and instead recommended that all known injuries should be reported by the employee to railroad officials *immediately*, but in any event, no later than the end of the employee's shift. They also recommended that after obtaining knowledge of incurring the injury or illness, notification to the proper railroad official(s) should be mandatory within 24 hours of obtaining such knowledge. These commenters also stated that if the railroad had more stringent notification rules, then the railroad's rules should govern the matter. Many railroad representatives commented that they already require immediate notification of an injury and that they cannot adequately investigate the circumstances and potential causes of the injury or illness without immediate notice by the employee. Further, these same commenters stated that a monetary penalty issued to the employee was not appropriate and, that such sanctions (*i.e.*, disciplinary measures) were better left between the railroad and the railroad employee.

In contrast, rail labor associations fully supported FRA's seven-day notification proposal. However, these commenters did not support the proposal to assess monetary penalties against an employee for his or her failure to report an accident or injury within the seven-day time frame. Instead, these commenters stated that railroads should be held accountable for the actions of their supervisory personnel who knowingly fail to report accidents or injuries that occur to railroad employees. Rail labor representatives acknowledged that railroad policy can, and often does, require more immediate notice than that proposed by FRA, but they also stated that FRA's proposal did not in any way hinder the right of railroads to establish their own policy regarding the timeliness of injury or illness reporting. Rail labor also stated that the proposed regulations should contain language that would suspend the employee's seven-day notification in writing requirement in the event of a severe injury which may prevent the employee from complying with this provision.

In response to the proposal to require railroads to provide employees with a copy of the completed injury and illness log (proposed § 225.39(b)), rail labor representatives stated that an employee should be notified that his or her case has been reported to FRA by either U.S. mail or by hand delivery in a sealed envelope on the property at a time when the employee would regularly receive other company correspondence. Rail labor supported the proposal to exempt the railroad from the seven-day notification requirement when compliance would not be possible due to a severe injury.

Final Rule

FRA does not adopt the proposed seven-day employer notification requirement. Similarly, FRA does not adopt the proposal that would require railroads to provide employees a copy of the completed ''Railroad Employee Injury and/or Illness Record'' within the prescribed time limit of seven days. However, as discussed previously in this preamble, § 225.25(c) does require each railroad to provide the employee, upon his or her request, a copy of either the completed ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) or the alternative railroad-designed record, as well as a copy of any other form, record, or report filed with FRA or held by the railroad pertaining to the employee's injury or illness. Section 225.25(c) thus eliminates the seven-day time limit in which to accomplish this requirement. By providing this requested information, the employee will have the opportunity to assess why, or why not, a particular event was, or was not, reported to FRA.

FRA believes that requiring a paper trail to prove that employees were in fact notified of how the railroad reported their injury, with a receipt, places an unnecessary burden on railroads. Problems also exist with the seven-day requirement in the case where the injured employee may not be at his or her residence during this time period.

FRA believes that the amended recordkeeping requirements in § 225.25 will provide injured and ill railroad employees a means by which to review

and verify the reporting status of their injury or illness.

F. Reporting Threshold

FRA has periodically adjusted the reporting threshold 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 equipment and labor costs so that each year the same groups of accidents are included in the reportable accident counts.

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.

Proposal

FRA proposed to obtain in October, of the year that it would publish a final rule on accident reporting, 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 of that year. 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.

Proposed Equation

Specifically, FRA proposed to use data from the U.S. Department of Labor, 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 I railroads and an overall railroad equipment cost index determined by the BLS. The two factors would be weighted equally.

For the wage component, FRA proposed to use LABSTAT Series Report, Standard Industrial Classification (SIC) code 4011 for Class I Railroad Average Hourly Earnings. For the equipment component, FRA proposed to use LABSTAT Series Report, Producer Price Index (PPI) Series WPU 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.

As proposed in the NPRM, 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.

Formula

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{ 1 + 0.5\frac{\text{Wn} - \text{Wp}}{\text{Wp}} + 0.5\frac{\text{En} - \text{Ep}}{100} \right\}$$

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

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.

Comments

The few comments received in response to the proposal to amend the calculation of the monetary accident reporting threshold using publicly available data were favorable.

Final Rule

The formula to calculate the monetary accident reporting threshold is adopted as proposed. FRA will gather the necessary data in October 1996 and will issue a notice in the Federal Register announcing the revised threshold dollar value. The threshold will then become effective beginning January 1, 1997.

G. Miscellaneous Amendments

This segment of the final rule outlines a number of amendments to various sections of the rule text.

1. Section 225.3 Applicability

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 ''FRSA'') (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 FRSA was enacted. In 1988, Congress amended the older railroad safety laws, including the Accident Reports Act, to conform their reach to that of the FRSA (while also extending FRA's safety jurisdiction to certain other fixed guideway systems). There is a very wide range of operations that could be considered tourist railroads under the broadest reading of the term ''railroad.'' Beginning in 1992, FRA announced that the Agency intended to exercise jurisdiction over ''non-insular'' railroads that are *not* part of the general railroad system and that Part 225, among certain laws and regulations, applies to those entities in the same manner as railroads that are part of the general system. 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 that regulations be tailored specifically to the tourist rail industry.

Proposal

In an effort to clarify the proper extent of the exercise of FRA's jurisdiction,

FRA announced several principles that would be used as guidelines. FRA stated that it would 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 described criteria that would measure the likelihood that a railroad's operations might affect a member of the public. FRA stated that a tourist operation is insular if its operations were 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 would *not* be 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 was not connected to the general system did 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 existed.

As a matter of clarification, FRA proposed to conform Part 225 to its policy on exercise of jurisdiction so that Part 225 would 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).

Comments

The Association of Railway Museums, Inc. (ARM), the Tourist Railroad Association, and the Illinois Railway Museum, strongly opposed this proposal. In general, these commenters made the following assertions:

(a) Any requirements imposed on railway museum operations should also be imposed on amusement park railroads.

(b) The non-accident information requirements would be extremely costly and burdensome, and the imposition of the proposed requirements would be contrary to the Regulatory Flexibility Act and the Swift Rail Development Act.

(c) The insular/non-insular railroad criteria proposed by FRA to determine which non-general system passenger railroads would be subject to regulations is irrational and arbitrary. Regulatory burdens are focused on an insignificant sector of non-general system passenger railroads since large amusement park rail operations that haul millions of passengers a year would be excluded from the regulations.

(d) FRA's practice of subjecting museum and tourist railroads to multiple rulemaking proceedings is extremely burdensome. These commenters urged FRA to deal with museum and tourist railroad issues in a separate, single proceeding.

Final Rule

Section 225.3 Applicability

Tourist railroad commenters had no objections to the proposed accident reporting requirements, but did oppose the non-accident information requirements due to the costs and burdens of collecting what they believed to be information of little value and use to FRA. These commenters further stated that any requirements imposed on the tourist/museum railroads should likewise be imposed on amusement park railroads. These commenters, in essence, are stating that since FRA does not require the amusement park railroads to be subject to Part 225, nor should FRA require the tourist, excursion, scenic, and museum railroads to be subject to the requirements of Part 225. FRA does not believe that exclusion of part of one industry (insular amusement park railroads) compels the exclusion of other parts of an industry (non-insular tourist and museum railroads). The accident reporting regulations set forth in Part 225 have always applied to non-general system, non-insular railroad operations, *e.g.*, a tourist railroad that confines its operations to an installation that is not part of the general system. Exclusion of insular amusement park railroads is not irrational given state and local regulation of these entities as amusements.

Consequently, § 225.3 states that Part 225 will apply 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 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; and (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.

FRA appreciates the concerns of small tourist operations that reviewing applicability of individual parts of the Code of Federal Regulations (CFR) in individual proceedings involves some burden on commenters. In order to foster broader and better coordinated dialogue with small rail passenger operations, FRA has established, within the Railroad Safety Advisory Committee (RSAC), a Tourist and Historic Railroads Working Group. This Working Group will review applicability of current and future regulations to these entities.

As discussed previously, legislation before Congress (the ''Department of Transportation Regulatory Reform Act of 1996'') would amend 49 U.S.C. 20901(a) to eliminate the requirement that railroads file notarized monthly accident/incident reports with FRA. The amendment would allow the Secretary to specify the frequency with which reports must be filed; provide discretion to set different reporting requirements for different classes of railroads; and facilitate electronic filing and a corresponding reduction in paper filings. This amendment would particularly benefit the tourist, excursion, scenic and museum rail industries which may have no events to report for a particular month.

2. Section 225.5 Definitions

Section 225.5 lists definitions applicable to part 225. FRA proposed that § 225.5 be reorganized so that definitions would appear in alphabetical order and without paragraph designations. Definitions proposed for revision included: ''accident/incident,'' ''employee human factor,'' ''medical treatment,'' ''occupational illness,'' and ''railroad.'' New terms proposed for addition to the list of definitions included: ''day away from work,'' ''day of restricted work activity,'' ''establishment,'' ''first aid treatment,'' ''FRA representative,'' ''nonreportable injury or illness,'' ''nonreportable rail equipment accident/incident,'' ''non-train incident,'' ''person,'' ''qualified health care professional,'' ''train accident,'' ''train

incident,'' ''volunteer,'' ''work environment,'' ''worker on duty,'' and ''work related.'' Finally, FRA proposed deletion of the definitions of ''lost workdays'' and ''restriction of work or motion.''

As discussed previously in this preamble, the proposed term ''recordable'' is replaced with the term ''accountable'' for purposes of defining those injuries/illnesses and rail equipment accidents/incidents which are not reportable to FRA but which are required to be recorded on the appropriate injury/illness and rail equipment accident/incident record.

Also note that ''railroad'' has been redefined to mean a person providing railroad transportation. The old definition for ''railroad'' has been reassigned to the term ''railroad transportation.'' Further, the definition of ''accident/incident'' is redefined in the final rule to conform to the amendment of § 225.19(d).

Train Accident

Proposed Rule

A ''train accident'' was defined as 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.

Comments

No comments received.

Final Rule

Adopted as proposed.

Train Incident

Proposed Rule

A ''train incident'' was 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.

Comments

No comments received.

Final Rule

Adopted as proposed.

Employee Human Factor

Proposed Rule

In the definition of ''employee human factor,'' the proposed rule removed reference to ''cause code 506'' because it was obsolete and replaced it with the term ''train accident cause codes pertaining to non-railroad employees.''

Comments

No comments received.

Final Rule

The definition of ''railroad employee human factor'' removes reference to ''cause code 506'' and is amended so as to capture the classifications for a ''Worker on Duty— Employee,'' ''Employee not on Duty,'' ''Worker on Duty— Contractor,'' and ''Worker on Duty—Volunteer.''

Medical Treatment

Proposed Rule

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

Comments

Several commenters believed the proposed change to the definition of ''medical treatment'' would create confusion. Commenters questioned whether employees who sought their own treatment, such as purchasing a sling for a strained arm, would qualify as ''medical treatment.'' They also questioned whether the definition would include the scenario where an employee chooses to take leftover prescribed medication to treat his or her injury or illness. Railroad representatives stated that the determination of appropriate treatment and the administration of reportable medical attention should be performed solely by licensed physicians and medical professionals working under the direction of physicians. These commenters urged FRA to retain the current definition of ''medical treatment'' to reduce the probability of confusion and possible abuse by employees who may jeopardize their treatment.

Final Rule

The definition of ''medical treatment'' is adopted as proposed with minor modification. FRA's definition of ''medical treatment'' is intended to remove the association between the type of treatment rendered and the person who provided the treatment. If a physician treats an injury using first aid measures, the treatment is nonreportable even though a highly skilled medical person administered the care. Conversely, someone with medical skills less than those of a physician (M.D.) may provide medical treatment for a condition. Generally, injuries that are self-treated would not satisfy the reporting requirements since the employee would not normally have the credentials of a ''qualified health care professional.'' However, an employee engaged in self-treatment may later have complications making the treatment ''reportable.'' For example, an employee may drill or puncture a finger nail at the work site so as to remove pressure from the blood that has pooled beneath the nail (a nonreportable injury at this point). If the nail should later become infected requiring treatment by a ''qualified health care professional,'' then the railroad must report the injury.

Medical treatment does *not* include preventive emotional trauma counseling provided by the railroad's employee counseling and assistance officer *unless* the participating worker has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident and this condition requires a regimen of treatment to correct. Further, the railroad's employee counseling and assistance officer rendering counseling to an employee diagnosed with such a mental disorder meets the definition of a ''qualified health care professional'' as discussed later in this preamble.

Occupational Illness

Proposed Rule

In the definition of ''occupational illness,'' FRA proposed that the reference to ''his or her railroad employment'' be replaced with the phrase ''worker's railroad employment.''

Comments

No comments received.

Final Rule

The definition of ''occupational illness'' is amended so as to include and capture occupational illnesses of the classifications of ''Worker on Duty— Employee,'' ''Worker on Duty— Contractor,'' and ''Worker on Duty— Volunteer.''

Railroad and Railroad Transportation

Proposed Rule

''Railroad'' was defined as it is in 49 U.S.C. 20102(1) (formerly contained in the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

Comments

No comments received.

Final Rule

The proposed definition for ''railroad'' is correctly reassigned to the term ''railroad transportation.'' Note that ''railroad'' is redefined to mean a person providing railroad transportation, which

is the definition of ''railroad carrier'' in 49 U.S.C. 20102(2).

Day Away From Work

Proposed Rule

''Day away from work'' was 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.

Comments

No comments received.

Final Rule

Adopted as proposed.

Day of Restricted Work Activity

Proposed Rule

A ''day of restricted work activity'' was defined as any day that a worker is restricted in his or her job following the day of the injury or diagnosis of occupational illness.

Comments

No comments received.

Final Rule

Adopted as proposed.

Establishment

Proposed Rule

''Establishment'' was defined as a physical location where workers report to work, where business is conducted or where services or operations are performed.

Comments

Some commenters proposed that ''establishment'' should be defined as one single, central location. Others suggested that ''each railroad establishment'' should be consistently interpreted to require posting of reports at ''designated assembly points where employees report for work.'' These commenters stated that such posting would not place an undue administrative burden on the railroad as railroads are already required under most collective bargaining agreements to regularly post and/or distribute job bulletins, awards and certain notices. They further stated each railroad should be required to identify ''establishments'' where pertinent records are maintained.

Some commenters stated that each railroad should be authorized to designate the ''establishments'' for which it would tabulate injury and illness data and at which ''establishments'' records would be maintained. They further commented that the railroad would provide FRA with a list of establishments it has designated and would inform FRA of periodic changes to its list.

Final Rule

The definition of ''establishment'' is adopted as proposed. In order to provide compatible counts for the railroad industry that duplicate those being reported by all other industries to the Department of Labor, FRA needs a total count of the number of railroad ''establishments'' that exist in the country. Thus, the block soliciting information on ''Establishments Included in this Report'' appears on the ''Annual Railroad Report of Employee Hours and Casualties, by State'' (Form FRA F 6180.56) as block ''4.'' In the NPRM, FRA proposed that railroads must maintain certain records ''at and for'' each establishment. The final rule, in §§ 225.25 and 225.27, states that records must be maintained for each establishment, but that centralization of recordkeeping may be performed at any location(s), as long as prescribed accessibility requirements are met. Refer to § 225.35 for a discussion of ''access to records and reports.''

First Aid Treatment

Proposed Rule

''First aid treatment'' was 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.

Comments

Commenters requested that FRA clarify the definition of ''first aid treatment'' in order to reduce or eliminate confusion as to what actually constituted such treatment.

Final Rule

The definition of ''first aid treatment'' is adopted as proposed. FRA believes this definition is adequate and the examples of first aid treatments found in the *FRA Guide* are sufficient to assist the reporting officer in identifying which treatments are reportable and which are nonreportable. FRA intends to review the examples in the *FRA Guide* to determine if any additional examples and/or guidance pertaining to ''first aid treatment'' and ''medical treatment'' would be beneficial to the railroad reporting officer.

FRA Representative

Proposed Rule

''FRA representative'' was 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.

Comments

No comments received.

Final Rule

Adopted as proposed.

Non-Train Incident

Proposed Rule

A ''non-train incident'' was 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.

Comments

No comments received.

Final Rule

Adopted as proposed.

Person

Proposed Rule

''Person'' was defined to add independent contractors and their employees and workers, as well as volunteers.

Comments

No comments received.

Final Rule

Adopted as proposed.

Qualified Health Care Professional

Proposed Rule

A ''qualified health care professional'' was 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. FRA also asked for comments regarding whether the railroad's employee assistance officer (EAO) should be considered a ''qualified health care professional'' when he or she provides counseling to an employee who has experienced traumatic stress from involvement in a serious or fatal accident.

Comments

Some rail labor representatives commented that the proposed definition was reasonable and that there was no need to restrict the definition of a ''qualified health care professional'' to an ''M.D.'' as long as the treating or

attending individual was qualified and operated within the scope of his or her license, registration, or certification. However, some of these commenters stated that the railroad's employee assistance officer (EAO) should not be considered a ''qualified health care professional'' when he or she counsels employees on a preventive basis.

Several railroad representatives stated that the definition should remain as broad as possible and that the railroad's EAO should be considered a ''qualified health care professional.'' Some of these commenters further emphasized that FRA should make it clear that when prescribed medical treatment is refused by an employee, the injury should continue to be considered reportable, provided such medical treatment meets reportability criteria.

Other railroad representatives opposed the definition because they believed that the latitude resulting from the proposed definition would allow treatment by nearly anyone who claimed to be a health care professional. One example offered by a major carrier involved the situation where a registered massage therapist, qualified to diagnose muscle strain due to work stress, could provide ''treatments'' which would cause the injury to be reportable. These commenters emphasized that the definition of a ''qualified health care professional'' should be restricted to physicians who are universally recognized as capable of diagnosing and treating individuals for illnesses and injuries.

Final Rule

The definition of ''qualified health care professional'' is adopted as proposed. However, the railroad's employee assistance officer (EAO) is considered a ''qualified health care professional'' when he or she provides counseling to an employee who has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident, and this condition requires a regimen of treatment to correct.

As discussed previously in this preamble under the definition of ''first aid'' treatment, many reportable injuries can be treated by a ''qualified health care professional'' who is not a physician, *i.e.*, who does not hold an M.D. Likewise, a physician (M.D.) may perform first aid treatment. In many instances, emergency medical treatment is performed in the absence of physicians. With all the variables, FRA believes that limiting the definition of ''qualified health care professional'' to encompass only physicians, would result in the underreporting of many injuries that require more than first aid treatment, thus rendering the injury reportable.

Volunteer

Proposed Rule

''Volunteer'' was 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 § 209.303.

Comments

Please refer to the detailed discussion of the definition of ''Volunteer'' in the preamble to this rule in the section entitled ''Form FRA F 6180.55—Railroad Injury and Illness Summary.''

Final Rule

The following definitions will not appear in § 225.5. They will however, be defined in the next revised *FRA Guide*.

Worker on Duty—Volunteer (Class H) is a volunteer who does not receive 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 as defined in § 209.303.

Volunteer—Other (Class I) is a volunteer who does not receive direct monetary compensation from the railroad and who is not engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303.

Worker on Duty—Contractor (Class F) is an employee of a contractor who does not receive direct monetary compensation from the railroad and who, while on railroad property, is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303.

Contractor—Other (Class G) is an employee of a contractor who does not receive direct monetary compensation from the railroad and who is not engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303.

Work Environment

Proposal

''Work environment'' was 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.

Comments

No comments received.

Final Rule

Adopted as proposed.

Work Related

Proposed Rule

''Work related'' was defined as relating to any incident, activity, exposure, etc. occurring within the work environment.

Comments

No comments received.

Final Rule

Adopted as proposed.

Worker on Duty

Proposal

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

Comments

Please refer to the detailed discussion of the definition of ''Worker on Duty'' in the preamble to this rule in the section entitled ''Form FRA F 6180.55—Railroad Injury and Illness Summary.''

Final Rule

Worker on Duty—Employee (Class A) is defined as an individual who receives direct monetary compensation from the railroad. Please note that this definition will not appear in § 225.5, but will appear in the next revised *FRA Guide*.

Lost Workdays and Restriction of Work or Motion

Proposal

FRA proposed deletion of the definitions for ''Lost Workdays'' and ''Restriction of Work or Motion.''

Comments

No comments received.

Final Rule

Adopted as proposed.

3. Section 225.7 Public Examination and Use of Reports Proposal

In § 225.7(a), FRA proposed that the 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 § 225.7(b), FRA proposed that ''Accident Reports Act'' would replace the erroneous reference to ''Accidents Reports Act.''

Comments

No comments received.

Final Rule

Section 225.7 Public Examination and Use of Reports

Section 225.7(a) removes reference to ''Executive Director'' and replaces it with ''Freedom of Information Officer, Office of Chief Counsel.'' Thus, written requests for a copy of any report would be addressed to the Freedom of Information Officer, Office of Chief Counsel, at FRA.

The statutory reference also is revised to reflect the 1994 repeal of the Accident Reports Act and the simultaneous revision and reenactment without substantive change of its provisions in title 49 of the United States Code.

4. Section 225.11 Reporting of Accidents/Incidents Proposal

As proposed, § 225.11 would be revised to reflect that reports identified in § 225.19 submitted via magnetic media or electronically, over telephone lines, would be due within 30 days after the end of the month in which the accident/incident occurred.

Comments

No comments received.

Final Rule

Section 225.11 Reporting of Accidents/Incidents

Adopted as proposed. Additionally, this section is amended to identify the office, *i.e.*, RRS–22, within the Office of Safety, where one may obtain a copy of the ''FRA Guide for Preparing Accidents/Incidents Reports.''

5. Section 225.12 Rail Equipment Accident/Incident Reports Alleging Employee Human Factor as Cause; Employee Human Factor Attachment; Notice to Employee; Employee Supplement

Final Rule

Since employee human factor is redefined to include the classifications of Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, and Worker on Duty—Volunteer, § 225.12(a) is amended to clarify that, for purposes of this section, ''employee'' is defined to include Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, or Worker on Duty—Volunteer.

6. Section 225.19 Primary Groups of Accidents/Incidents Proposal

Proposed revisions to §§ 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.''

Section 225.19(d) identifies the third group of accidents (''death, injury or occupational illness'') that are to be reported on Form FRA F 6180.55a. FRA proposed that the language 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 to any person; (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.

Comments

No comments received.

Final Rule

Section 225.19 Primary Groups of Accidents/Incidents

Adopted as proposed. Additionally, § 225.19(e) is added to clarify that the current accident/incident reporting threshold of $6,300 is effective until FRA amends that amount and provides notice in the Federal Register.

7. Section 225.21 Forms

Proposal

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

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

The Records discussed in new §§ 225.25 (a) and (b) and in §§ 225.25 (d) and (e) and the alternative, railroad-designed records would be added to the list of forms as § 225.21(h) (Form FRA F 6180.98—Railroad Employee Injury and/or Illness Record) and as § 225.21(i) (Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record).

Comments

No comments received.

Final Rule

Section 225.21 Forms

Adopted as proposed.

8. Section 225.29 Penalties

Proposal

Section 225.29 identifies the penalties FRA may impose upon any person that violates any requirement of this part. FRA proposed amendment to the language of this section to reflect the 1992 amendments to the Federal Railroad Safety Act of 1970 which increased the minimum penalty and settlement per violation to $500.

Comments

No comments received.

Final Rule

Section 225.29 Penalties

Adopted as proposed.

9. Section 225.35 Access to Records and Reports

Proposal

FRA inspectors frequently encounter reluctance from the railroads when examining and photocopying claims department records, particularly railroad employee medical records. FRA proposed that FRA representatives, or any representative of a State participating in investigative and surveillance activities under the Federal railroad safety laws and regulations, must have access to *all* records, reports, logs, and supplementary records related to (a) rail equipment accidents/incidents, including collisions and derailments; (b) highway-rail grade crossing accidents/incidents; (c) death, injuries, and illnesses, including claims and medical records; as well as all records and reports identified in § 225.25, for examination and photocopying (at no expense to the representative) in a reasonable manner during normal business hours. Further, a penalty was proposed for each instance the railroad denies a representative access to any record, report, log, and supplementary record identified above.

Comments

Most railroads representatives stated that the requirement for records to be maintained at one or more central locations was far too stringent and impracticable. In contrast, rail labor representatives agreed with the FRA proposal that railroads should have a hard copy of all records on file at a

central location designated by that railroad and that such records should be easily and readily accessible upon request.

Final Rule

Section 225.35 Access to Records and Reports

Section 225.35 requires that each railroad must have at least one location, and must identify the location(s), where both federal and State inspectors, and authorized representatives, have centralized *access* to a copy of all records and reports provided for in this Part. Each railroad must identify at least one location where a copy of any record or report is accessible for inspection by maintaining a list of such establishments in the office where the railroad's reporting officer conducts his or her business. Further, inspectors and representatives must be able to access within a reasonable time, but in any event no later than four business hours after the request, a hard copy of the signed ''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 hard copy of all other records and reports pursuant to Part 225. This requirement also includes access to a hard copy of *any* report submitted to FRA via magnetic media or, electronically, over telephonic lines, and also includes copies of the records and reports identified in § 225.25.

Note that the requirement under § 225.35 does not state that original records and reports must be kept at a centralized location by the railroad. Rather, it states that each railroad must have a list (in the office where the railroad's reporting officer conducts his or her official duties/business) which identifies at least one location where a copy of all records and reports pursuant to Part 225 may be accessed by the inspector or other authorized representative. The four business hours time period affords railroads sufficient time to fulfill any record request.

10. Appendix A Schedule of Penalties

Proposal

FRA proposed that Appendix B to Part 225 would be redesignated as Appendix A and would be revised to add penalties for the following sections: § 225.33, ''Failure to Adhere to the Internal Control Plan''; § 225.39, ''Failure to Inform Employer of Injury and/or Illness'' and ''Failure to Provide Employee with a Copy of Form FRA F 6180.98''; and § 225.35, ''Access to Records and Reports.'' Additionally, the rule proposed that the dual entries under each of paragraphs (a), (b), and (d) of § 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 § 225.12(a) code (2) would be increased, in light of the 1992 amendments to the Federal Railroad Safety Act of 1970 which increased the minimum penalty and settlement to $500.

Comments

Railroad representatives opposed the addition of any penalty. Rail labor representatives opposed the addition of a penalty against the employee for his or her ''failure to notify the railroad within seven calendar days of incurring an injury or illness'' but favored the addition of a penalty for both § 225.33, the railroad's failure to adhere to its Internal Control Plan, and § 225.39, the railroad's failure to provide the employee with a copy of Form FRA F 6180.98 (the ''Railroad Employee Injury and/or Illness Record'').

Final Rule

Appendix A Schedule of Penalties

The Schedule of Civil Penalties, Appendix A, contains additional penalties for violations of § 225.33(1), ''Failure to Adopt the Internal Control Plan''; § 225.33(2), ''Inaccurate Reporting due to Failure to Comply with the Internal Control Plan''; § 225.33(3), ''Failure to Comply with the Intimidation/Harassment Policy in the Internal Control Plan''; and § 225.35, ''Access to Records and Reports.'' The dual entries under each of paragraphs (a), (b), and (d) of § 225.12 are coded ''(1)'' and ''(2),'' respectively, to allow the proper entry of data into FRA's enforcement database. The penalties for violations of § 225.12(a) code (2) are increased, in light of the 1992 amendments to the Federal Railroad Safety Act of 1970 which increased the minimum penalty and settlement to $500.

11. Revision of Title 49, United States Code

On July 5, 1994, all the general and permanent Federal railroad safety laws were simultaneously repealed, reenacted without substantive change, and recodified as positive law in Title 49 of the United States Code by Public Law 103–272. Due to this change, Part 225 is amended throughout to reference the newly codified provisions.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule 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 final rule also has been reviewed under Executive Order 12866 and is considered ''nonsignificant'' under that Order.

AAR stated in its written comments that FRA is required by law to explain its noncompliance with Executive Order 12866. AAR and member railroads claimed that GAO's 1989 audit on accident/incident reporting was outdated and that GAO's findings should not be considered for this rulemaking. GAO's audit concluded that only one railroad, out of the five it studied, had a written ICP and, only that railroad did not have serious errors in accident/incident reporting. GAO found that the other railroads underreported the actual number of reportable accidents and incidents, and that many of the reports submitted to FRA contained inaccurate or incomplete information. During the several days of public hearings and in the written comments provided in response to this rulemaking, there was no statement from any party that an independent audit was conducted by any railroad to determine whether that railroad was properly reporting accidents and incidents; nor did any railroad state that even an internal audit was performed to determine whether the GAO audit was in fact outdated. Based on the lack of empirical evidence, FRA rejects AAR's claim that it is in noncompliance with Executive Order 12866.

Although the rulemaking is ''nonsignificant,'' FRA nonetheless has prepared a regulatory impact analysis addressing the economic impact of the final rule. The regulatory evaluation estimates the economic costs and consequences of this final rule as well as its anticipated benefits of the impact. This regulatory impact analysis 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. FRA has assessed quantitative measurements of the costs and benefits expected from the implementation of this rule. The Net Present Value (NPV) of the net costs is

$2.34 million or, $117,000 per year. Over a 20-year period, the NPV of the estimated quantifiable societal benefits is $2.62 million, and the NPV of the estimated quantifiable societal costs is $4.96 million. Assuming the improved data generated by this rule led to regulatory decisions that provided the margin of safety necessary to prevent even one rail-related death over 20 years, this rule would produce quantified benefits equaling the quantified costs. Thus, it is FRA's position that the qualitative benefits as a result of this final rule, *i.e.*, the collection of consistent and uniform data and the value of well focused regulatory decisions and properly targeted compliance activities, will far exceed the costs.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of 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.

Some small entities (*e.g.*, tourist, scenic, museum and excursion railroads) expressed a concern for FRA's accident reporting NPRM due to the proposal to include ''Volunteers'' who perform safety-sensitive functions or who operate on-track equipment in the ''Worker on Duty'' classification. This concern was based on the fact that tourist railroads would have to collect and report to FRA the number of safety-sensitive hours its volunteers worked each month. Tourist and museum railroads viewed this proposal as being excessively burdensome. This final rule revises this proposal so that there are new categories for the classification of ''Volunteer'' on Form FRA F 6180.55. Further, the final rule eliminates the proposal that would have required railroads to collect and report any of the hours worked by volunteers.

The final rule requires railroads to implement an Internal Control Plan (ICP) for their railroad accident reporting process. This requirement is a process standard that will promote the accuracy of the reporting process. The requirement does not tell the railroads how to develop and implement an ICP or how the lines of communication should be established. Nor does the ICP dictate who is responsible for which functions or information exchange. The final rule adopts an ICP which allows railroads greater flexibility in design and implementation. Therefore, the needs, resources, and suitability of an ICP for each railroad can be reflected in its implementation. Most small railroads will be burdened proportionately less by this requirement than large or medium sized railroads.

Small railroads also expressed some concern for the proposal to calculate costs associated with damage to (i) On-track equipment, (ii) signal equipment, (iii) track, (iv) track structures and roadbed, and (v) costs of equipment rental and operation. The proposed damage worksheet required the damages to be estimated using the costs associated with acquiring new parts. This differed greatly from the current methods that railroads use to estimate accident damages. This potentially created problems and additional burdens for small railroads because they generally perform repairs with used or refurbished parts. This final rule does not adopt this method of calculating accident damages and does not adopt use of the property damage worksheet by railroads. The burden on small railroads therefore has been reduced with elimination of this proposal.

FRA appreciates the concerns small railroads and tourist operations expressed concerning the impact the accident reporting and other regulations have on these entities. As stated previously, there is legislation before Congress (the ''Department of Transportation Regulatory Reform Act of 1996'') which, if passed, would amend 49 U.S.C. 20901(a) to eliminate the requirement that railroads file notarized monthly reports with FRA regarding accidents and incidents on their properties. The amendment also would allow the Secretary to specify the frequency with which reports must be filed; provide discretion to set different reporting requirements for different classes of railroads; and facilitate electronic filing and a corresponding reduction in paper filings. It is believed these amendments would reduce unnecessary expense and delay associated with filing monthly reports, particularly for small railroads and tourist operations which may have no events to report for a particular month.

In reviewing the economic impact of the rule, FRA has concluded that it will have a small economic impact on small entities. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

FRA has prepared a regulatory flexibility assessment addressing the impact of the final rule on small entities. This regulatory flexibility assessment 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.

Paperwork Reduction Act

The information collections contained in the accident reporting NPRM were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) under control number 2130–0500. This approval will expire on June 30, 1997. This final rule contains amendments to the approved information collections, and these revisions are subject to review by OMB under the Paperwork Reduction Act of 1995. The sections that contain the new and/or revised information collection requirements and the estimated time to fulfill each requirement are as follows:

Proposed section	Brief description	Estimated average time
225.19(b), 225.21(e)	Form FRA F 6180.57—Highway-Rail Grade Crossing Accident/Incident Report	4 hours.
225.19(c), 225.21(a)	Form FRA F 6180.54—Rail Equipment Accident/Incident Report	2 hours.
225.19(d), 225.21(c)	Form FRA F 6180.55a—Railroad Injury and Illness Summary (Continuation Sheet)	10 minutes.
225.21(b)	Form FRA F 6180.55—Railroad Injury and Illness Summary	45 minutes.
225.21(d)	Form FRA F 6180.56—Annual Railroad Report of Manhours and Casualties by State.	3 hours.
225.21(g)	Form FRA F 6180.78—Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report.	15 min./2 hours.
225.21(h), 225.25(a)	Form FRA F 6180.98—Railroad Employee Injury and/or Illness Record	30 minutes.
225.21(i), 225.25(b)	Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record	30 minutes.

Proposed section	Brief description	Estimated average time
225.25(h)	Monthly List of Injuries and Illnesses	5 hours (Class I RR). 45 minutes (RR with 400,000 manhours or more, excluding Class I RR). 10 minutes (RR with less than 400,000 manhours)
225.33(a)	Internal Control Plans	32 hours (Class I RR). 20 hours (RR with 400,000 manhours or more, excluding Class I RR)) 1.75 hours (RR with less than 400,000 manhours).
225.37(b)(2), 225.37(c)(1)	FRA F Form 6180.99—Batch Control Form	10 minutes.
225.25(c)	Copy of Railroad Employee Injury and/or Illness Record to Employee	2 minutes.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information shall have practical utility; on the accuracy of FRA''s estimates of the burden of the information collection requirements; on the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Gloria Swanson at (202) 501–4982.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Federal Railroad Administration, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Ms. Gloria Swanson, Federal Railroad Administration, Room 8301, RRS–211, 400 Seventh Street, S.W., Washington, D.C. 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements when they do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new or revised information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

Environmental Impact

FRA has evaluated these 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 rule will not have any effect on the quality of the environment.

Federalism Implications

This rule will 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.

The Final Rule

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

PART 225—[AMENDED]

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

Authority: 49 U.S.C. 20901, 20102, 322(a), 21302, 21304, 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. 39, 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); 49 CFR 1.49 (c), (g), and (m).

2. By revising § 225.1 to read as follows:

§ 225.1 Purpose.

The purpose of this part is to provide the Federal Railroad Administration with accurate information concerning the hazards and risks that exist on the Nation's railroads. FRA needs this information to effectively carry out its regulatory responsibilities under 49 U.S.C. chapters 201–213. FRA also uses this information for determining comparative trends of railroad safety and to develop hazard elimination and risk reduction programs that focus on preventing railroad injuries and accidents. Issuance of these regulations under the federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accidents/incidents and injuries/illnesses which occur in that State.

3. By revising § 225.3 to read as follows:

§ 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 that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation and used for freight operations.

(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 is not 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.

4. By revising § 225.5 to read as follows:

§ 225.5 Definitions

As used in this part—

Accident/incident means:

(1) Any impact between railroad on-track equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle or pedestrian at a highway-rail 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 reportable damages greater than the current reporting threshold 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 to any person;

(ii) Injury to any person that requires medical treatment;

(iii) Injury to a railroad employee that results in:

(A) A day away from work;

(B) Restricted work activity or job transfer; or

(C) Loss of consciousness; or

(4) Occupational illness of a railroad employee. *Accountable injury or illness* means 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; however, it may be provided at any location, including the work site.

Accountable rail equipment accident/incident means 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 from the track before any rail operations over the track can continue. An accountable rail equipment accident/incident, if not tended to, thus would disrupt railroad service. Examples of ''disruption of service'' would include: loss of main track; one or more derailed wheels; any train failing to arrive or depart at its scheduled time; one or more cars or locomotives taken out of service; or rerouting trains due to a damaged car or locomotive.

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 employee does not report to work for reasons associated with his or her condition.

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

Employee 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 Accidents/Incidents Reports,'' except for those train accident cause codes pertaining to non-railroad workers. For purposes of this definition ''employee'' includes the classifications of Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, and Worker on Duty—Volunteer.

Establishment means a single physical location where workers report to work, 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. Medical treatment also does *not* include preventive emotional trauma counseling provided by the railroad's employee counseling and assistance officer *unless* the participating worker has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident and this condition requires a regimen of treatment to correct.

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 any person who falls under the definition for the classifications of Worker on Duty—Employee, Worker on Duty—Contractor, or Worker on Duty—Volunteer, other than one resulting from injury, caused by environmental factors associated with the person'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 passenger; any trespasser or nontrespasser; 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 repetitive motion injuries.

Railroad means a person providing railroad transportation.

Railroad transportation means any form of non-highway ground transportation that run on rails or electro-magnetic guideways, including 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 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.

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.

Work environment is the physical location, equipment, materials processed or used, and activities of a railroad employee 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.

§ 225.7 [Amended]

5. By removing ''Executive Director'' in the third sentence in § 225.7(a) and adding in lieu thereof ''Freedom of Information Officer, Office of Chief Counsel'' and by removing ''Section 4 of the Accidents Reports Act (36 Stat. 351, 45 U.S.C. 41)'' in the first sentence in § 225.7(b) and adding in lieu thereof ''49 U.S.C. 20903'' and by removing ''Accident Reports Act'' in the second sentence in § 225.7(b) and adding in lieu thereof ''49 U.S.C. 20901'' and by removing ''45 U.S.C. 41'' at the end of paragraph (b) and adding in lieu thereof ''49 U.S.C. 20903.''

6. By revising § 225.11 to read as follows:

§ 225.11 Reporting of accidents/incidents.

Each railroad subject to this part shall submit to FRA a monthly report of all railroad accidents/incidents described in § 225.19. The report shall be made on the forms prescribed in § 225.21 in hard copy or, alternatively, by means of magnetic media or electronic submission, as prescribed in § 225.37, and shall be submitted within 30 days after expiration of the month during which the accidents/incidents occurred. Reports shall be completed as required by the current ''FRA Guide for Preparing Accidents/Incidents Reports.'' A copy of this guide may be obtained from the Office of Safety, RRS–22, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

7. By adding a sentence to § 225.12(a), by revising the second sentence in § 225.12(g)(3), and by revising §§ 225.12(h) (1) and (2) to read as follows:

§ 225.12 Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor Attachment; notice to employee; employee supplement.

(a) * * * For purposes of this section, ''employee'' is defined as a Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, or Worker on Duty—Volunteer.

* * * * *

(g) * * *

(1) * * *

(2) * * *

(3) * * * If an employee wishes to provide confidential information to FRA, the employee should not use the Supplement form (part II of Form FRA F 6180.78), but rather provide such confidential information by other means, such as a letter to the employee's collective bargaining representative, or to the Federal Railroad Administration, Office of Safety Assurance and Compliance, RRS–11, 400 Seventh Street, S.W., Washington, D.C. 20590.

* * *

(h) * * *

(1) Under 49 U.S.C. 21301, 21302, and 21304, any person who willfully files a false Supplement with FRA is subject to a civil penalty. See Appendix A to this part.

(2) Any person who knowingly and willfully files a false Supplement is subject to a $5,000 fine, or up to two years'' imprisonment, or both, under 49 U.S.C. 21311.

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

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(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 shall 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 shall be reported on Form FRA F 6180.55a if it results in:

(1) Death to any person;

(2) Injury to any person that requires medical treatment;

(3) Injury to a railroad employee 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 employee.

(e) The accident/incident reporting threshold for calendar years 1991 through 1996 is $6,300. This threshold dollar amount will remain in effect until FRA amends that amount and provides notice in the Federal Register. The procedure for determining the reporting threshold will appear as Appendix B to Part 225.

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

§ 225.21 Forms.

* * * * *

(b) * * * All railroads subject to this part, shall show on this form the total number of freight train miles, passenger train miles, yard switching train miles,

and other train miles run during the month.

* * * * *

(h) *Form FRA F 6180.98—Railroad Employee Injury and/or Illness Record.* Form FRA F 6180.98 or an alternative railroad-designed record shall be used by the railroads to record all reportable and accountable injuries and illnesses to railroad employees for each establishment. This record shall be completed and maintained in accordance with the requirements set forth in § 225.25.

(i) *Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record.* Form FRA F 6180.97 or an alternative railroad-designed record shall be used by the railroads to record all reportable and accountable rail equipment accidents/incidents for each establishment. This record shall be completed and maintained in accordance with the requirements set forth in § 225.25.

10. By revising § 225.25 to read as follows:

§ 225.25 Recordkeeping.

(a) Each railroad shall maintain either the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or an alternative railroad-designed record as described in paragraph (b) of this section of all reportable and accountable injuries and illnesses of its employees that arise from the operation of the railroad for each railroad establishment where such employees report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

(b) The alternative railroad-designed record may be used in lieu of the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) described in paragraph (a) of this section. Any such alternative record shall contain all of the information required on the Railroad Employee Injury and/or Illness Record. Although this information may be displayed in a different order from that on the Railroad Employee Injury and/or Illness Record, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad shall be consistent for each of the railroad''s reporting establishments. Railroads may list additional information on the alternative record beyond the information required on the Railroad Employee Injury and/or Illness Record. The alternative record shall contain, at a minimum, the following information:

(1) Name of railroad;

(2) Case/incident number;

(3) Full name of railroad employee;

(4) Date of birth of railroad employee;

(5) Gender of railroad employee;

(6) Social security number of railroad employee;

(7) Date the railroad employee was hired;

(8) Home address of railroad employee; include the street address, city, State, ZIP code, and home telephone number with area code;

(9) Name of facility where railroad employee normally reports to work;

(10) Address of facility where railroad employee normally reports to work; include the street address, city, State, and ZIP code;

(11) Job title of railroad employee;

(12) Department assigned;

(13) Specific site where accident/incident/exposure occurred; include the city, county, State, and ZIP code;

(14) Date and time of occurrence; military time or AM/PM;

(15) Time employee's shift began; military time or AM/PM;

(16) Whether employee was on premises when injury occurred;

(17) Whether employee was on or off duty;

(18) Date and time when employee notified company personnel of condition; military time or AM/PM;

(19) Name and title of railroad official notified;

(20) Description of the general activity this employee was engaged in prior to the injury/illness/condition;

(21) Description of all factors associated with the case that are pertinent to an understanding of how it occurred. Include a discussion of the sequence of events leading up to it; and the tools, machinery, processes, material, environmental conditions, etc., involved;

(22) Description, in detail, of the injury/illness/condition that the employee sustained, including the body parts affected. If a recurrence, list the date of the last occurrence;

(23) Identification of all persons and organizations used to evaluate or treat the condition, or both. Include the facility, provider and complete address;

(24) Description of all procedures, medications, therapy, etc., used or recommended for the treatment of the condition.

(25) Extent and outcome of injury or illness to show the following as applicable:

(i) Fatality—enter date of death;

(ii) Restricted work; number of days; beginning date;

(iii) Occupational illness; date of initial diagnosis;

(iv) Instructions to obtain prescription medication, or receipt of prescription medication;

(v) If missed one or more days of work or next shift, provide number of work days; and beginning date;

(vi) Medical treatment beyond ''first aid'';

(vii) Hospitalization for treatment as an inpatient;

(viii) Multiple treatments or therapy sessions;

(ix) Loss of consciousness;

(x) Transfer to another job or termination of employment;

(26) Each railroad shall indicate if the Railroad Injury and Illness Summary (Continuation Sheet) (FRA Form F 6180.55a) has been filed with FRA for the injury or illness. If FRA Form F 6180.55a was not filed with FRA, then the railroad shall provide an explanation of the basis for its decision.

(27) The reporting railroad shall indicate if the injured or ill railroad employee was provided an opportunity to review his or her file; and

(28) The reporting railroad shall identify the preparer's name; title; telephone number with area code; and the date the log entry was completed.

(c) Each railroad shall provide the employee, upon request, a copy of either the completed Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or the alternative railroad-designed record as described in paragraphs (a) and (b) of this section as well as a copy of any other form, record or report filed with FRA or held by the railroad pertaining to the employee's injury or illness.

(d) Each railroad shall maintain the Initial Rail Equipment Accident/Incident Record (Form FRA F 6180.97) or an alternative railroad-designed record as described in paragraph (e) of this section of reportable and accountable 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 where workers report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

(e) The alternative railroad-designed record may be used in lieu of the Initial Rail Equipment Accident/Incident Record (Form FRA F 6180.97). Any such alternative record shall contain all of the information required on the Initial Rail Equipment Accident/Incident Record. Although this information may be

displayed in a different order from that on the Initial Rail Equipment Accident/Incident Record, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad shall be consistent for each of the railroad's reporting establishments. Railroads may list additional information in the alternative record beyond the information required on the Initial Rail Equipment Accident/Incident Record. The alternative record shall contain, at a minimum, the following information:

(1) Date and time of accident;

(2) Reporting railroad, and accident/incident number;

(3) Other railroad, if applicable, and other railroad's accident/incident number;

(4) Railroad responsible for track maintenance, and that railroad's incident number;

(5) Type of accident/incident (derailment, collision, etc.);

(6) Number of cars carrying hazardous materials that derailed or were damaged; and number of cars carrying hazardous materials that released product;

(7) Division;

(8) Nearest city or town;

(9) State;

(10) Milepost (to the nearest tenth);

(11) Specific site;

(12) Speed (indicate if actual or estimate);

(13) Train number or job number;

(14) Type of equipment (freight, passenger, yard switching, etc.);

(15) Type of track (main, yard, siding, industry);

(16) Total number of locomotives in train;

(17) Total number of locomotives that derailed;

(18) Total number of cars in train;

(19) Total number of cars that derailed;

(20) Total amount of damage in dollars to equipment based on computations as described in the ''FRA Guide for Preparing Accidents/Incidents Reports'';

(21) Total amount of damage in dollars to track, signal, way and structures based on computations as described in the ''FRA Guide for Preparing Accidents/Incidents Reports'';

(22) Primary cause;

(23) Contributing cause;

(24) Persons injured and persons killed, broken down into the following classifications: worker on duty—employee; employee not on duty; passenger on train; nontrespasser—on railroad property; trespasser; worker on duty—contractor; contractor—other; worker on duty—volunteer; volunteer—other; and nontrespasser—off railroad property;

(25) Narrative description of the accident;

(26) Whether the accident/incident was reported to FRA;

(27) Preparer's name, title, telephone number with area code, and signature; and

(28) Date the report was completed.

(f) Each railroad shall enter each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident on the appropriate record, as required by paragraphs (a) through (e) of this section, as early as practicable but no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred.

(g) The records required under paragraphs (a) through (e) of this section may be maintained at the local establishment or, alternatively, at a centralized location. If the records are maintained at a centralized location, but not through electronic means, then a paper copy of the records that is current within 35 days of the month to which it applies shall be available for that establishment. If the records are maintained at a centralized location through electronic means, then the records for that establishment shall be available for review in a hard copy format within four business hours of FRA's request. FRA recognizes that circumstances outside the railroad's control may preclude it from fulfilling the four-business-hour time limit. In these circumstances, FRA will not assess a monetary penalty against the railroad for its failure to provide the requested documentation provided the railroad made a reasonable effort to correct the problem.

(h) A listing of all reported injuries and occupational illnesses for the previous month shall be posted in a conspicuous location at and for each railroad establishment within 30 days after expiration of the month during which the injuries and illnesses occurred. For purposes of this paragraph, this list is required to be posted only at those establishments that are in continual operation for a minimum of 90 calendar days; otherwise the list shall be posted at the next higher organizational level establishment. This listing shall be posted and shall remain continuously displayed for the next twelve consecutive months. Incidents reported for employees at that establishment shall be displayed in date sequence. The listing shall contain, at a minimum, the following information:

(1) Name and address of the establishment;

(2) Calendar year of the cases being displayed;

(3) Incident number used to report case;

(4) Date of the injury or illness;

(5) Location of incident;

(6) Regular job title of employee injured or ill;

(7) Description of the injury or condition;

(8) Number of days employee absent from work at time of posting;

(9) Number of days of work restriction for employee at time of posting;

(10) If fatality—enter date of death;

(11) Annual average number of railroad employees reporting to this establishment;

(12) Preparer's name, title, telephone number with area code, and signature; and

(13) Date the report was completed.

(14) When there are no reportable injuries or occupational illnesses associated with an establishment for that month, the listing shall make reference to this fact.

11. By revising the first sentence in § 225.27(a) and by adding a new sentence after the revised first sentence to read as follows:

§ 225.27 Retention of records.

(a) Each railroad shall retain the Railroad Employee Injury and/or Illness Record and the Monthly List of Injuries and Illnesses required by § 225.25 for at least five years after the end of the calendar year to which they relate. Each railroad shall retain the Initial Rail Equipment Accident/Incident Record required by § 225.25 for at least two years after the end of the calendar year to which they relate. * * *

* * * * *

12. By removing ''$250'' in the first sentence in § 225.29 and adding in lieu thereof ''$500'' and by revising the third and fourth sentences in § 225.29 to read as follows:

§ 225.29 Penalties.

* * * See Appendix A to this part for a statement of agency civil penalty policy. A person may also be subject to the criminal penalties provided for in 49 U.S.C. 21311.

13. By revising 225.31(f) to read as follows:

§ 225.31 Investigations.

* * * * *

(f) Section 20903 of title 49 of the United States Code provides that no part of a report of an accident investigation

under section 20902 of title 49 of the United States Code may be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in the accident investigation report.

14. By adding new § 225.33 as follows:

§ 225.33 Internal Control Plans.

(a) Each railroad shall adopt and comply with a written Internal Control Plan that shall be maintained at the office where the railroad's reporting officer conducts his or her official business. Each railroad shall amend its Internal Control Plan, as necessary, to reflect any significant changes to the railroad's internal reporting procedures. The Internal Control Plan shall be designed to maintain absolute accuracy and shall include, at a minimum, each of the following ten components:

(1) A policy statement declaring the railroad's commitment to complete and accurate reporting of all accidents, incidents, injuries, and occupational illnesses arising from the operation of the railroad, to full compliance with the letter and spirit of FRA's accident reporting regulations, and to the principle, in absolute terms, that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting such accident, incident, injury or illness will not be permitted or tolerated and will result in some stated disciplinary action against any employee, supervisor, manager, or officer of the railroad committing such harassment or intimidation.

(2) The dissemination of the policy statement; complaint procedures. Each railroad shall provide to all employees, supervisory personnel, and management the policy statement described in paragraph (a)(1). Each railroad shall have procedures to process complaints from any person about the policy stated in paragraph (a)(1) being violated, and to impose the appropriate prescribed disciplinary actions on each employee, supervisor, manager, or officer of the railroad found to have violated the policy. These procedures shall be disclosed to railroad employees, supervisors, managers, and officers. The railroad shall provide ''whistle blower'' protection to any person subject to this policy, and such policy shall be disclosed to all railroad employees, supervisors and management.

(3) Copies of internal forms and/or a description of the internal computer reporting system used for the collection and internal recording of accident and incident information.

(4) A description of the internal procedures used by the railroad for the processing of forms and/or computerized data regarding accident and incident information.

(5) A description of the internal review procedures applicable to accident and incident information collected, and reports prepared by, the railroad's safety, claims, medical and/or other departments engaged in collecting and reporting accident and incident information.

(6) A description of the internal procedures used for collecting cost data and compiling costs with respect to accident and incident information.

(7) A description of applicable internal procedures for ensuring adequate communication between the railroad department responsible for submitting accident and incident reports to FRA and any other department within the railroad responsible for collecting, receiving, processing and reporting accidents and incidents.

(8) A statement of applicable procedures providing for the updating of accident and incident information prior to reporting to FRA and a statement of applicable procedures providing for the amendment of accident and incident information as specified in the ''FRA Guide for Preparing Accidents/Incidents Reports.''

(9) A statement that specifies the name and title 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 identification of the site where the most recent audit report may be found for inspection and photocopying.

(10)(i) A brief description of the railroad organization, including identification of:

(A) 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 and structures departments; payroll, accounting, and personnel departments);

(B) The title of each railroad reporting officer;

(C) The title of each manager of such components, by component; and

(D) All officers to whom managers of such components are responsible, by component.

(ii) A current organization chart satisfies paragraphs (a)(10)(i)(C)(D) (iii) and (iv) of this section.

(b) [Reserved]

15. By adding new § 225.35 to read as follows:

§ 225.35 Access to records and reports.

Each railroad subject to this part shall have at least one location, and shall identify each location, where any representative of the Federal Railroad Administration or of a State agency participating in investigative and surveillance activities under Part 212 of this chapter or any other authorized representative, has centralized *access* to a copy of any record and report (including relevant claims and medical records) required under this part, for examination and photocopying in a reasonable manner during normal business hours. Such representatives shall display proper credentials when requested. Each railroad shall identify the locations where a copy of any record and report required under this part is accessible for inspection and photocopying by maintaining a list of such establishment locations at the office where the railroad's reporting officer conducts his or her official business. A copy of any record and report required under this part shall be accessible within four business hours after the request. FRA will not assess a monetary penalty against the railroad for its failure to provide the requested documentation when circumstances outside the railroad's control preclude it from fulfilling the four-business-hour time limit and the railroad has made a reasonable effort to correct the problem.

16. By adding new § 225.37 to read as follows:

§ 225.37 Magnetic media transfer and electronic submission.

(a) A railroad has the option of submitting the following reports, updates, and amendments by way of magnetic media (computer diskette or magnetic tape), or by means of electronic submission over telephone lines or other means:

(1) The Rail Equipment Accident/Incident Report (Form FRA F 6180.54);

(2) the Railroad Injury and Illness Summary (Form FRA F 6180.55);

(3) the Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a);

(4) the Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57); and

(5) the Batch Control Form (Form FRA F 6180.99).

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

(1) the computer diskette or magnetic tape;

(2) the Batch Control Form (Form FRA F 6180.99); 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) Each railroad utilizing the electronic submission option shall submit to FRA the following:

(1) the Batch Control Form (Form FRA F 6180.99) which is submitted to an FRA-designated computer; and

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

(d) Each railroad employing either the magnetic media or electronic submission option, shall submit its monthly reporting data for the reports identified in paragraph (a) of this section in a year-to-date file format as described in the ''FRA Guide for Preparing Accidents/Incidents Reports.''

(e) In addition to fulfilling the requirements stated in paragraph (b) through (d) of this section, each railroad initially utilizing either the magnetic media or electronic submission option, shall submit the hard copy report(s) for each accident/incident it reports by such means. FRA will continually review the railroad''s submitted hard copy reports against the data it has submitted electronically, or by means of magnetic media. Once the magnetic media or electronic submission is in *total* agreement with the submitted hard copies of the reports for *three* consecutive reporting months, FRA will notify the railroad, in writing, that submission of the hard copy reports, except for the notarized Railroad Injury and Illness Summary, is no longer required.

Appendix A—[Removed]

17. By removing Appendix A.

18. 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 [1]

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 Employee Human Factor Attachment properly.		
(1) Employee identified	2,500	5,000
(2) No employee identified	1,000	2,000
225.12(b):		
(1) Failure to notify employee properly	2,500	5,000
(2) Notification of employee 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 employee dies as result of the reported accident	2,500	5,000
225.12(g):		
Willfully false accident statement by employee	.....	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	(1)	(1)
225.25 Recordkeeping	2,500	5,000
225.27 Retention of records	1,000	2,000
225.33:		
(1) Failure to adopt the Internal Control Plan	2,500	5,000
(2) Inaccurate reporting due to failure to comply with the Internal Control Plan	2,500	5,000
(3) Failure to comply with the intimidation/harassment policy in the Internal Control Plan	2,500	5,000
225.35 Access to records and reports	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 § 225.23 constitutes a violation of § 225.11. For purposes of §§ 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 employee'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.

§§ 225.12, 225.13, 225.15, 225.19, 225.21 [Amended]

19. 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) § 225.12(b)(2)(iii);

(b) § 225.13;

(c) § 225.15(a);

(d) §§ 225.19(a) and (b); and

(e) § 225.21(e).

Issued in Washington, DC, on May 30, 1996.

Donald M. Itzkoff,

Deputy Federal Railroad Administrator.

Attachments

Note: These attachments will not appear in the Code of Federal Regulations.

Attachments 1—Review of AAR's Proposed Performance Standards

I. Introduction

The NPRM for amending the Accident/Incident Report Regulations (49 CFR 225) included a section on Internal Control Procedures (ICP). The Association of American Railroads (AAR) and its members objected to the ICP and, instead proposed that a Performance Standard be used to measure compliance with the reporting requirements.

Westat, Inc. reviewed the statistical implications of the Performance Standards for Railroad Accident/Incident Reporting as proposed by AAR. Our comments on AAR's proposal, are presented below.

AAR's recommended approach relies on auditing a sample of records, rather than all records, to assure a specified rate of compliance with reporting requirements. A

statistical audit can be designed to reduce the labor requirements of the monitoring process without compromising reliable reporting of reportable occurrences. It has become common in recent years to view statistical audits as an important part of Total Quality Management (TQM), rather than as just a tool of the more traditional approach to quality assurance based on acceptance testing. The key difference between the two approaches is that TQM focuses on continuous and incremental improvements of process performance, whereas acceptance testing, as in AAR's Performance Standards, simply judges acceptability of process output by applying pre-defined criteria (Gitlow, *et. al.*, Tools and Methods for the Improvement of Quality, 1989, IRWIN, Homewood, IL, Boston, MA).

II. AAR'S Recommendations for Auditing a Sample of Records

AAR's Performance Standards are based on methods selected from a set of statistical procedures that were developed for the U.S. military (MIL–STD–105E, 1989) as means of statistically controlling process quality in a stable environment. The military standard (Standard, for short) invoked by AAR is based on sound statistical methods. However, AAR's application of the Standard suffers from at least the five major deficiencies discussed below. A detailed summary of AAR's recommendations for applying the Standard is given in Appendix 1. Westat's critique of the proposed Performance Standards is presented here.

1. Reporting Process May Not Be Stable

AAR's reporting process has not been fully defined, it has not been tested in the real world, and its stability in the sense the Standard uses this term has not been demonstrated, yet AAR assumed that reporting will be a stable process, and applied procedures appropriate only for stable processes. The documentation of the Standard clearly states that the procedures described therein are directly applicable only to stable processes.

2. AAR's Sample Inclusion Criterion Is Flawed

The Standard established batch sampling plans and procedures for inspection by attributes. To apply the procedures, batches would be sampled at random, and sampled items classified by inspection either as ''acceptable'' or as ''defective.'' It is assumed that all items can be classified, and leaving items unclassified is not permitted. The Standard offers rules for choosing sample sizes and acceptance criteria. The Standard formulates acceptance criteria in terms of the number, or the percentage, of defectives in the sample. Acceptance criteria logic is to accept the batch if a random sample of a specified size contained fewer than a pre-determined number of defectives, otherwise, reject the batch.

In Westat's understanding of AAR's scheme for applying the Standard, a batch is ''* * * a list of all reportable and non-reportable accidents/incidents occurrences for a specified calendar year,'' ''* * * a rejection is defined as railroad's failure to report an occurrence required to be reported * * * [that is] not reported * * * '', and ''random sample[s] [would] be taken from the list of occurrences.''

AAR's lists can include two types of records, R-type, and NR-type (*See* Table 1):

* R-type records are records of occurrences classified by the railroad as reportable, and

* NR-type records are records of occurrences classified by the railroad as non-reportable.

AAR uses reportability as the inspection attribute. AAR's method counts rejections only among NR-type records, and equates the number of rejections to the number of reportable occurrences that were mistakenly reported as NR-type records. These records are identified in the second row of Table 1. Note that records in the third row of Table 1 are also in error, but they are not rejections according to the rules proposed by AAR.

AAR plans to sample lists containing records classified as R-type and NR-type, and reject a list whenever a random sample from it includes too many reportable NR-type records. For statistical reasons, this is expected to happen if the number of reportable occurrences that were classified as NR-type (*i.e.*, N_2 in Table 1) was large relative to the total number of records, N, in the list. It is clear that AAR's sampling plan treats R-type records and NR-type records differently. For determining sample size, AAR's sampling plan combines R-type and NR-type records. For counting rejections, it recognizes only the reporting errors in NR-type records (row 2 in Table 1) but not the reporting errors in R-type records (row 3 in Table 1). Whether in error, or not in error, R-type records are not rejected according to AAR's criteria. This implies that increasing the proportion of R-type records reduces the expected number of rejections in fixed-sized random samples. Metaphorically speaking, increasing the size of the lake (R-type records) without increasing the stock of fish in it (NR-type records) makes it harder to catch the large fish (rejected records).

We have showed that AAR's audit scheme makes audit results depend on the number of out-of-scope (non-reportable) records on the audited list. Surely, making audit results depend on data outside the audit's scope is not acceptable: valid acceptance criteria must be based only on data relevant to rejection rate, *e.g.*, the total number reportable occurrences, and the number of reportable occurrences in error.

3. AAR Overstated Compliance Rate

Using any reasonable definition of compliance rate, AAR's audit does not actually deliver the claimed compliance rate of 99-percent for accident/incident reports. In fact, we show in the Appendix 2 that AAR's sampling plan, at best, achieves 97-percent compliance rate. But even this weaker claim requires an unreasonable, and inappropriate, stretch of what one means by ''compliance rate.''

Specifically, if one were willing to assume the reporting process to be stable, with no evidence for this assumption, and if AAR was willing to adopt the full set of procedures specified in the Standard for monitoring stable processes, then such a strengthened plan would actually ensure roughly even odds for rejecting a composite list of 5,000 records of reportable occurrences that included about three-percent of miss-classified reportable occurrences (cf. Appendix 2).

However, as we showed earlier, even a plan strengthened in this way could say absolutely NOTHING about the actual under-reporting rate of reportable occurrences without determining the split between the true frequencies of reportable and non-reportable occurrences.

4. AAR's Performance Standards Lack Requirements for Maintaining Written Internal Control Procedures (ICP)

Westat believes that high quality accident/incident reporting cannot be achieved without maintaining a written ICP. The Military Standard includes a general requirement for developing written procedure (cf. General Requirements, 4.1) which would be made available to the Government representative's review upon request. This requirement is fully in line with standard business practice of making explicit all major parts of complex systems. Without written directives governing company policy and operational procedures, it is not possible to guarantee full implementation of management decisions by line employees.

In contrast, AAR's proposal for a Performance Standard does not permit FRA to direct a railroad to develop and maintain a written ICP until after the railroad failed to demonstrate compliance in two consecutive audits.

5. Non-compliance With the Standard

AAR's Performance Standards do not implement the full set of procedures prescribed in Military Standard. Most importantly, AAR's Performance Standards fail to implement the ''switching procedures.'' These are explained below. The Military Standard defines three levels of inspection (normal, tightened, and reduced) and specifies conditions for their applicability. For example, users are directed to institute tightened inspection ''when 2 out of 2, 3, 4, or 5 consecutive lots or batches have been rejected by the original inspection.'' Switching procedures, in general, refer to a set of rules that tell users when to adopt normal, tightened, or reduced inspection. The Standard clearly states that the sampling plan performance characteristics it published are valid only when the full set of procedures, including the switching procedures, are adopted. AAR's Performance Standard lacks switching rules, and AAR has not determined the compliance rate bias resulting from this lack.

Appendix 1—Review of AAR'S Performance Standard Proposal

1. Summary of AAR's Proposal

Key features of the proposals by AAR's Performance Standard for Part 225 Reporting by Class I Railroads and Amtrak are as follow:

(a) Class I Railroads shall maintain Internal Control Procedures (ICP) designed to assure 99-percent compliance for accident/incident reporting under § 225.11.

(b) Accident/incident compliance rate will be estimated for reporting periods of 12

months or more from comparisons between reports filed with FRA and the railroad's own data base containing records for employee injuries, illnesses, and property damage.

(c) Key features of audits to be conducted to monitor compliance rates are as follow:

(1) Each railroad will provide to FRA a list of reportable occurrences for a specified calendar year containing all relevant information and record locations, and make records available for inspection upon FRA request, subject to special rules.

(2) FRA will draw a random sample of entries from each list in accordance with the General Inspection Level II procedures contained in Military Standard (MIL–STD–105E), and assess the sample for compliance based on procedures specified in that Standard.

(3) A rejection is defined as failure to report a reportable occurrence under § 225.19, subject to applicable procedures for resolving reporting requirements.

(4) Audits will be conducted by qualified FRA personnel. Results will be reported to railroads in writing.

(d) Failure to achieve a 99-percent compliance rate is subject to civil penalties. Railroads must propose corrective action within 30 days. FRA may reschedule new audits within a reasonable period.

(e) Failure to achieve 99-percent compliance rate for a second time is treated as in paragraph (d), except that FRA may also direct the railroad to file a written ICP with FRA.

(f) Each railroad directed to file a written ICP in accordance with this paragraph, shall maintain a written ICP, covering internal processes/procedures within the railroad's control, for the preparation of accident/incident reports under § 225.11.

(g) Railroads may petition for relief from paragraph (f) after achieving 99-percent compliance rate twice in a row.

2. Overview of Audit Using MIL–STD–105E

The procedure identified by AAR in paragraph (c)(2) involves the following operational steps:

Step 1. Determine the sample size (N) of reported occurrences for checking by reference to the family of single sampling plans for normal inspection that are contained in Master Table II–A. The applicable sample size is in the 2nd column of Table II–A in the row identified by the sample size code letter for the number of reported occurrences on the list. The code letter is to be found in the column headed ''General inspection level II'' using reported number of occurrences as ''Lot or batch size'' to select the row in Table I.

Step 2. Draw a random sample of N occurrences from the list of all reportable and non-reportable accidents/incident occurrences submitted to FRA by the railroad company.

Step 3. Examine relevant data items for all occurrences in the sample, classify the reporting requirements for each element, and determine the total number of rejects, *i.e.*, reportable occurrences that were reported as non-reportable (n).

Step 4. Reject the sample if the total number of rejects equaled or exceeded the acceptance number (Ac) for the sampling plan. In general, sample size and acceptance number jointly determine the stringency of reporting requirements. For the plans advocated by AAR, Ac is located at the intersection of the row for the sample size code letter, and the column for which Acceptable Quality Level (normal inspection) in Table II–A equals 1.0.

3. Interpreting AAR's Inspection Plan and Some Comments

The sampling plans and procedures contained in Military Standard (MIL–STD–105E, 1989) were designed for use in planning and conducting inspection by attributes. As the foreword to the documentation states, ''the sampling concept is based on the probabilistic recurrence of events when a series of lots or batches are produced in a stable environment.''

When applying the Standard (MIL–STD–105E), AAR views a railroad's list of all reportable and non-reportable accidents/incidence occurrences for a 12 month period as ''a lot or a batch.''

The Standard defines ''inspection by attributes'' as ''inspection whereby either a unit of product is classified simply as defective or non-defective, or the number of defects in the unit is counted, with respect to a given requirement or set of requirements.'' AAR has provided only an implicit definition for the attribute it proposes to use by defining rejection ''* * *as a railroad's failure to report an occurrence required to be reported under section 225.19 and not reported, * * *'' With this definition of inspection attribute, only reportable accidents that were not reported can give rise to a rejection under any circumstance.

Reportable accidents that were reported, and non-reportable accidents are always correctly classified.

Note that list size depends on the number of non-reportable occurrences. AAR has not identified the class of non-reportable occurrences that railroads expect to include on lists.

The documentation for the Standard contains three types of sampling plans: single, double, and multiple. AAR recommended the use of single sampling plans. With a single sampling plan, a single random sample is drawn from each list. The documentation recognizes that samples may need to be stratified based on ''some rational criterion,'' or may need to be collected over time. AAR has not recommended the use of stratification.

Once sampling plan type has been chosen, inspection level determines the relationship between the number of occurrences included in the list (the lot or batch size) and sample size. The documentation recognizes three general inspection levels (I, II, and III), and four special inspection levels. Inspection level II is regarded as normal. Relative to the use of a level II plan, the use of a level I plan would reduce discrimination level, and the use of a level II plan would increase it. AAR recommends the use of level II plans.

Once sampling plan and inspection levels have been selected, the remaining choice is Acceptable Quality Level (AQL). According to the documentation, ''when a continuous series of lots is considered, the AQL is the quality level which, for the purpose of sampling inspection, is the limit of a satisfactory process average.'' For a given sampling plan, inspection level, and AQL, the documentation provides tables for determining sample size, acceptance numbers, and rejection numbers.

The Standard instructs users to choose AQL in a manner that is appropriate for the level of acceptable risk. This choice involves balancing the consequences of accepting lots with too many or too few defectives. The documentation of the Standard emphasizes that, by itself, AQL does not determine the chances of accepting or rejecting individual lots or batches. AQL relates directly only to what might be expected from a series of lots of batches provided appropriate ''switching procedures'' (see discussion below) and other related steps contained in the Standard, are also implemented. AAR recommended the use of 0.01 as the AQL value for audits.

In the terminology of the Standard, ''switching procedures'' describe how the inspection procedures need to be modified under special circumstances. Normal procedures would be in effect until 2 out of 2–5 consecutive lots have been rejected. When that happens, inspection procedures would need to be tightened. There are other rules for switching from tightened to normal, and from normal to reduced, procedures.

As stated earlier, by itself, AQL does not characterize the performance of a sampling plan. AQL is the designated value of percent defectives for which lots will be accepted most of the time by the sampling procedure. Understanding the full implications of a sampling plan requires looking at its operating characteristic curve (OCC). In general, OCCs indicate the percentage of lots and batches which may be expected to be accepted under various sampling plans for a given process quality. Table X in the documentation of the Standard provides the OCCs for normal inspection of a range of sample sizes and sampling plans.

Appendix 2—Nominal Compliance Rate Under AAR's Performance Standard

AAR's scheme monitors the rate of reporting errors of reportable accidents/incidents relative to all records (R-type and NR-type combined), which is not interesting, rather than relative to all reportable occurrences (R-type records plus reportable occurrences reported as NR-type records), which is interesting. As proposed, AAR's Performance Standards would deliver 97-percent compliance based on the former compliance rate which is of no interest. The proposed Performance Standards are completely uninformative regarding the latter compliance rate, which does matter.

We apply AAR's scheme (cf paragraph (c)(2) in the Appendix to AAR's Comments) to AAR's example of 5,000 occurrences and an acceptable quality level of one-percent, AQL = 0.01. In this case, Tables I and II–A require drawing a random sample of size 200, and set the acceptance number to five, and the rejection number to six. The list is accepted whenever the random sample of

200 records contains five or fewer rejects. It is rejected whenever it contains six or more rejects.

Under this sampling plan, railroads that underreport up to one-percent of all reportable occurrences will pass the audit most of the time.

The OCC for this sampling plan is shown in Table X–L. According to Table X–L, the acceptance rate at AQL = 0.01 is 89-percent. In other words, if the list of 5,000 occurrences contained exactly 50 defectives (1%), there would be a 89-percent chance of accepting it based on auditing a random sample of size N = 200, and using five as the maximum acceptable number of rejects.

The tables show that if the list contains 142 defectives for an underreporting rate of 2.84-percent, expected rejection rate rises to 50-percent; if it contains 232 defectives for an underreporting rate of 4.64-percent, expected rejection rate rises to 90-percent. Thus, rejection and acceptance are more or less in balance when underreporting is close to three-percent and they reach extreme values above and below it. Specifically, the chances of acceptance and rejection are about the same when the underreporting rate is about 2.8-percent. Rejection rate increases to 90-percent when underreporting is about 4.6-percent, and it decreases to about ten-percent when underreporting is about one-percent.

Noting that three-percent underreporting could be considered the same as 97-percent compliance, one may reasonably characterize a sampling plan with the above characteristics as a plan that achieves 97-percent of compliance. It is hard to justify the claim that it achieves 99-percent compliance.

TABLE 1.—CORRECT AND REPORTED EVENT/OCCURRENCE CLASSIFICATIONS

Event/occurrence:		Report in error	Report rejected by sampling plan	
Correct	Reported			
Reportable.	R-type	No	No	N_1
Reportable.	NR-type	Yes	Yes	N_2
Non-reportable.	R-type	Yes	No	N_3
Non-reportable.	NR-type	No	No	N_4
All	All	All	All	N

BILLING CODE 4910–06–P

FRA BATCH CONTROL FOR MAGNETIC MEDIA

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

OMB Approval No.: 2130-xxxx

1. Name of Reporting Railroad	2. Alphabetic Code	3. Report Month	4. Report Year

5. Rail Equipment Accident/Incident Report (Form FRA F 6180.54)

a. Number of records on the tape or diskette _____

b. Total equipment damage (Field Number 66, Field Name EQPDMG) for all records submitted _____

c. Total track damage (Field Number 67, Field Name TRKDMG) for all records submitted _____

d. Total number of cars in the consist (the sum of the fields LOADF1, LOADP1, EMPTYF1, EMPTYP1, and CABOOSE1 - Field Numbers 56, 57, 58, 59, and 60, respectively) for all records submitted _____

6. Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57)

a. Number of records on the tape or diskette _____

b. Total vehicle damage (Field Number 56, Field Name VEHDMG) for all records submitted _____

c. Total number of occupants killed (Field Number 59, Field Name TOTKLD) for all records submitted _____

d. Total number of occupants (Field Number 61, Field Name TOTOCC) for all records submitted _____

7. Railroad Injury and Illness Summary (Form FRA F 6180.55)

a. Number of records on the tape or diskette _____

b. Total of all miles (Freight, Passenger, Yard Switching, and Other) _____

c. Railroad worker hours _____

d. Passenger miles operated _____

8. Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a)

a. Number of records on the tape or diskette _____

b. Total number of lost work days (Field Number 11, Field Name DAYSABS) for all records submitted _____

c. Total number of days of restricted activity (Field Number 12, Field Name DAYSRES) for all records submitted _____

9. Name of Reporting Officer (Type or Print)	10. Date

FORM FRA F 6180.99

ATTACHMENT 2

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

RAIL EQUIPMENT ACCIDENT/INCIDENT REPORT

OMB Approval No.: 2130-xxxx

1. Name of Reporting Railroad	1a. Alphabetic Code	1b. Railroad Accident/Incident No.
2. Name of Other Railroad Involved in Train Accident/Incident	2a. Alphabetic Code	2b. Railroad Accident/Incident No.
3. Name of Railroad Responsible for Track Maintenance *(single entry)*	3a. Alphabetic Code	3b. Railroad Accident/Incident No.
4. U. S. DOT-AAR Grade Crossing Identification Number	5. Date of Accident/Incident month / day / year	6. Time of Accident/Incident AM ☐ PM ☐

7. Type of Accident/ Incident *(single entry in code box)*	1. Derailment 2. Head on collision 3. Rear end collision	4. Side collision 5. Raking collision 6. Broken train collision	7. Hwy-rail crossing 8. RR grade crossing 9. Obstruction	10. Explosion-detonation 11. Fire/violent rupture 12. Other impacts	13. Other *(describe in narrative)*	Code

8. Cars Carrying HAZMAT	9. HAZMAT Cars Damaged/ Derailed	10. Cars Releasing HAZMAT	11. People Evacuated	12. Division

13. Nearest City/ Town	14. Mileport *(to nearest tenth)*	15. State Abbr. / Code	16. County	

17. Temperature (F) *(specify if minus)* ° F	18. Visibility *(single entry)* 1. Dawn 3. Dusk 2. Day 4. Dark / Code	19. Weather *(single entry)* 1. Clear 3. Rain 5. Sleet 2. Cloudy 4. Fog 6. Snow / Code	20. Type of Track 1. Main 3. Siding 2. Yard 4. Industry / Code	

21. Track Name/ Number	22. FRA Track Class (1-6, X) / Code	23. Annual Track Density *(gross tons in millions)*	24. Time Table Direction 1. North 3. East 2. South 4. West / Code

25. Type of Equipment Consist *(single entry)* 1. Freight train 4. Work train 7. Yard/switching 2. Passenger train 5. Single car 8. Light loco(s). 3. Commuter train 6. Cut of cars 9. Maint./inspect. car / Code	26. Was Equipment Attended? 1. Yes 2. No / Code	27. Train Number/Symbol	

28. Speed *(recorded speed, if available)* R - Recorded E - Estimated MPH / Code	30. Method(s) of Operation *(enter code(s) that apply)* a. ATCS g. Automatic block m. Special instructions o. Other *(specify in narrative)* b. Auto train control h. Current of traffic n. Other than main track rules c. Auto train stop i. Time table/train orders d. Cab signals j. Track warrant control e. Traffic control k. Direct traffic control f. Interlocking l. Yard limits	Code(s)
29. Trailing Tons *(gross tonnage, excluding power units)*		

31. Principal Car/Unit	a. Initial and Number	b. Position in Train	c. Loaded *(yes/no)*	32. If any railroad employees tested for drug or alcohol impairment, enter codes from reporting manual. Code(s)
(1) First Involved *(derailed, struck, etc.)*				
(2) Causing *(if mechanical, cause reported)*				33. Was this consist transporting passengers? (y/n)

34. Locomotive Units	a. Head End	Mid Train b. Manual	Mid Train c. Remote	Rear End d. Manual	Rear End e. Remote	35. Cars	Loaded a. Freight	Loaded b. Pass.	Empty c. Freight	Empty d. Pass.	e. Caboose
(1) Total in Train						(1) Total in Equipment Consist					
(2) Total Derailed						(2) Total Derailed					

36. Equipment Damage This Consist	37. Track, Signal, Way, & Structure Damage	38. Primary Cause Code	39. Contributing Cause Code

Number of Crew Members				Length of Time on Duty	
40. Engineers/ Operators	41. Firemen	42. Conductors	43. Brakemen	44. Engineer/Operator Hrs: Mins:	45. Conductor Hrs: Mins:

Casualties to:	46. Railroad Employees	47. Train Passengers	48. Others	49. Special Study Block
Fatal				
Nonfatal				

50. Narrative Description *(Be specific, and continue on separate sheet if necessary)*

51. Typed/Printed Name & Title of Preparer	52. Signature	53. Date

FORM FRA F 6180.54

ATTACHMENT 3

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

RAILROAD INJURY AND ILLNESS SUMMARY

(Continuation Sheet)

SHEET ____ OF ____
OMB Approval No.: 2130-xxxx

1. Name of Reporting Railroad	2. Alphabetic Code	3. Report Month	4. Report Year

5a. Accident/Injury Number	5b. Day	5c. Time of Day	5d. County	5e. State	5f. Type Person/ Job Code	5g. Age

5h. Drug/ Alcohol Test	5i. Injury Illness Code	5j. Physical Act	5k. Location	5l. Event	5m. Result	5n. Cause	5o. Number of Days Away From Work	5p Number of Days Restricted	5q. Exposure to Hazmat	5r. Termination or Permanent Transfer? (y/n)

5s. Narrative (Up to 250 Characters)

5a. Accident/Injury Number	5b. Day	5c. Time of Day	5d. County	5e. State	5f. Type Person/ Job Code	5g. Age

5h. Drug/ Alcohol Test	5i. Injury Illness Code	5j. Physical Act	5k. Location	5l. Event	5m. Result	5n. Cause	5o. Number of Days Away From Work	5p Number of Days Restricted	5q. Exposure to Hazmat	5r. Termination or Permanent Transfer? (y/n)

5s. Narrative (Up to 250 Characters)

5a. Accident/Injury Number	5b. Day	5c. Time of Day	5d. County	5e. State	5f. Type Person/ Job Code	5g. Age

5h. Drug/ Alcohol Test	5i. Injury Illness Code	5j. Physical Act	5k. Location	5l. Event	5m. Result	5n. Cause	5o. Number of Days Away From Work	5p Number of Days Restricted	5q. Exposure to Hazmat	5r. Termination or Permanent Transfer? (y/n)

5s. Narrative (Up to 250 Characters)

FORM FRA F 6180.55a

ATTACHMENT 4

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

RAILROAD INJURY AND ILLNESS SUMMARY

OMB Approval No.: 2130-xxxx

1. Name of Reporting Railroad	2. Alphabetic Code	3. Report Month & Year	4. State Alphabetic Code	5. County

6. Name of Reporting Officer	7. Official Title
8. Address	9. Telephone *(Area Code) (Number)*

10.

I, _____ , being first duly sworn, do say upon my oath that I
(Name of Affiant)
am _____ , of the railroad aforesaid and as such officer of the said railroad it is my duty to have supervision
(Title of Office held by affiant)
over the record of reportable incidents arising from the operation of the said railroad, and that I have caused to be compiled from the said record and to be carefully examined the annexed report in attached hardcopy forms or magnetic media or electronic submission of such incidents occurring during the month named at the head of this sheet; and that the said report is true and complete to the best of my knowledge and belief.

Subscribed and sworn to before me, a notary public in and for the State and County aforesaid, this _____ day of _____ , 19 _____ .

(Use an im-
[L.S]
pression seal) _____ _____
(Notary Public) *(Signature of affiant)*

OPERATIONAL DATA & ACCIDENT/INCIDENT COUNTS FOR REPORT MONTH

11. Freight Train Miles	12. Passenger Train Miles	13. Yard Switching Train Miles	14. Other Train Miles

15. Railroad Worker Hours	16. Passenger Miles Operated	17. Number of Passengers Transported

18. REPORTED CASUALTIES			19. NUMBER OF FRA FORMS ATTACHED	
Type of Person	Fatal	Nonfatal	FRA Form Number	Number Attached
Worker on duty - employee			6180.54	
Employees not on duty			6180.55a	
Passengers on trains			6180.56	
Nontrespassers/on railroad property			6180.57	
Trespassers			6180.81	
Worker on duty - contractor				
Contractor - other				
Worker on duty - volunteer				
Volunteer - other				
Nontrespassers/off railroad property				
Grand total				

20. Remarks Section. Please describe operational, environmental, or other circumstances that account for unusual fluctuations in train miles operated, employee hours, or passenger counts.

FORM FRA F 6180.55

This report is required by law (49 USC 20901). Failure to report can result in the imposition of civil penalties.

ATTACHMENT 5

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

ANNUAL RAILROAD REPORT
OF
EMPLOYEE HOURS AND CASUALTIES, BY STATE

OMB Approval No.: 2130-xxxx

1. Reporting Railroad	2. Alphabetic Code	3. Report Year

4. Establishments Included in this Report	5. Average Employment in Report Year

6.

State	Employee Hours	Casualties	State	Employee Hours	Casualties
Alabama			Montana		
Alaska			Nebraska		
Arizona			Nevada		
Arkansas			New Hampshire		
California			New Jersey		
Colorado			New Mexico		
Connecticut			New York		
Delaware			North Carolina		
District of Columbia			North Dakota		
Florida			Ohio		
Georgia			Oklahoma		
Idaho			Oregon		
Illinois			Pennsylvania		
Indiana			Rhode Island		
Iowa			South Carolina		
Kansas			South Dakota		
Kentucky			Tennessee		
Louisiana			Texas		
Maine			Utah		
Maryland			Vermont		
Massachusetts			Virginia		
Michigan			Washington		
Minnesota			West Virginia		
Mississippi			Wisconsin		
Missouri			Wyoming		

7. Total Employee Hours for the Year	8. Total Casualties During the Year	
9. Typed Name and Title	10. Signature	11. Date

FORM FRA F 6180.56

ATTACHMENT 6

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

HIGHWAY-RAIL GRADE CROSSING ACCIDENT/INCIDENT REPORT

OMB Approval No.: 2130-xxxx

1. Name of Reporting Railroad | 1a. Alphabetic Code | 1b. Railroad Accident/Incident

2. Name of Other Railroad Involved in Train Accident/Incident | 2a. Alphabetic Code | 2b. Railroad Accident/Incident No.

3. Name of Railroad Responsible for Track Maintenance *(single entry)* | 3a. Alphabetic Code | 3b. Railroad Accident/Incident No.

4. U. S. DOT-AAR Grade Crossing Identification Number | 5. Date of Accident/Incident month day year | 6. Time of Accident/Incident AM ☐ PM ☐

7. Nearest Railroad Station | 8. Division | 9. County | 10. State Abbr. Code

11. City *(if in a city)* | 12. Highway Name or Number Public ☐ Private ☐

Highway User Involved

13. Type — A. Auto, B. Truck, C. Truck-trailer, D. Pick-up truck, E. Van, F. Bus, G. School bus, H. Motorcycle, J. Other motor vehicle, K. Pedestrian, M. Other *(specify)* — Code

14. Vehicle Speed *(est. mph at impact)*

15. Direction *(geographical)* — 1. North 2. South 3. East 4. West — Code

16. Position — 1. Stalled on crossing 2. Stopped on crossing 3. Moving over crossing 4. Trapped — Code

20a. Was the highway user and/or rail equipment involved in the impact transporting hazardous materials? — 1. Highway user 2. Rail equipment 3. Both 4. Neither — Code

Rail Equipment Involved

17. Equipment — 1. Train *(units pulling)* 2. Train *(units pushing)* 3. Train *(standing)* 4. Car(s) *(moving)* 5. Car(s) *(standing)* 6. Light loco(s) *(moving)* 7. Light loco(s) *(standing)* 8. Other *(specify)* — Code

18. Position of Car Unit in Train

19. Circumstance — 1. Rail equipment struck highway user 2. Rail equipment struck by highway user — Code

20b. Was there a hazardous materials release by — 1. Highway user 2. Rail equipment 3. Both 4. Neither — Code

20c. State here the name and quantity of the hazardous material released, if any.

21. Temperature *(specify if minus)* °F

22. Visibility *(single entry)* — 1. Dawn 2. Day 3. Dusk 4. Dark — Code

23. Weather *(single entry)* — 1. Clear 2. Cloudy 3. Rain 4. Fog 5. Sleet 6. Snow — Code

24. Type of Equipment Consist *(single entry)* — 1. Freight train 2. Passenger train 3. Commuter train 4. Work train 5. Single car 6. Cut of cars 7. Yard/switching 8. Light loco(s). 9. Maint./inspect. car — Code

25. Track Type Used by Rail Equipment Involved — 1. Main 2. Yard 3. Siding 4. Industry — Code

26. Track Number or Name

27. FRA Track Class (1-6, X)

28. Number of Locomotive Units

29. Number of Cars

30. Consist Speed *(Recorded speed, if available)* — R - Recorded, E - Estimated — MPH — Code

31. Time Table Direction — 1. North 2. South 3. East 4. West — Code

32. Type of Crossing Warning — 1. Gates 2. Cantilever FLS 3. Standard FLS 4. Wig wags 5. Hwy. traffic signals 6. Audible 7. Crossbucks 8. Stop signs 9. Watchman 10. Flagged by crew 11. Other *(specify)* 12. None — Code(s)

33. Signaled Crossing Warning *(See reverse side for instructions and codes)* — Code

34. Whistle Ban — 1. Yes 2. No 3. Unknown — Code

35. Location of Warning — 1. Both sides 2. Side of vehicle approach 3. Opposite side of vehicle approach — Code

36. Crossing Warning Interconnected with Highway Signals — 1. Yes 2. No 3. Unknown — Code

37. Crossing Illuminated by Street Lights or Special Lights — 1. Yes 2. No 3. Unknown — Code

38. Driver's Age

39. Driver's Gender — 1. Male 2. Female — Code

40. Driver Drove Behind or in Front of Train and Struck or was Struck by Second Train — 1. Yes 2. No 3. Unknown — Code

41. Driver — 1. Drove around or thru the gate 2. Stopped and then proceeded 3. Did not stop 4. Stopped on crossing 5. Other *(specify)* — Code

42. Driver Passed Standing Highway Vehicle — 1. Yes 2. No 3. Unknown — Code

43. View of Track Obscured by *(primary obstruction)* — 1. Permanent structure 2. Standing railroad equipment 3. Passing train 4. Topography 5. Vegetation 6. Highway vehicles 7. Other *(specify)* 8. Not obstructed — Code

Casualties to:	Killed	Injured
46. Highway-Rail Crossing Users		
49. Railroad Employees		
52. Passengers on Train		

44. Driver was — 1. Killed 2. Injured 3. Uninjured — Code

45. Was Driver in the Vehicle? — 1. Yes 2. No — Code

47. Highway Vehicle Property Damage *(est. dollar damage)*

48. Total Number of Highway-Rail Crossing Users *(include driver)*

50. Total Number of People on Train *(include passengers and train crew)*

51. Is a Rail Equipment Accident/Incident Report Being Filed? — 1. Yes 2. No — Code

53a. Special Study Block | 53b. Special Study Block

54. Narrative Description *(Be specific, and continue on separate sheet if necessary)*

55. Typed Name and Title | 56. Signature | 57. Date

FORM FRA F 6180.57

* NOTE THAT ALL CASUALTIES MUST BE REPORTED ON FORM FRA F 6180.55A

ATTACHMENT 7 PAGE 1

INSTRUCTIONS FOR COMPLETING BLOCK 33

Only if Types 1 - 6, Item 32 are indicated, mark in Block 33 the status of the warning devices at the crossing at the time of the accident, using the following codes:

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.).

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). Explain in Narrative Description.

NOTICE TO RAILROAD EMPLOYEE* INVOLVED IN RAIL EQUIPMENT ACCIDENT/INCIDENT ATTRIBUTED TO EMPLOYEE HUMAN FACTOR

EMPLOYEE STATEMENT SUPPLEMENTING RAILROAD ACCIDENT REPORT

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

OMB Approval No.: 2130-xxxx

PART I - NOTICE TO RAILROAD EMPLOYEE INVOLVED IN RAIL EQUIPMENT ACCIDENT (To be completed by reporting railroad)

Name of Reporting Railroad	Date of Accident/Incident ____/____/____ mo day year	Accident/Incident No.	Location of Accident/Incident (State, nearest city/town)

Applicable to this person?	Causes reported on Form FRA F 6180.54 Code	Description
☐ Yes ☐ No		
☐ Yes ☐ No		

Employee's Name (First, middle, last)	Job Title on Date of Accident	Name of Employing Railroad on Date of Accident/Incident

Employee's Home Address or RFD No.

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 employee. 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.

Name of Railroad Representative	Signature of Railroad Representative	Date Signed	Date Mailed/Hand Delivered

Name and address of railroad representative to whom form is to be returned:

PART II - EMPLOYEE STATEMENT SUPPLEMENTING RAILROAD ACCIDENT REPORT (To be completed by notified person)

Willful false statements can result in imposition of civil penalties.

(Continue statement on separate sheet, if required, and mail with statement)

I have carefully read this statement and confirm that it is true to the best of my knowledge and belief.

Date Mailed/Hand Delivered to FRA: _____

_____ Signature _____ Date Signed

Date Mailed/Hand Delivered to Railroad: _____

Your Telephone Number	Home address, if different from address in Part I
Home: ( ) _____	
Work: ( ) _____	

NOTE: This Notice and Employee Supplement under 49 CFR 225.12 are part of the reporting railroad's accident report to FRA pursuant to the accident reports statute and, as such, shall not "be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report . . . ." 49 USC 20903. See 49 CFR 225.7 (b).

FORM FRA F 6180.78 Employee includes the following classifications: Worker on Duty--Employee, Employee not on Duty, Worker on Duty--Contractor, and Worker on Duty--Volunteer.

ATTACHMENT 8

RAILROAD EMPLOYEE INJURY AND/OR ILLNESS RECORD

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

OMB Approval No.: 2130-xxxx

1. Railroad	2. Case/Incident Number

EMPLOYEE INFORMATION

3. Last Name, First Name, Middle Initial	4. Date of Birth	5. Sex (M/F)	6. Social Security Number	7. Date Hired

HOME ADDRESS:	8. Street Address *(include Apt. No.)*	9. City	10. State	11. ZIP	12. Home Telephone No. *(include area code)*

ESTABLISHMENT/ FACILITY WHERE EMPLOYEE NORMALLY REPORTS:	13. Name of Facility			
	14. Street Address	15. City	16. State	17. ZIP

18. Job Title	19. Department Assigned To

ACTIVITY/INCIDENT/EXPOSURE DESCRIPTION

LOCATION WHERE ACCIDENT/ INCIDENT/ EXPOSURE OCCURRED:	20. Specific Site			
	21. City	22. County	23. State	24. ZIP

25. Is this on your premises? Yes ☐ No ☐	26. Date of Occurrence	27. Time Shift Began AM ☐ PM ☐	28. Time of Occurrence AM ☐ PM ☐	29. Was person on duty? Yes ☐ No ☐

COMPANY NOTIFICATION:	30. Date that Employee Notified Company Personnel of Condition	31. Time that Employee Notified Company Personnel of Condition AM ☐ PM ☐	32. Person Notified

33. Describe the general activity this person was engaged in prior to injury/illness.

34. Describe all factors associated with this case that are pertinent to an understanding of how it occurred. Include a discussion of the sequence of events leading up to it, and the tools, machinery, processes, material, environmental conditions, etc., involved.

FORM FRA F 6180.98

ATTACHMENT 9 PAGE 1

INJURY/CONDITION INFORMATION

35. Describe in detail the injury/condition that this person sustained. Include a discussion of the body parts affected. If this is a recurrence, list date of last occurrence.

36. Identify all persons and organizations used to evaluate and/or treat condition. (Include facility, provider, and address)

37. Describe all procedures, medications, therapy, etc., used/recommended for the treatment of condition:

38. Check any of the following consequences resulting from this injury/condition:

- ☐ Death. Date of: _____
- ☐ Restriction of work. Total days of restricted activity: _____ as of: _____
- ☐ Occupational illness. Date of initial diagnosis: _____
- ☐ Instructions to obtain prescription medication, or receipt of prescription medication.
- ☐ Missed a day of work or next shift. Actual days absent from work: _____ as of: _____
- ☐ Medical treatment. This includes any medical care or treatment beyond "first aid" that is given, or should have been given, regardless of who provided the treatment. "First Aid" treatment is limited to very simple procedures, e.g., application of a bandaid on minor scratches, cuts, abrasions, etc.
- ☐ Transfer to another job or termination of employment.
- ☐ Hospitalization for treatment as an inpatient.
- ☐ Multiple treatments or therapy sessions.
- ☐ Loss of consciousness.

39. If any of the above consequences occurred, the injury/condition is almost always reportable to FRA on Form FRA F 6180.55a. If you believe this case does not meet the reporting criteria, you must give a brief explanation below of the basis for this decision. Was the case reported? Yes ☐ No ☐

40. Has this employee been provided an opportunity to review his or her file? Yes ☐ No ☐

41. Preparer's Name	42. Preparer's Title	43. Telephone Number	44. Date

INITIAL RAIL EQUIPMENT ACCIDENT/INCIDENT RECORD

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

OMB Approval No.: 2130-xxxx

1. Date of Accident/Incident (YY/MM/DD)	2. Time of Accident/Incident AM / PM	
3. Name of Railroad	4. Incident Number	
5. Other Railroad	6. Incident Number	
7. Railroad Responsible for Track Maintenance	8. Incident Number	
9. Type of Accident/Incident (Derailment, Collision, Obstruction, Other)		
10. Number of Hazmat Cars Damaged or Derailed	11. Number of Hazmat Cars Releasing Product	
12. Division	13. Nearest City/Town	14. State
15. Milepost *(to nearest tenth)*	16. Specific Site	
17. Speed Actual / Estimated	18. Train/Job Number	
19. Type of Equipment (Freight, Passenger, Yard/Switching, etc.)	20. Type of Track (Main, Yard, Siding, Industry)	
21. Total Locomotive Units in Train	22. Total Locomotives Derailed	23. Total of Cars in Equipment Consist / 24. Total Cars Derailed
25. Equipment Damage *(in dollars)*	26. Track, Signal, Way & Structure Damage *(in dollars)*	
27. Primary Cause	28. Contributing Cause	

29. Persons Injured and Killed	Injured	Killed		Injured	Killed
Worker on duty - employee			Worker on duty - contractor		
Employees not on duty			Contractor - other		
Passengers on trains			Worker on duty - volunteer		
Nontrespassers/on railroad property			Volunteer - other		
Trespassers			Nontrespassers/off railroad property		

30. Narrative Description (Be specific, and continue on separate sheet if necessary)

31. Was this accident/incident reported to the FRA? Yes ☐ No ☐

32. Name of Railroad Official	33. Signature	34. Telephone Number	35. Date

FORM FRA F 6180.97

ATTACHMENT 10

[FR Doc. 96–14943 Filed 6–17–96; 8:45 am]
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