

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 225**

[Docket No. FRA-2006-26173]

RIN 2130-AB82

Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirements

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM) and request for comments.

SUMMARY: FRA proposes to amend its existing regulations addressing accident/incident reporting in order to clarify ambiguous regulations and enhance the quality of information available for railroad casualty analysis. In addition to proposing revisions to its regulations, FRA is proposing revisions to its Guide for Preparing Accident/Incident Reports (FRA Guide) and its Accident/Incident recording and reporting forms, and is requesting comments and suggestions on certain topics of interest.

DATES: *Written Comments:* Written comments on the proposed rule must be received by November 10, 2008. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearing: If any person desires an opportunity for oral comment, he or she should notify FRA in writing and specify the basis for the request. FRA will schedule a public hearing in connection with this proceeding if the agency received a written request for hearing by October 9, 2008.

ADDRESSES: Anyone wishing to file a comment or request a public hearing should refer to Docket Number FRA-2006-26173 in such comment or request. You may submit your comments and related material or request for a public hearing by any one of the following methods:

- *Fax:* 1-202-493-2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays; or

- *Electronically through the Federal eRulemaking Portal.* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Arnel B. Rivera, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-22, Mail Stop 25, West Building 3rd Floor, Room W33-306, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202-493-1331); or Gahan Christensen, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W31-204, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202-493-1381).

SUPPLEMENTARY INFORMATION: Note that, for brevity, references to a section in part 225 will omit "49 CFR"; e.g. § 225.5. References to the FRA Guide for Preparing Accident/Incident Reports in part 225 will omit "for Preparing Accident/Incident Reports," and refer only to the "FRA Guide." In addition to revising its regulations in the *Code of Federal Regulations*, FRA is proposing to revise the FRA Guide. The proposed FRA Guide is posted on FRA's Web site at <http://safetydata.fra.dot.gov/officeofsafety>, and click on "Click Here for Changes in Railroad Accident/Incident Recordkeeping and Recording."

FRA is also revising its instructions for electronically submitting monthly reports to FRA and will publish said instructions in a revised Companion Guide: Guidelines for Submitting Accident/Incident Reports by Alternative Methods (Companion Guide). Upon completion by FRA the

Companion Guide will be posted on FRA's Web site at <http://safetydata.fra.dot.gov/officeofsafety>, and click on "Click Here for Changes in Railroad Accident/Incident Recordkeeping and Recording."

Background

In 1910 Congress enacted the Accident Reports Act, Public Law No. 165, recodified as amended at 49 U.S.C. 20901-20903, "Accidents and Incidents." Title 49 U.S.C. 20901 requires in part, that railroad carriers file with the Secretary of Transportation reports on "all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the month" (emphasis added). Title 49 U.S.C. 20902 authorizes the Secretary of Transportation to investigate accidents and incidents. The Secretary delegated the authority to carry out the Accident Reports Act to the Administrator of FRA. 49 U.S.C. 103(c)(1); 49 CFR 1.49(c)(11). FRA's accident/incident reporting requirements were originally issued pursuant to the Accident Reports Act of 1910.

Sixty years later, Congress enacted the Federal Railroad Safety Act of 1970 (FRSA), Public Law No. 91-458, recodified primarily at 49 U.S.C. chapter 201, with penalty provisions in 49 U.S.C. chapter 213, as amended. Section 20103(a) provides that "[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970." The Secretary delegated this authority to the Administrator of FRA. 49 CFR 1.49(m). FRA reissued its accident reporting regulations, 39 FR 43222, December 11, 1974, under the added authority of FRSA to cover additional railroads, preempt the States from prescribing their own accident reporting regulations, and require reporting of occupational illnesses. FRA's accident/incident reporting requirements, 49 CFR part 225, are currently issued under the dual statutory authority of the Accident Reports Act of 1910 and FRSA.

In 1970, Congress also enacted the Occupational Safety and Health Act (OSH Act), Public Law No. 91-596, codified as amended at 29 U.S.C. 651 *et seq.* While the OSH Act gives the Secretary of Labor a broad, general authority to regulate working conditions that affect the occupational safety and health of employees, it also recognized the existence of similar authority in other Federal agencies. Section 4(b)(1) of the OSH Act, codified at 29 U.S.C.

653(b)(1), provides that the OSH Act shall not apply to working conditions as to which another Federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

Because FRA exercises statutory authority to prescribe and enforce standards and regulations for all areas of railroad safety under the FRSA, OSHA's jurisdiction may be preempted by FRA under section 4(b)(1) of the OSH Act with regards to certain matters related to railroad safety. See *Policy Statement asserting FRA jurisdiction over matters involving the safety of railroad operations*, 43 FR 10584, March 14, 1978.

With respect to employee injury and illness recordkeeping, however, the Occupational Safety and Health Review Commission ruled that the railroad industry must comply with OSHA requirements and must afford the Secretary of Labor's representatives access to these records. *Secretary of Labor v. Conrail* (OSHRD Docket No. 80-3495, 1982). In doing so the Commission indicated that employee injury and illness recordkeeping does not come within the purview of section 4(b)(1) of the OSH Act and, therefore, OSHA's jurisdiction has not been displaced by FRA's employee injury and illness recordkeeping and reporting regulations. Nevertheless, the Commission did state, "[t]his does not mean that railroad industry employers must use the OSHA form, No. 200, mentioned in section [29 CFR] 1904.2(a). Section 1904.2(a) allows an employer to maintain 'an equivalent which is as readable and comprehensible [as the OSHA 200 form] to a person not familiar with it.'" Under OSHA's current regulations, 49 CFR 1904.3 states that "[i]f you create records to comply with another government agency's injury and illness recordkeeping requirements, OSHA will consider those records as meeting OSHA's Part 1904 recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this Part 1904 requires you to record." Accordingly, because FRA's employee injury and illness recordkeeping and reporting requirements employ equivalent standards to those promulgated by OSHA, OSHA does not require railroad carriers to maintain OSHA records in addition to FRA records. Rather, railroad carriers are only required to report employee injuries and illnesses to FRA in accordance with FRA's regulations. FRA makes all railroad

employee injury and illness data available to OSHA for use in its complementary program of regulation, and provides this data to the Bureau of Labor Statistics (BLS) each year for inclusion in DOL's national occupational injury and illness database.

Part 225 contains a series of specific accident/incident recording and reporting requirements. The purpose of the FRA's accident/incident recordkeeping and reporting regulations 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 statutory 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 prevention railroad injuries and accidents." 49 CFR 225.1. Part 225's central provision requires that each railroad subject to part 225 submit to FRA monthly reports of all accidents and incidents that meet FRA's reporting criteria. 49 CFR 225.11. Railroad accidents/incidents are divided into three groups, each of which correspond to the type of reporting form that a railroad must file with FRA: (1) Highway-rail grade crossing accidents/incidents; (2) rail equipment accidents/incidents; and (3) deaths, injuries and occupational illnesses. See 49 CFR 225.19.

In 1996, FRA published extensive amendments to its accident/incident reporting regulations. 61 FR 30940, June 18, 1996, and 61 FR 67477, December 23, 1996. This was the first major revision of the accident/incident reporting requirements since 1974. The primary purpose of the revision was to increase the accuracy, completeness, and utility of FRA's accident database and to clarify certain definitions and regulatory requirements. Among other things, these amendments required railroads to adopt and comply with an internal control plan (ICP) to ensure accurate reporting of accidents and incidents.

In 2003, FRA again published extensive amendments to its accident/incident reporting regulations (FRA's 2003 Final Rule). 69 FR 10107-10140, March 3, 2003. The primary purpose of these revisions was to conform FRA's accident/incident reporting requirements to OSHA's newly revised occupational injury and illness recording and reporting requirements. 66 FR 5916-6135, January 19, 2001

(codified at 29 CFR parts 1904 and 1952) (OSHA's 2001 Final Rule). FRA's 2003 Final Rule also addressed other issues and provided for an alternative method of recording claimed occupational illnesses with the advent of Form FRA F 6180.107, "Alternative Record for Illness Claimed to be Work-Related."

In this document, FRA proposes to amend its accident/incident reporting regulations in order to: Clarify ambiguous definitions and regulations; add necessary definitions; require the reporting of additional types of injuries to all persons; require the reporting of suicide data; include a comprehensive list of accident/incident reporting exceptions; allow for consolidated accident/incident reporting by integrated railroad systems; require railroads to complete (by amending the definition for "Accountable Injury or Illness") a Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" of all injuries and illnesses when such abnormal condition or disorder manifests *within* the work environment regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment; set forth requirements for railroad electronic recordkeeping systems for purposes of part 225; update regulatory text, as applicable; enhance the quality of information available for railroad casualty analysis; clarify and limit which highway-rail grade crossing fatalities must be telephonically reported to the National Response Center (NRC); clarify and refine the requirements and criteria for using and retaining Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work Related," and the alternative railroad-designed record; eliminate the oath and notarization requirements for Form FRA F 6180.55, "Railroad Injury and Illness Summary"; allow for the electronic submission via the Internet of Forms FRA F 6180.54, "Rail Equipment Accident/Incident Report"; 6180.55, "Railroad Injury and Illness Summary"; 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"; 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report"; and 6180.81, "Employee Human Factor Attachment"; set forth record retention requirements for certain accident/incident recording and reporting records not previously addressed; and update FRA's address information. In addition to proposing revisions to its regulations, FRA is proposing revisions to the FRA Guide and to certain accident/incident

recording and reporting forms. The proposed FRA Guide and forms are posted for public notice and comment on FRA's Web site at <http://safetydata.fra.dot.gov/officeofsafety>, and click on "Click Here for Changes in Railroad Accident/Incident Recordkeeping and Recording."

FRA also requests comments and suggestions on four issues of concern. First, FRA requests comments and suggestions for any additional information that might be gathered on Form FRA F 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report," that would be useful in determining how and why highway-rail grade crossing accidents/incidents occur.

Second, FRA requests comments and suggestions on whether FRA should require railroads to complete longitude and latitude blocks on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)" (blocks 5s and 5t) for trespassers only, and Form FRA F 6180.54, "Rail Equipment Accident/Incident Report" (blocks 50 and 51). Currently, completion of longitude and latitude data on both of these forms is optional.

Traditionally, FRA and the railroad industry have relied on the railroad milepost system to reference location, and in many cases, location data derived from the milepost system is accurate for short-term issues. Over the long-term, however, railroads do change mileposts during mergers and reorganizations. Also, mileposts can be inaccurate when a railroad is able to build a shorter link, or when a railroad does not remove old mileposts when replacement mileposts, which have a different starting location, are installed. Accordingly, both FRA and the transportation industry are moving aggressively to collection of geospatial data (*i.e.*, longitude and latitude coordinates) in order to better understand transportation needs, take counter measures when there are problems with a specific area or transportation link, and facilitate planning.

FRA is exploring the collection of longitude and latitude data (for trespassers only) on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)," as a means of improving railroad safety in the area of trespasser injuries and fatalities. While there are no Federal regulations dealing with unauthorized access to (*i.e.*, trespassing on) railroad property, FRA has significantly contributed to Operation Lifesaver, Inc. (a nonprofit organization devoted to highway-rail crossing safety and

trespasser prevention programs) in hopes of reducing the number of trespasser incursions. FRA believes that the collection of longitude and latitude coordinates when a trespasser is injured is the beginning of the process to define "hot spots" of unauthorized access to railroad property. Identification of such hot spots may be used to target areas for increased law enforcement surveillance by public and railroad security forces, and to assist Operation Lifesaver in reaching out to schools and other organizations in the hot zones for increased educational awareness of safety concerns around railroad operations.

FRA is exploring the collection of longitude and latitude data on Form FRA F 6180.54, "Rail Equipment Accident/Incident Report," as a means of improving railroad safety in the area of train accidents. FRA needs a permanent means of determining the location of an accident. This is especially meaningful when a release of hazardous materials or leakage of diesel fuel has occurred. Having the geographic coordinates for all train accidents will allow FRA to develop better inspection planning, identify locations of hazardous materials contamination affecting the health and/or environment, and provide to the Transportation Security Administration another tool for security planning.

Third, FRA is considering changing the method by which telephonic reports of accidents/incidents, as required by § 225.9, are made to FRA. Under FRA's current regulations, railroads are required to telephonically report certain accidents/incidents to the NRC, which in turn, provides notification of the accident/incident to FRA. FRA is reviewing whether it would be preferable for railroads to report these accidents/incidents directly to FRA via electronic transmission, and invites comments and suggestions on this issue.

Fourth, FRA is proposing in this NPRM to require railroads to report to FRA on Form FRA F 6180.55a suicides and attempted suicides, otherwise referred to as "suicide data," and requests comments addressing State access to such reports. Section § 225.1 states that, "[i]ssuance 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 that occur in that State." FRA realizes that suicide data may provide valuable

information to State research and suicide prevention programs, and wants States to have needed access to suicide data. At the same time, however, FRA is concerned about the use and public availability of suicide data. Accordingly, FRA is requesting comments on how to ensure that restrictions on the use and public availability of suicide data at the State level remain consistent with those FRA has prescribed in proposed § 225.41. Specifically, that suicide data (as defined in § 225.5) will not be included in any summaries of data on the number of injuries and illnesses associated with railroad operations; that suicide data is not publicly accessible; and that suicide data will only be available to the public in aggregate.

Section-by-Section Analysis

Technical Amendment: Throughout the rule text FRA has updated the agency's address to reflect FRA's relocation to the new U.S. Department of Transportation headquarters building. This revision affects §§ 225.7(a), 225.11(b), 225.12(g)(3), and the introductory paragraph of § 225.21.

Section 225.3 Applicability

In this section, FRA proposes a technical amendment to the introductory text of paragraph (b) with respect to that paragraph's reference to FRA's required ICP elements. Currently, paragraph (b) refers only to ICP elements 1 through 10. FRA proposes to revise the paragraph to include element number 11 (added in FRA's 2003 Final Rule), which requires railroads to include in their internal control plans a statement that specifies the name, title, and address of the custodian of the railroad's Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related," records and all supporting documentation, as well as where the documents are located. *See* 68 FR 10107, 10139, March 3, 2003.

Section 225.5 Definitions

FRA proposes to amend paragraph (1) of the definition of "Accident/incident" to conform to the language of the FRA Guide and to clarify: That a highway-rail grade crossing accident/incident is not limited only to "impact between an automobile, bus, truck, motorcycle, bicycle, farm vehicle or pedestrian" as stated in the current definition; that sidewalks, pathways, shoulders and ditches associated with the crossing are considered to be part of the crossing site; and that the term "highway user" includes pedestrians, cyclists, and all other modes of surface transportation, motorized and unmotorized.

FRA proposes to amend paragraph (3) of the definition of "Accident/incident" to conform to the revised language proposed for § 225.19(d); and to reference, rather than explicitly list, the general reporting criteria set forth in § 225.19(d). See Section-by-Section Analysis for § 225.19(d), "Primary groups of accidents/incidents; Death, injury and occupational illness."

FRA proposes to amend the definition of "Accountable injury or illness" to conform to the definition of "injury or illness" as proposed in this notice; to remove the word "activity" from the phrase "by an event, exposure, or activity in the work environment" as redundant since the definition of "event or exposure" as proposed in this notice is inclusive of activities; and to delete the phrase "not otherwise reportable" due to its ambiguity and replace referenced text with the specification that an accountable injury or illness "does not meet the general reporting criteria listed § 225.19(d)(1) through (d)(6)." See Section-by-Section Analysis for § 225.19(d), "Primary groups of accidents/incidents; Death, injury and occupational illness." These changes are clarifying in nature and do not pose any change to FRA's accident/incident recording or reporting requirements.

FRA is also proposing to amend the definition of "Accountable injury or illness" related to injuries and illness that occur within the work environment. Specifically, FRA is proposing that when an abnormal condition or disorder of a railroad employee manifests *within* the work environment and causes or requires the railroad employee to be examined or treated by a qualified health care professional, but does not meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6); such condition or disorder is an accountable injury or illness regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment. When such condition or disorder manifests *outside* the work environment it is an accountable injury or illness if the condition or disorder is discernably caused by an event or exposure in the work environment.

FRA's purpose in making this amendment is to ensure that each potentially reportable injury and illness is tracked and evaluated. In many cases injuries and illness, and/or the signs and symptoms thereof, of one kind or another can be manifest in the work environment without the reason(s) (i.e., causes of or contributors to) being apparent. In such cases railroads may prematurely attribute the cause of the

injury or illness solely to a non-work-related event or exposure that occurred outside the work environment. Consequently, the railroad does not consider the injury or illness to be "accountable" and does not complete a Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" for that injury or illness. In many of these cases however, an event or exposure in the work environment may in fact be a cause of, or contributor to, the injury or illness, but because the railroad made a premature determination that the injury or illness is not work-related, the railroad may not subsequently perform adequate inquiry (e.g., communication with the employee when the employee returns to the work environment after treatment, review of medical records, etc.) to make an accurate causal determination. Ultimately, this type of oversight will result in the under-reporting of employee injuries and illnesses to FRA, and because the railroad did not complete a Form FRA F 6180.98 to initially record the injury or illness, no audit trail is created. Thus, FRA is unable to later evaluate the reportability of the injury or illness. In order to rectify this problem, FRA is proposing that the definition of "Accountable Injury or Illness" be amended to require railroads complete Form FRA F 6180.98 records for all employee injuries and illnesses that involve signs or symptoms that surface at work, regardless of whether the injury or illness is discernably caused or contributed to by an event or exposure in the work environment. Such revision is necessary in order for FRA to effectively enforce its railroad injury and illness reporting requirements. Unless FRA has the opportunity to examine those injuries and illness which manifest in the work environment but are deemed as being not work-related (thus "nonreportable"), as well as those deemed "reportable" by the railroad, it is difficult for FRA to determine whether a railroad is making appropriate reporting decisions.

FRA proposes to amend the definition of "Accountable rail equipment accident/incident" to mean "a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that does not result in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed."

Under the current definition, an accountable rail equipment accident/incident must be both not reportable, and (if not attended to) disrupt railroad service. This revision eliminates the

disruption of service criteria. The agency believes this change simplifies recording requirements related to accountable rail equipment accidents/incidents, and will result in railroads maintaining a more complete set of records of accountable rail equipment accidents/incidents.

FRA proposes to add a definition for "Discernable cause." FRA's accident/incident reporting regulations that concern railroad occupational casualties should be maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations to permit comparability of data on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents. Moreover, maintaining such compatibility allows railroads to report occupational casualties only to FRA, rather than to OSHA and to FRA. OSHA's regulations provide that "[i]f you create records to comply with another government agency's injury and illness recordkeeping requirements, OSHA will consider those records as meeting OSHA's Part 1904 recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this Part 1904 requires you to record." See 29 CFR 1904.3.

Note that under OSHA's regulations, the term "recording" is used. Under FRA's regulations and Guide, the term "reporting" is used. FRA has always used the term "reporting" in its regulations and the FRA Guide, and because the Accident Reports Act of 1910, as amended, requires "a railroad carrier [to] file a report * * * on all accidents and incidents * * *" 49 U.S.C. 20901.

With respect to employee injury and illness recording, OSHA's 2001 Final Rule, states that "each employer * * * must record each fatality, injury and illness that is work-related; and is a new case; and meets one or more of the general recording criteria * * * or the application to specific cases." 66 FR 5916, 5945, January 19, 2001, codified at 29 CFR 1904.4(a). OSHA's 2001 Final Rule goes on to state that "[employers] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness," and that "[w]ork-relatedness is presumed for injuries and illnesses resulting from events or

exposures occurring in the work environment, unless an exception in [29 CFR] 1904.5(b)(2) specifically applies.” 66 FR 5916, 5946, January 19, 2001, codified at 29 CFR 1904.5(a).

After OSHA’s 2001 Final Rule was published, the National Association of Manufacturers (NAM) filed a legal challenge to the final rule, with respect to (among other things) the final rule’s presumption of work-relatedness, in the United States District Court for the District of Columbia. On November 16, 2001, OSHA and NAM entered into a settlement agreement to resolve NAM’s legal challenge. The parties then entered into a revised settlement agreement on November 29, 2001. The revised settlement agreement was published in the **Federal Register** at 66 FR 66943, December 27, 2001. As part of the NAM–OSHA settlement, the parties agreed to the following:

Section 1904.5(a) states that “[the employer] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition. Work relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment * * * Under this language [29 CFR 1904.5(a)], a case is presumed work-related if, and only if, an event or exposure in the work environment is a discernable cause of the injury or illness or of a significant aggravation to [sic] pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause.

Section 1904.5(b)(2) states that a case is not recordable if it “involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.” This language is intended as a restatement of the principle expressed in 1904.5(a), described above. Regardless of where signs or symptoms surface, a case is recordable only if a work event or exposure is a discernable cause of the injury or illness or of a significant aggravation to a pre-existing condition.

Section 1904.5(b)(3) states that if it is not obvious whether the precipitating event or exposure occurred in the work environment or elsewhere, the employer “must evaluate the employee’s work duties and environment to decide whether or not one or more events or exposures in the work environment caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.” This means that the employer must make a determination whether it is more likely than not that work events or exposures were a cause of the injury or illness, or a significant aggravation to a pre-existing condition. If the employer decides the case is not work-related, and OSHA subsequently issues a citation for failure to record, the Government would have the burden of proving that the injury or illness was work-related.”

In 2003, FRA revised its accident/incident reporting regulations to conform, to the extent practicable, to OSHA’s revised requirements. 68 FR 10108–10140, March 3, 2003. In doing so FRA took into account the NAM–OSHA settlement agreement, in particular the agreement’s reference to the term “discernable” to qualify or describe cause. FRA included the phrase “discernable cause” in its definitions of “Accident/incident,” “Accountable injury or illness,” and “Occupational illness” in § 225.5, and added the phrase to its reporting requirement for “Deaths, injuries and occupational illnesses” at § 225.19(d). While FRA did discuss the meaning of “discernable cause” in the preamble of FRA’s 2003 Final Rule, *see* 68 FR 10108, 10127, March 3, 2003, the agency did not explicitly define the term “Discernable cause” in the rule text. In order to clarify the meaning of this term, FRA therefore proposes to include in § 225.5 a definition for “Discernable cause” to mean, “a causal factor capable of being recognized by the senses or the understanding.” *See Webster’s Third New International Dictionary*, (1961). *See also, Webster’s Third New International Dictionary, Unabridged*, (1971). And to explain in the text of the definition that “[a]n event or exposure arising from the operation of a railroad is a discernable cause of (i.e., discernably caused) an injury or illness if, considering the circumstances, it is more likely than not that the event or exposure is a cause of the injury or illness. The event or exposure arising from the operation of a railroad need not be a sole, predominant or significant cause of the injury or illness, so long as it is a cause (i.e., a contributing factor).”

For clarification purposes, FRA proposes to add a definition for “Event or exposure” to include an “incident, activity, or occurrence” to clarify that event or exposure is a term that is to be broadly interpreted and to eliminate redundant language in the rule text.

FRA proposes to amend the definition of “Event or exposure arising from the operation of a railroad” in order to clarify its meaning. The term “event or exposure arising from the operation of a railroad” and its definition were added to § 225.5 in FRA’s 2003 Final Rule to replace “arising from the operation of a railroad” and its definition. The agency made this amendment to tailor more narrowly what types of accidents/incidents were considered to “arise from the operation of a railroad” and therefore be potentially reportable. 68 FR 10108, 10115–16, March 3, 2003.

FRA’s current definition of “Event or exposure arising from the operation of a railroad” has a three-tier definition:

The first tier defines “event or exposure arising from the operation of a railroad” broadly “with respect to any person on property owned, leased, or maintained by the railroad, an activity of the railroad that is related to its rail transportation business or an exposure related to the activity.” FRA proposes to revise this first tier of the definition by changing “any person” to “a person who is not an employee of the railroad.” Such change is consistent with the intent of the paragraph as stated in the preamble to FRA’s 2003 Final Rule:

FRA developed a compromise position, proposing that railroads not be required to report deaths or injuries to persons who are not railroad employees that occur while off railroad property unless they result from a train accident, a train incident, a highway-rail grade crossing accident/incident, or a release of a hazardous material or other dangerous commodity related to the railroad’s rail transportation business.

68 FR 10108, 10109, March 3, 2003. This lends to the accuracy of the definition, since tier one was intended to apply only to persons who are not railroad employees. FRA also proposes to amend this paragraph for purposes of clarification by removing the phrase “any activity of the railroad” such that tier one of the definition, as proposed, would indicate that with respect to a person who is not an employee of the railroad, an event or exposure that occurs on property owned, leased, or maintained by the railroad and is related to the performance of the railroad’s rail transportation business. FRA is proposing to delete the reference to “activity” since the proposed definition of “event or exposure” includes “activity.”

The second tier also defines “event or exposure arising from the operation of a railroad” broadly, but “with respect to an employee of the railroad (whether on or off property owned, leased or maintained by the railroad), an activity of the railroad that is related to the performance of its rail transportation business or an exposure related to that activity.” FRA proposes to amend this paragraph for purposes of clarification by revising the definition to state “with respect to a person who is an employee of a railroad, an event or exposure that is work-related.” This amendment thus removes the phrase “any activity of the railroad,” since the proposed definition of “event or exposure” includes “activity.” It also removes the phrase “(whether on or off property owned, leased, or maintained by the railroad)” and “that is related to the performance

of the railroad's rail transportation business * * * since "work-related" encompasses both of those requirements.

The third tier defines "Event or exposure arising from the operation of a railroad narrowly with respect to a person who is neither on the railroad's property nor an employee of the railroad, to include only certain enumerated events or exposures, *i.e.*, a train accident, a train incident, or a highway-rail crossing accident/incident involving the railroad; or a release of hazardous material from a railcar in the railroad's possession or a release of another dangerous commodity if the release is related to the railroad's rail transportation business." 68 FR 10108, 10116, March 3, 2003. FRA proposes no substantive change to this tier of the definition, but is incorporating the tier three definition into the tier one (paragraph (1) of the definition of "event or exposure arising from the operation of a railroad") since both tier one and tier three apply to persons who are not railroad employees.

The amendments to tier one, tier two and tier three of the definition of "Event or exposure arising from the operation of a railroad" will then be organized such that paragraph (1) will be applicable to non-employees and paragraph (2) will be applicable to employees. These amendments are clarifying measures and do not change the meaning of the term. The definition continues to mean, consistent with FRA's 2003 Final Rule, "that a railroad would not have to report to FRA the death of or injury to an employee of a contractor to the railroad who is off railroad property (or deaths or injuries to any person who is not a railroad employee) unless the death or injury results from a train accident, train incident, or highway-rail grade crossing accident involving the railroad; or from a release of a hazardous material or some other dangerous commodity in the course of the railroad's rail transportation business. In addition, FRA would require railroads to report work-related illnesses only of railroad employees and under no circumstances the illness of employees of a railroad contractor." 68 FR 10108, 10116, March 3, 2003.

FRA proposes a technical amendment to the definition of "General reporting criteria" to include criteria number [225.19(d)] (6), "Illness or injury that meets the application of any of the [enumerated] specific case criteria," which was inadvertently omitted in FRA's 2003 Final Rule.

FRA proposes to add a definition of "Injury or illness" to mean "an

abnormal condition or disorder," (this is consistent with OSHA's definition at 29 CFR 1904.46), and to provide examples of injuries and illnesses. In doing so, FRA clarifies that pain is an injury or illness when it is sufficiently severe to meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6). See OSHA's Final Rule, 66 FR 5916, 6080, January 19, 2001. FRA also clarifies that a Musculoskeletal Disorder is an injury or illness. See OSHA's Final Rule, 66 FR 5916, 6017, January 19, 2001 and 68 FR 38601, 38602, June 30, 2003. Incorporation of such definition does not represent any change to FRA's current accident/incident recording and reporting requirements. The definition has been included in an effort to eliminate confusion as to what constitutes an injury or illness. FRA wishes to emphasize that injuries and illnesses are reportable only if they are new cases discernably caused or significantly aggravated by an event or exposure arising from the operation of a railroad, that meet one or more of the general reporting criteria.

FRA proposes to amend the definition of "New case" to apply to all persons rather than only to employees. Correspondingly, FRA is replacing the phrase "in the work environment" to "arising from the operation of a railroad" since the term "work environment" also applies only to employees. Such change is consistent with the statutory requirement that railroads report to FRA "all accidents and incidents resulting in injury or death to an individual * * * arising from the carrier's operations during the month," not just accidents and incidents resulting in injury or death to railroad employees. See 49 U.S.C. 20901. FRA considers this amendment a correction to the current definition that does not affect reporting requirements. FRA also proposes to include the descriptor "discernably" before "caused" in the definition of "New case" to be consistent with the rest of the part 225 regulatory language.

FRA proposes to amend the definition of "Qualified health care professional" to remove the example regarding an otolaryngologist. The definition currently states, "[f]or 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" since, as a licensed physician, an otolaryngologist can diagnose conditions other than those related to the ears, nose, throat, and related structures of the head and neck.

FRA proposes to amend the definition of "Railroad." Currently, part 225 defines "railroad" as "a person providing railroad transportation." In order to attain better consistency with Congress' 1994 revisions to 49 U.S.C. 20102, FRA proposes to define "railroad" as meaning "a railroad carrier," and add a definition to § 225.5 for "railroad carrier" as meaning a "person providing railroad transportation."

Congress added the term "Railroad carrier" to 49 U.S.C. 20102 in 1994 (Pub. L. No. 103-272, 108 Stat 745), as part of a larger effort "[t]o restate the laws related to transportation in one comprehensive title" and "attain uniformity [of language] within the title." See House Report No. 103-180 at 3, reprinted in 1994 U.S.C.C.A.N. 818, 820. Specifically, Congress defined "railroad carrier" at 49 U.S.C. 20102(2) as a "person providing railroad transportation," in order to "distinguish between railroad transportation and the entity providing railroad transportation." See House Report No. 103-180 at 79, reprinted in 1994 U.S.C.C.A.N. 818, 898. FRA's definition of "railroad transportation" remains unchanged.

FRA proposes to add a definition for "Significant aggravation of a pre-existing injury or illness." This definition is consistent with that of OSHA as set forth at 29 CFR 1904.5(b)(4) and the current version (effective May 1, 2003) of the FRA Guide. FRA proposes to add the definition to § 225.5 for clarification and ease of reference.

FRA proposes to add a definition for "Suicide data." Consistent with FRA's proposal to remove suicide and attempted suicide from its current § 225.15 reporting exceptions (*see* Section-by-Section Analysis for 225.15, "Accidents/Incident not to be reported"), and begin collecting suicide related data, FRA proposes to add to § 225.5 a definition for "Suicide data," to mean data regarding the death of an individual due to that individual's commission of suicide as determined by a coroner or other public authority; or injury to an individual due to that individual's attempted commission of suicide as determined by a public authority. FRA emphasizes that only the death of or injury to the individual who committed the suicidal act is considered to be suicide data. FRA will not report suicide data to OSHA. FRA will not include suicide data (as defined in § 225.5) in its periodic summaries of data on the number of injuries and illnesses associated with railroad operations. FRA will maintain suicide

data in a database that is not publicly accessible. Accordingly, suicide data will not be available on FRA's Web site for individual reports or downloads. Suicide data will be available to the public in aggregate format on FRA's Web site and via requests under the Freedom of Information Act. See § 225.41, "Suicide data" as proposed in this NRPM.

FRA proposes to amend the definition of "Work environment" to explain that the work environment means the establishment and other locations where on or more railroad employees are working or present as a condition of employment. Such addition brings additional clarity and better conforms FRA's definition to OSHA's definition at 29 CFR 1904.5(b)(1).

FRA proposes to revise the definition of "Work-related" by removing the words "incident, activity, * * * or the like" and replacing them with "event or exposure" since the definition of "event or exposure" as proposed in this section encompasses those terms. FRA also explains in the definition that an injury or illness is presumed work-related if an event or exposure in the work environment is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness; that the causal event need not be peculiarly occupational in nature so long as it occurs at work; that the causal event need only be a cause (i.e., contributory factor); and that if an injury or illness is within the presumption, the employer can rebut the work-relatedness only by showing that the case falls within an exception listed in 49 CFR 225.15. Such presumption is consistent with the NAM-OSHA settlement agreement, 66 FR 66943, December 27, 2001, and with OSHA's regulations which require that "[employers] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition." 29 CFR 1904.5(a). OSHA's regulation goes on to explain that "[w]ork-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in [29 CFR] 1904.5(b) specifically applies." *Id.* At 29 CFR 1904.5(b)(2), OSHA sets forth nine exceptions to its injury and illness reporting requirements. FRA's reporting exceptions are currently set forth at § 225.15 and in the FRA Guide. FRA is proposing in this Notice to include all FRA accident/incident reporting exceptions in § 225.15. See Section-by-

Section Analysis for § 225.15, "Accidents/Incident not to be reported."

In cases where it is not obvious whether a precipitating event or exposure occurred in the work environment, the employer must evaluate the employee's work duties and environment to decide whether it is more likely than not that an event or exposure at work contributed to the employee's injury or illness. FRA's requirement is consistent with that of OSHA at 29 CFR 1904.5(b)(3) where OSHA addresses how an employer should handle a case if it is not obvious whether the precipitating event or exposure occurred in the work environment, stating "in these situations, [the employer] must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition" and with the NAM-OSHA settlement agreement, 66 FR 66943, December 27, 2001.

FRA also wishes to clarify that an event or exposure that occurs in the work environment need not have a clear connection to a specific work activity, condition, or substance that is peculiar to the railroad transportation business in order to be an "event or exposure arising from the operation of a railroad." Examples of events or exposures arising from the operation of a railroad include an employee tripping for no apparent reason while walking across a level floor; an employee being sexually assaulted by a co-worker; or an employee being injured by an act of violence perpetrated by one co-worker against a third party. See OSHA's 2001 Rule, 66 FR 5916, 5946, January 19, 2001. In such cases the employee's job-related tasks and exposures did not create or contribute to the risk that an injury or illness would occur. *Id.* Rather, these activities are events or exposures arising from the operation of a railroad because they occurred in the work environment. Likewise, normal body movements (e.g., walking, climbing a staircase, bending down, sneezing) engaged in by an employee at the time of injury are also events arising from the operation of a railroad, even if the body movement is not related to the employee's job related tasks. See 66 FR 5916, 5957-5958, January 19, 2001. Correspondingly, events or exposures involving contractors or volunteers that occur on property owned, leased or maintained by the railroad, also arise from the operation of a railroad even if they do not have a clear connection to a specific work activity, condition, or

substance that is peculiar to the railroad transportation business.

Section 225.6 Consolidated Reporting

FRA proposes to add § 225.6 addressing consolidated railroad accident/incident reporting for certain integrated railroad systems.

Title 49 U.S.C. 20901 requires that each "railroad carrier" submit to FRA a monthly report of its accidents/incidents. Title 49 U.S.C. 20102 defines a "railroad carrier" as a "person providing railroad transportation." "Person," as defined by 1 U.S.C. 1 "include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." Generally, FRA has considered subsidiary corporations as discrete "persons" or "railroad carrier[s]," each individually responsible for complying with FRA's accident/incident reporting requirements, regardless of the subsidiary's affiliation with any other incorporated railroad. This interpretation is consistent with the general rule that the corporate parent shareholder is not liable for the debts of the subsidiary. As such, FRA has generally treated each incorporated "railroad carrier" as an independent entity responsible for complying with Federal railroad safety laws, regardless of the railroad's affiliation with any other incorporated entity.

Due to the proliferation of mergers within the railroad industry however (since 1970, the dozens of Class I railroads then in existence have merged into an industry structure of just seven Class I railroads), incorporation is no longer a reliable indicator of who is truly "providing railroad transportation" since merged railroads do not always become a single legal entity. Many railroad mergers were structured so that the acquiring (*i.e.*, parent) railroad allowed the target (*i.e.*, subsidiary) railroad to survive as a separate legal entity after the merger. Acquiring railroads preferred this type of merger because certain rights and properties of the target railroad were more likely to remain intact than if the target disappeared. This proclivity still holds true.

Because merged railroads may operate as independent entities, or as a single larger commonly controlled integrated railroad system, compliance with and enforcement of part 225 is increasingly difficult, since the operations of merged railroads often become so integrated that parent railroad corporations (and consequently FRA) are not necessarily able to disaggregate their operations, especially in terms of identifying which

subsidiary railroad employs a worker or owns the equipment or trackage involved in an accident/incident. As a result, accident and incident recording and reporting inaccuracies by the railroads are more likely to occur, and remain undiscovered by FRA, thus undermining the integrity of FRA's accident and incident databases. For these reasons, Canadian National Railroad, in the latter half of 2004, requested that FRA allow them to report their operationally integrated subsidiary's accidents/incidents on a consolidated basis, rather than discretely. Upon review of the issue, for purposes of part 225 only, FRA proposes to adhere to the view that where a parent corporation dominates its subsidiary railroads and operates as a single, integrated United States railroad system, FRA may consider the dominating corporation as principal (*i.e.*, the "provider of railroad services") for the entire system, and the subsidiary corporation(s) as agent, thus making the acts of the latter in effect the acts of the former. In other words, FRA may treat the parent corporation as the "railroad carrier" for that system. This means that the parent corporation is responsible for the system's compliance with part 225, and that any time an FRA representative finds an instance of noncompliance by any of the subsidiaries making up the system, the FRA representative may recommend to FRA's Office of Chief Counsel that a civil penalty be issued against the parent corporation.

A parent corporation may request in writing that FRA treat its commonly controlled railroad carriers, which operate as a single, seamless, integrated United States rail system, as a single railroad carrier for purposes of part 225 compliance. The written request must provide a list of the subsidiary railroads controlled by the parent corporation and an explanation as to how the subsidiary railroads operate as a single, seamless, integrated United States railroad system.

If, upon review of this information, it is FRA's belief that "the provider of railroad services" is actually the parent corporation, FRA may treat the parent corporation as the railroad carrier for purposes of part 225. If the agency grants the request, the parent corporation must enter into a written agreement with FRA specifying which subsidiaries are included in its railroad system, consenting to assume responsibility for compliance with part 225 for all named subsidiaries making up the system, and consenting to guarantee any liabilities owed to the United States government that are incurred by its named subsidiaries for violating part 225. Any change to the

subsidiaries making up the railroad system will require execution of an amended agreement.

This interpretation is consistent with the Surface Transportation Board's (STB) Decision Ex Parte No. 634 (Proposal to Require Consolidated Reporting by Commonly Controlled Railroads) (November 7, 2001). In this decision, STB required that each group of railroads that operate as a single, integrated United States rail system whose cumulative operating revenues meet the Class I threshold, submit consolidated annual financial reports that combine the operations of all their commonly controlled railroads that operate as an integrated rail system within the United States. Prior to this decision, STB did not require commonly owned railroads to report on a consolidated basis. As such, families of railroads that were operated as an integrated system with cumulative operating revenues well above the \$250 million threshold were not required to file financial reports so long as the operating revenues of each individual railroad was less than \$250 million. By requiring that all components of an integrated system be combined, STB asserts that it is able to gather more meaningful and accurate information on the large rail systems operating in the United States, and determine whether the railroad systems are Class I (large railroads), Class II (medium-sized railroads), or Class III (smaller railroads). Likewise, FRA believes that by treating all components of an integrated system as a single railroad, FRA will be able to gather more meaningful and accurate accident/incident data.

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

FRA proposes to clarify its accident/incident telephonic reporting requirements related to fatalities that occur at highway-rail grade crossings as a result of train accidents or train incidents.

Currently, FRA requires railroads to report immediately, via telephone, to the NRC "a fatality at a highway-rail grade crossing as a result of a train accident or train incident." § 225.9(a)(2)(iii). FRA has found that confusion exists as to the applicability of this requirement when death does not actually occur at the scene of the highway-rail grade crossing accident/incident, but some hours or days later, after the fatally injured person is taken to the hospital for treatment.

Upon review, FRA proposes to revise the telephonic reporting requirement for

highway-rail grade crossing fatalities to require that such fatalities must be telephonically reported only if death occurs within 24 hours of the accident/incident. This proposal is consistent with Department of Transportation, Office of Inspector General's November 28, 2005, recommendation (Report No. MH-2006-016) to FRA that the FRA amend § 225.9 to clarify reporting requirements and include criteria that require railroads to report to NRC any death that occurs within 24 hours of a highway-rail grade crossing accident/incident.

FRA also proposes a technical amendment to paragraph (a)(2)(iv) by adding the words "or more" after \$150,000 to clarify that the telephonic reporting requirement is triggered when a train accident results in damage of \$150,000 or more to railroad and nonrailroad property.

Section 225.11 Reporting of Accidents/Incidents

In this section, FRA proposes to list each primary accident/incident group described in § 225.19 (*i.e.*, Highway-Rail Grade Crossing; Rail Equipment; and Death, Injury and Occupational Illness) by subsection. By identifying each group of accidents/incidents with a different subsection, FRA will be better able to access data and differentiate among data elements. For example, currently, if FRA issues a violation against a railroad for alleged non-compliance with § 225.11, FRA's case tracking database captures this as a violation of § 225.11. With such limited information, FRA is unable to easily identify what type of reporting non-compliance is alleged (*i.e.*, failure to report a highway-rail grade crossing accident/incident; failure to report a rail equipment accident/incident or failure to report an accident/incident involving a death, injury or occupational illness). Such capability will provide FRA with better and more useful data, as well as quicker access to the data.

FRA also proposes to update this section to reflect the proposed provisions in § 225.37 regarding filing accident/incident reports with FRA via optical media (CD-ROM) and electronically via the Internet.

§ 225.15 Accidents/Incidents Not To Be Reported

In this section, FRA proposes to revise § 225.15 to include a comprehensive list of injury/illness and rail equipment accident/incident reporting exceptions (formerly listed partially in § 225.15 and in the FRA Guide). As discussed in the Section-by-Section Analysis of § 225.5, "Definitions" with respect to the

definition of "Work-relatedness," OSHA's regulations require that "[employers] must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition." 29 CFR § 1904.5(a). OSHA's regulation goes on to explain that "Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in [29 CFR] 1904.5(b) specifically applies." 29 CFR 1904.5 (a). FRA has established certain reporting exceptions in § 225.15 and has also adopted OSHA's reporting exceptions in the current FRA Guide.

FRA's proposed list of exceptions includes both the FRA orientated exceptions and exceptions set forth by OSHA at 29 CFR 1904.5(b) as adopted by FRA. Upon drafting this Notice to incorporate the reporting exceptions into this section, FRA reviewed the applicability of each injury and illness reporting exception as related to the class of injured person, and incorporates this information into the rule text.

In making this revision, FRA leaves paragraph (a) substantively unchanged.

In paragraph (b), FRA addresses reporting exceptions for Class A—Worker on Duty—Employee injuries and illness. Paragraph (b)(1) retains the current paragraph (b) reporting exception relating to injuries and illnesses occurring in living quarters. To paragraph (b) FRA adds additional reporting exceptions applicable to Employees on Duty—Class A (paragraphs (b)(2) through (b)(3)). These exceptions do not affect a railroad's obligation to report to FRA Class B—Employee not on duty injuries.

Paragraph (c) contains reporting exceptions applicable to all employees (whether on or off duty). With respect to the reporting exception listed in paragraph (c)(3), FRA wishes to clarify that an injury or illness that is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption is not reportable. It does not matter if the employee bought the food on the employer's premises or brought the food into work. For example, if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work-related. If, however, the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered reportable if the

case meets the general reporting criteria set forth at § 225.19(d)(1)–(d)(6).

In paragraph (d), FRA addresses the applicability of the reporting exceptions listed in paragraph (b) and (c) to contractors and volunteers. The reporting exceptions for employee injuries and illnesses apply equally to volunteer injuries and illnesses and to contractor injuries (contractor illnesses are not reportable to FRA). Because an injury to a contractor, or injury to or illness of a volunteer, must occur on property owned, leased or maintained by the railroad (rather than in the work environment), any reference to the term "work environment" in paragraph (b) is construed to mean, for the purposes of paragraph (d) only, on property owned, leased, or maintained by the railroad. The application of the exceptions as stated in paragraph (d) does not reflect any change to FRA's provisions, but is included to clarify the applicability of the reporting exceptions to contractors and volunteers. Paragraph (e) addresses reporting exceptions for rail equipment accidents/incidents which are currently included in the FRA Guide.

The agency believes these exceptions should be incorporated into the rule, and that doing so will provide a better understanding of FRA's employee injury and illness reporting requirements. The reporting exceptions do not affect a railroad's obligation to maintain records of accidents/incidents as required by § 225.25 (Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" and Form FRA F 6180.97, "Initial Rail Equipment Accident/Incident Record"), as applicable.

FRA also proposes to eliminate from the reporting exceptions suicides and attempted suicides. In doing so FRA is proposing that casualties due to suicides and attempted suicides, that meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6), be reported to the agency on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)," as a new category of data called "suicide data." Under the proposed system, a fatality to a person due to that person's commission of suicide as determined by a coroner or other public authority; or a reportable injury to a person due to that person's attempt to commit suicide as determined by a public authority, would be reported to FRA regardless of the need for other reporting of the event (*i.e.*, the suicide resulted in a reportable train accident or highway-rail grade crossing collision). These suicide data cases would not be reported to OSHA by FRA. FRA will not include suicide data (as defined in § 225.5) in its periodic

summaries of data on the number of injuries and illnesses associated with railroad operations. FRA will maintain suicide data in a database that is not publicly accessible. Accordingly, suicide data will not be available on FRA's Web site for individual reports or downloads. Suicide data will, however, be available to the public in aggregate format on FRA's Web site and via requests under the Freedom of Information Act (FOIA). For additional information FOIA request see FRA's Web site at <http://www.fra.dot.gov/us/foia>. Suicide data counts will be included in casualty counts on Forms FRA F 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report," and FRA F 6180.54, "Rail Equipment Accident/Incident Report," in order that number of casualties reported to FRA on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)," for the month is consistent with the number of casualties reported to FRA on each of these accident/incident reporting forms. See § 225.41, "Suicide data." See also Section-by-Section Analysis for § 225.5, "Definitions," and Appendix H, "Forms," for additional information.

FRA believes that it is important to collect data on suicides. Death by suicide is a national problem as indicated by the fact that more than 30,000 Americans die by suicide each year. Currently, there are no reliable reports about how many of these deaths occur on railroad property. The California Public Utilities Commission indicates that more than 55 percent of pedestrian railroad fatalities in California are attributed to suicide, and according to the American Association of Suicidology, railroads that have tracked probable suicides on the rail system report that suicides are responsible for 39 percent of pedestrian fatalities. Additionally, a March 3, 2005, Chicago Tribune article, "Suicide is Top Cause of Train Track Deaths; State Looks for Ways to Prevent Fatalities," indicates that in 2004, there were 30 probable suicide deaths and an additional three attempts involving trains in Chicago alone, and that suicide was the leading cause of rail-related fatalities in Illinois for 2004, which led Illinois to implement a systematic tracking program of such incidents on rail property. This information illustrates the fact that there are a large number of fatalities occurring on railroad property without any national initiative to collect data that might be used to address these events.

Since it appears that suicides contribute significantly to the total number of fatalities that are occurring

on railroad tracks, it is appropriate to report suicides in addition to the other causes of death in the industry. By requiring the information be reported as suicide data, these fatalities will not be included in the normally reported fatality data. These new data may help FRA, organizations promoting safety on and around railroad property, and suicide prevention agencies, assess the problem and develop programs to decrease the incidence of suicides by train.

FRA notes that the collection of suicide data will also aid the Federal Transit Administration (FTA) in its collection and analysis of commuter railroad accidents, since FRA provides certain commuter railroad safety data to FTA. FTA relies on FRA to provide to it data on the types of accidents occurring on commuter rail, their primary causes, and the consequences, in terms of fatalities (which for FTA includes suicides under 49 CFR part 659), injuries and property damage. The data FRA provides to FTA, however, is somewhat incomplete, in that FRA cannot provide suicide data to FTA. Consequently, FTA, which uses this information to better inform their assessments of safety plans and hazard analysis performed by commuter rail grantees applying for FTA grants, must work with an incomplete data set.

In order for FRA to capture suicide data, FRA proposes to require railroads to indicate suicide or attempted suicide on Forms FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"; FRA F 6180.54, "Rail Equipment Accident/Incident Report"; and FRA F 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report" as follows:

(1) *Form FRA F 6180.55a*—FRA proposes to require an "X" representative of "suicide or attempted suicide" be placed in "Special Cause Code" block 5r. FRA also proposes to change the title of block 5m, currently "Result," to "Tools." This change is a correction to the current form and is necessary to maintain consistency with types of Circumstance Codes in Appendix F of the FRA Guide.

(2) *Form FRA F 6180.54*—FRA proposes to add four Miscellaneous Cause Codes for use in block 38 as follows: (i) Code M309 "Suicide (Highway-Rail Grade Crossing Accident)"; (ii) Code M310 "Attempted Suicide (Highway-Rail Grade Crossing Accident)"; (iii) Code M509 "Suicide (Other Misc.)"; and (iv) Code M510 "Attempted Suicide (Other Misc.)". These codes would be added to Appendix C, "Train Accident Cause Codes" to refer to "Suicide or

Attempted Suicide" for use in "Primary Cause Code" block 38. Railroads would also be required to include suicides and attempted suicides in the casualty counts in blocks 46, 47, and 48, as applicable.

(3) *Form FRA F 6180.57*—FRA proposes to add to block 41, currently titled "Driver Action," (FRA is proposing to change this title to "Highway User Action," for additional information see Changes to FRA Guide, section N, "Appendix H, "Forms", subsection 8, "FRA Form FRA F 6180.57") a selection for "Suicide or Attempted Suicide." Railroads would also be required to include suicides and attempted suicides in the casualty counts in blocks 46, 49, and 52, as applicable. See Section-by-Section Analysis for Appendix H, "Forms" for additional information.

FRA notes that it is also concerned that suicides are being reported as trespasser fatalities, because railroads do not always make reasonable inquiry in their efforts to determine the cause of death. In fact, FRA has found that a number of reported trespasser fatalities are actually suicides. Accordingly, FRA is revising Chapter 6 of the FRA Guide to clarify that in order to fulfill its responsibilities to maintain accuracy in reporting, a railroad must try to obtain documentation indicating the cause of death by contacting the coroner or other public official by telephone and, if unsuccessful in obtaining the needed information, in writing. The railroad must continue its efforts to obtain this information for a period of six months following the month in which the fatality occurred. The railroad must keep a record of its efforts to obtain such documentation. This record and any documentation obtained must be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35(b).

Section 225.17 Doubtful Cases

In this section, FRA proposes to revise part 225 by redesignating the "Alcohol or Drug Involvement" provisions currently contained in this paragraph (d) to a newly added § 225.18. FRA has often observed that the inclusion of the two unrelated topics in one section has led to confusion among interested parties. The move is, therefore, intended to reduce possible confusion and does not pose any substantive change to FRA's current accident/incident reporting requirements. FRA also proposes a technical amendment to the first sentence of paragraph (a) by inserting the word "of," which was inadvertently omitted, between the words "officer" and "a railroad"

revising the sentence to read: "The reporting officer of a railroad * * *."

Section 225.18 Alcohol or Drug Involvement

As stated above, FRA proposes to add a new section, § 228.18, and redesignate the Alcohol and Drug provisions currently contained in § 225.17(d) to a new section, § 225.18, for clarity purposes only. FRA does propose technical amendments to proposed paragraph § 225.18(b) (currently § 225.17(d)(2)) changing the word "title" to "chapter" to reference the correct term and inserting "49 CFR" in front of the reference to § 219.209 for clarity. FRA also proposes to amend § 225.18(d) (currently § 225.17(d)(4)) by changing the word "paragraph" to "section" to accommodate the proposed redesignation of § 225.17(d) to § 225.18(a)–(d).

Section 225.19 Primary Groups of Accidents/Incidents

In this section, FRA proposes to revise paragraph (d) to clarify the agency's existing reporting requirements for death, injury and occupational illness and to further conform those requirements to OSHA's recordkeeping and reporting regulations.

FRA's accident/incident reporting regulations that concern railroad occupational casualties should be maintained, to the extent practicable, in general conformity with OSHA's recordkeeping and reporting regulations to permit comparability of data on occupational casualties between various industries, to allow integration of railroad industry data into national statistical databases, and to improve the quality of data available for analysis of casualties in railroad accidents/incidents. See Section-by-Section Analysis for § 225.5, "Definitions" with respect to "Discernable cause." Moreover, maintaining such compatibility allows railroads to report occupational casualties only to FRA rather than to OSHA and to FRA. See 29 CFR 1904.3.

With respect to employee injury and illness recording, OSHA's regulations requires that "each employer * * * must record each fatality, injury and illness that is work-related; and is a new case; and meets one or more of the general recording criteria * * * or the application to specific cases." 29 CFR 1904.4(a).

By rewording paragraph (d) to more closely model OSHA's wording, FRA is better conforming its reporting requirements to that of OSHA. FRA is also clarifying that only new cases are reportable. The current regulation requires that the injury or illness must

be a new case or a significant aggravation of a pre-existing injury or illness. FRA therefore proposes, that to be reportable, a significant aggravation of a pre-existing case must be a "new case" (i.e., a case in which either the employee has not previously experienced a reported injury or illness of the same type that affects the same part of the body, or the employee previously experienced a reported injury or illness of the same type that affected the same part of the body but had recovered completely (all signs had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear).

FRA also proposes to amend paragraph (d) by revising the general reporting criteria, specifically paragraph (d)(2), which currently states, "injury to any person that results in medical treatment," to include "significant injury to any person" and "loss of consciousness to any person." Failure to include these classes of injuries as reportable for "any person" rather than just railroad employees in the general criteria in the agency's 2003 Final Rule (68 FR 10107, March 3, 2003), has resulted in FRA not capturing data for non-employees with respect to significant injuries.

In addition, FRA proposes to amend paragraph (d)(6)(v) to remove the word "independently" for purposes of clarity. As explained in the Section-by-Section Analysis the § 225.5 definition of "Injury or Illness," MSD's are injuries and illnesses under the rule and are subject to the same recording criteria that apply to other injuries and illnesses.

Lastly, FRA proposes to amend paragraph (d)(6) to include covered data cases. The addition of covered data cases to § 225.19(d) is a technical amendment and intended to correct the inadvertent omission of the criteria in the current rule text. The addition does not alter FRA's reporting criteria or its policy on covered data as stated in § 225.39.

Section 225.21 Forms

In this section, FRA proposes to amend paragraph (j) in relation to the use of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related." Specifically, FRA is proposing to make use of the Form FRA F 6180.107, in place of Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," optional rather than mandatory, and to amend and redesignate the instructions for use of the form currently set forth at § 225.21(j) to § 225.25(i) under the

section entitled "Recordkeeping." See Section-by-Section Analysis for § 225.25, "Recordkeeping," for additional information.

Section 225.25 Recordkeeping

In this section, FRA proposes to eliminate from paragraph (a) the words "that arise from the operation of the railroad" in order to maintain continuity with the agency's proposed definition of "accountable injury or illness." See Section-by-Section Analysis for § 225.5, "Definitions," for additional information. Moreover, such language is redundant with respect to reportability, as § 225.19(d) clearly indicates an injury or illness is only reportable if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness.

FRA also proposes to revise the criteria for using Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related" and sets forth all of the information that must be included in an alternative railroad-designed record that may be used in lieu of the Form FRA F 6180.107.

Prior to FRA's most recent amendments to part 225 in 2003, FRA required all accountable and reportable injuries and illnesses be recorded on Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," or an equivalent record containing the same information. The subset of those cases that qualified for reporting were then reported to FRA on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)." If the case was not reported, the railroad was required to state, on Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," or the equivalent record, the reason the injury or illness was not reportable. According to the final rule preamble, 68 FR 10107, 10118, March 3, 2003:

[a]lthough this system has generally worked well, problems have arisen with respect to accounting of claimed occupational illnesses. As further explained below, railroads are subject to tort-based liability for illnesses and injuries that arise as a result of conditions in the workplace. By their nature, many occupational illnesses, particularly repetitive stress cases, may arise either from exposures outside the workplace, inside the workplace, or a combination of the two. Accordingly, issues of work-relatedness become very prominent. Railroads evaluate claims of this nature using medical and ergonomic experts, often relying upon job analysis studies as well as focusing on the individual claims.

With respect to accounting and reportability under part 225, railroad

representatives asserted their concern that mere allegations (e.g., receipt of a complaint in a tort suit naming a large number of plaintiffs) not give rise to a duty to report. They added that many such claims are settled for what amounts to nuisance values, often with no admission of liability on the part of the railroad, so even the payment of compensation is not clear evidence that the railroad viewed the claim of work-relatedness as valid.

Although sympathetic to these concerns, FRA was disappointed in the quality of data provided in the past related to occupational illness. Indeed, in recent years the number of such events reported to FRA has been extremely small. FRA has an obligation to verify, insofar as possible, whether the railroad's judgments rest on a reasonable basis, and discharging that responsibility requires that there be a reasonable audit trail to verify on what basis the railroad's decisions were made.

As a result, FRA established at § 225.25(i)(1) a separate category of claimed illnesses to be recorded on a new form, Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work Related." This category is comprised of: Illnesses for which there is insufficient information to determine whether the illness is work-related; illness for which the railroad has made a preliminary determination that the illness was not work-related; and illnesses for which the railroad has made a final determination that the illness is not work-related.

For any case determined to be reportable, under § 225.25(i)(2) the railroad has been required to remove the designation "illness claimed to be work-related" and transfer the record to the reporting officer for retention and reporting in the normal manner. In the event the railroad determined the case was not reportable, § 225.25(i)(3) requires that the railroad record an explanation in "narrative" block 19 of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related," of the reason(s) the railroad made that determination, making reference to the "most authoritative" information relied upon.

FRA believed that this system of accounting for contested illnesses would focus responsibility for reporting decisions and provide an appropriate audit trail. In addition, FRA thought that it would result in a body of information that could be used for research into the causes of prevalent illnesses, particularly in the case of musculoskeletal disorders. See 68 FR 10107, 10118, March 3, 2003. Unfortunately, this has not been the case.

Rather than use the Form FRA F 6180.107, "Alternative Record for

Illnesses Claimed to be Work-Related,” to record only those illnesses for which the railroad: has insufficient information to determine whether the illness is work-related; has made a preliminary determination that the illness is not work-related; or has made a final determination that the illness is not work-related. FRA found that frequently railroads are recording all occupational illnesses on Form FRA F 6180.107 as a matter of practice even before evaluating the sufficiency of information provided and/or work-relatedness, and that railroads allowed these records to remain unevaluated for periods of several months or more without being updated or reviewed for work-relatedness. Moreover, FRA has found that railroads are not creating the Form FRA F 6180.107 record no later than seven working days after receiving information or acquiring knowledge that an employee is claiming they have incurred an occupational illness, as required by the FRA Guide. Consequently, this system of accounting has not focused responsibility for reporting decisions, not provided an appropriate audit trail, not resulted in a body of information that can be used in the future for research into the causes of prevalent illnesses, and has not been helpful in correcting the under-reporting of occupational illnesses to FRA.

In order to correct this problem, FRA proposes to refine the circumstances and procedures related to the recording of claimed occupational illnesses on Form FRA F 6180.107, “Alternative Record for Illnesses Claimed to be Work-Related.” Specifically, FRA proposes to allow the use of the Form FRA F 6180.107 to record only those claimed occupational illnesses for which the railroad carrier has not received, from the employee or their representative, information sufficient to determine whether the occupational illness is work-related. FRA’s proposal also includes, among other things, requirements that railroads: enter each illness claimed to be work-related on the record no later than seven working days after receiving information or acquiring knowledge that an employee is claiming they have incurred an occupational illness; make a good faith effort to obtain information necessary on occupational illness cases to make a reporting decision by December 1 of the next calendar year; document the receipt of new or additional case information in “narrative” block 19 of Form FRA F 6180.107 within seven days of receipt and to re-evaluate the case in light of the new information

within 30 days of receipt of the information; complete a Form FRA F 6180.98 for any claimed occupational illness case determined to be accountable or reportable within seven days of making such determination; to retain the record in accordance with the provisions set forth in § 225.27 and report the illness in accordance with regular reporting requirements; and provide complete narratives on Form FRA F 6180.107 for those cases the railroad determines are not reportable. The proposal also specifically defines what data elements an alternative railroad-designed Form FRA F 6180.107 must contain.

FRA proposes to amend the requirement at paragraph § 225.25(b)(6) so that the alternative railroad-designed record for Form FRA F 6180.98, “Railroad Employee Injury and/or Illness Record,” require the input of the “Employee identification number” only, to eliminate for privacy reasons the employee social security number option. FRA is proposing a like requirement for the alternative railroad-designed record for Form FRA F 6180.107, “Alternative Records for Illnesses Claimed to be Work-Related.” FRA is also proposing corresponding changes for Forms FRA F 6180.98 and 6180.107. See Section-by-Section Analysis for Appendix H, “Forms.”

FRA also proposes to replace the term “log entry” at § 225.25(b)(28) with “record” and “report” at § 225.25(e)(28) with “record.” Both of these sections refer to “records,” specifically alternative railroad-designed Form FRA F 6180.98, “Railroad Employee Injury and/or Illness Record” and alternative railroad-designed Form FRA F 6180.97, “Initial Rail Equipment Accident/ Incident Record,” respectively. This amendment is merely technical and is not intended by the agency to affect any substantive change.

FRA also proposes to amend the requirements for these alternative railroad-designed records by amending §§ 225.25(b)(28) and (e)(28), and proposed (j)(25), respectively, to reflect that the date required is the initial date the form was signed/completed. FRA finds it necessary to make such change because certain railroads do not retain the initial date a record was completed, but only the date of the most recent update to the record. Consequently, FRA is unable to discern if the railroad entered each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident on the appropriate record, as required by § 225.25(a) through (e), no later than seven working days after receiving information or

acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred, as required by § 225.25(f). FRA believes that specifying the date which is required to be maintained on the record will resolve any confusion regarding the requirement. FRA is proposing a like requirement for the alternative railroad-designed Form FRA 6180.107, “Alternative Record for Illnesses Claimed to be Work-Related.” FRA is proposing corresponding changes for Forms FRA F 6180.98, 6180.97 and 6180.107. See Section-by-Section Analysis for Appendix H, “Forms.”

Section 225.27 Retention of Records

In this section, FRA proposes a five-year record retention requirement for Form FRA F 6180.107, “Alternative Record for Illnesses Claimed to be Work-Related.” FRA does so because the current rule does not set forth a retention period for these forms. Five years is the same retention period as that of Form FRA F 6180.98, “Railroad Employee Injury and/or Illness Record,” and appropriate for accurate recordkeeping and auditing purposes. FRA also proposes a requirement that in the event a railroad opts to submit their monthly Form FRA F 6180.55, “Railroad Injury and Illness Summary” via optical media or electronically via the Internet, rather than in hard copy, the railroad retain the original completed hard copy for a period of five years after the calendar year to which it relates. If the railroad opts to submit the report to FRA via the Internet, FRA proposes to require that the railroad also retain a hard copy printout of FRA’s electronic notice acknowledging receipt of the submission for a period of five years after the calendar year to which the report acknowledged relates. FRA proposes these requirements in light of the new electronic submission options proposed in § 225.37, “Magnetic media transfer and electronic submission” of this notice.

Lastly, FRA proposes system standards for the electronic retention, by railroads, of accident/incident records. Historically, railroads have retained these records in hard copy form. FRA, however, is not opposed to railroads maintaining these records electronically so long as the integrity of the record is maintained. In order to ensure such integrity, FRA is proposing minimum system requirements for electronic retention of accident/incident records.

Section 225.33 Internal Control Plan

In this section, FRA proposes to clarify current ambiguity of element number 11 of the internal control plan

to allow railroads to have multiple named custodians and locations of completed Forms FRA F 6180.107, "Alternative Records for Illnesses Claimed to be Work-Related," or the alternate railroad-designed forms and supporting documentation. FRA recognizes that railroads do not necessarily keep completed Claimed Occupational Illness Records in a centralized location, and that different individuals may be responsible for keeping the records. By amending the regulation, railroads will be able to accurately indicate who the custodians are and where the custodians and records are located.

Section 225.37 Magnetic Media Transfer and Electronic Submission

FRA is updating the title of this section to reflect changes in technology. It will read, "Optical media transfer and electronic submission." FRA also is instituting two changes related to Form FRA F 6180.55, "Railroad Injury and Illness Summary." FRA believes that both of these changes will reduce railroad burdens related to completing and submitting this form.

FRA has replaced the oath and notarization requirement for Form FRA F 6180.55, "Railroad Injury and Illness Summary," with a requirement that the signature be signed under penalty of perjury in accordance with 28 U.S.C. 1746.

Title 49 U.S.C. 20901 requires that a railroad file an Accident/Incident report "under oath" no later than 30 days after the end of each month. To fulfill this requirement, FRA currently requires that a railroad reporting officer make a sworn statement, under oath, before a notary public each month attesting to the accuracy that month's submission. The question has arisen as to whether an unsworn, unnotarized statement is adequate to fulfill the section 20901 oath requirement.

In 1976, Congress addressed the use of "unsworn declarations under penalty of perjury," in lieu of a sworn affidavit. Title 28 U.S.C. 1746, "Unsworn Declarations Under Penalty of Perjury," provides that "wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported,

evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated * * *" and provides examples of the form the declaration, certificate, verification, or statement must take. Consequently, the oath requirement of 20901 can be met via an unsworn, unnotarized statement, so long as the statement meets the requirements set forth in 28 U.S.C. 1746.

FRA is also updating the regulatory text to include provisions allowing railroads to make their monthly reporting submissions (Forms FRA F 6180.54, "Rail Equipment Accident/ Incident Report"; 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)"; 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report") to FRA via optical media (CD-ROM) or electronically via the Internet. Batch control forms (Form FRA F 6180.99) are no longer required for submission. Form FRA F 6180.55, "Railroad Injury and Illness Summary," reports and Form FRA F 6180.81 "Employee Human Factor Attachment" reports; may also be submitted through these means, however the Form FRA F 6180.55 must be submitted as an image of the completed and signed hard copy and must be in .pdf or .jpg file format only; and the Form FRA F 6180.81 must also be in .pdf or .jpg file format. If a railroad opts to submit their completed Form FRA F 6180.55 to FRA via optical media or electronically via the Internet, the railroad must maintain the original completed and signed Form FRA F 6180.55 for at least five years after the calendar year to which the report relates in accordance with proposed § 225.27(c). FRA will provide to the railroad an electronic notice acknowledging the agency's receipt Form FRA F 6180.55 reports which are filed electronically via the Internet. The railroad must also maintain a hard copy print out this acknowledgment notice for at least five years after the calendar year to which the report acknowledged relates in accordance with proposed § 225.27(c).

FRA is also proposing to add a paragraph (f) a statement requiring that railroads choosing to use the optical medical or electronic submission via Internet option must use one of the approved formats specified in the Companion Guide. FRA will reject submissions that do not adhere to the required formats, which may result in the issuance of one or more civil penalty assessments against a railroad for failing

to provide timely submissions of required reports as required by § 225.11.

Section 225.41 Suicide Data

In this section, FRA proposes to add § 225.41 "Suicide Data," to detail FRA's intended use of suicide data. See Section-by-Section Analysis for § 225.15, "Accidents/Incidents Not To Be Reported" for additional information.

Appendix A to Part 225—Schedule of Civil Penalties

Appendix A to part 225 contains a schedule of civil penalties for use in connection with this part. FRA may revise the schedule of civil penalties in issuing the final rule to reflect revision made to part 225. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

FRA notes that in December 2006, it published proposed statements of agency policy that would amend the 25 schedules of civil penalties issued as appendixes to FRA's safety regulations, including part 225. See 71 FR 70589, Dec. 5, 2006. The proposed revisions are intended to reflect more accurately the safety risks associated with violations of the rail safety laws and regulations, as well as to make sure that the civil penalty amounts are consistent across all safety regulations. Although the schedules are statements of agency policy, and FRA has authority to issue revisions without having to follow the notice and comment procedures of the Administrative Procedure Act, FRA has provided members and representatives of the general public an opportunity to comment on the proposed revisions before amending them. FRA is currently evaluating all of the comments received in preparing final statements of agency policy, and the schedule of civil penalties to part 225 may be revised as a result, independent of the rulemaking proceeding.

Proposed Revisions to the FRA Guide

Generally, FRA proposes to make the following changes to the FRA Guide: Improve the table of contents; add a subject index; reorganize chapter contents for ease of use; include

necessary updates; include new "Questions and Answers" and "Scenarios" taken from the FRA Safety Data Web page (<http://safetydata.fra.dot.gov/officeofsafety>) and from OSHA's Web page (<http://www.osha.gov/comp-links.html>) to clarify reporting issues; and to eliminate redundant language by replacing verbatim reiterations of part 225 rule text where appropriate and instead, cite references to part 225 (for ease of reference FRA proposes to include the full regulatory text of part 225 in a newly created appendix K of the FRA Guide). More specific changes include:

A. *Chapter 1, "Overview of Accident/ Incident Reporting and Recordkeeping Requirements."* FRA proposes to revise the paragraph titled, "Telephonic Reports of Certain Accidents/Incidents" in accordance with this amendments set forth in § 225.9 of this proposal, and to include the telephonic reporting requirements set forth in 49 CFR parts 229, "Railroad Locomotive Safety Standards"; part 233, "Signal Systems Reporting Requirements"; part 234, "Grade Crossing Signal System Safety"; and part 219, "Control of Alcohol and Drug Use." Such incorporation is for informational purposes only, and places no new reporting requirements on railroads. By including these requirements in the guide, FRA hopes to better disseminate its telephonic reporting requirements, and improve railroad compliance by providing a single reference location for determining when accident/incident telephonic notification is required.

FRA also proposes to amend the section entitled "Close of Calendar Year" by clarifying the requirements for submitting late and amended reports, revising the time frame in which FRA will accept additional late and amended accident/incident reports, and changing from optional to mandatory the filing of amended reports for certain accidents/incidents.

FRA publishes final accident/incident counts following the conclusion of a reporting year. Submission of the December report concludes the reporting year. However, railroads are still required to provide to FRA late reports of unreported accidents/incidents and amended reports that correct or update earlier submissions.

Currently, the FRA Guide (Chapter 1—Page 12 through 13) specifies three cutoff dates for filing late and amended accident/incident reports following the completion of the reporting year:

- (1) April 15 of the of the next calendar year;
- (2) December 1 of the following year; and

(3) Five years after the end of the calendar year to which the accident/incident report relates.

FRA has found this reporting scheme to be confusing and outdated with the advent of improved technology. Moreover, improvements in database management strategies allow for contemporaneous viewing of reporting accident/incident statistics and have eliminated the need to impose artificial deadlines for keeping files open or for FRA to publish interim reports. As such, FRA proposes to remove references to the cutoff date of April 15th of the next calendar year for accepting late reports and amendments. Accordingly, FRA will receive and process any and all late and amended reports for a period of five years following the calendar year to which an amended or late report relates. This accommodation does not relieve a railroad of its obligation to promptly file a late or amended report upon becoming aware of an omission, mistake or otherwise, in accordance with § 225.13 and the late and amended reporting guidance set forth in this Guide. FRA will continue to publish its Annual Report of Railroad Safety Statistics. Because the accident/incident databases will remain open for updating for a period of five years, the statistics published in the Annual Report will be subject to change. The authoritative source for rail safety statistics will now be the Office of Safety's Web site: <http://safetydata.fra.dot.gov/OfficeofSafety>.

To clarify, FRA does not propose to change the following late and amended reporting requirements which are currently set forth in the FRA Guide:

(1) Railroads must file amended reports with FRA through December 1 of the year following the year in which the accident/incident was initially reported.

(2) Railroads must file late reports with FRA for five years (following the end of the calendar year to which the accident/incident relates) for all unreported accident/incidents.

FRA does, however, propose to change its reporting requirements with respect to certain specified accidents/incidents. Currently, the FRA Guide states that railroads "should" continue to file amended reports after December 1 of the following year (*i.e.*, for five years after the end of the calendar year to which they relate) for the changes listed below. FRA proposes to make such amended reporting mandatory. Accordingly, FRA proposes that railroads shall continue to file amended reports for five years after the end of the calendar year to which they relate for the following changes:

(1) Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a): Change from Injury to Fatality (only if the injured person dies within 180 days from the date of the injury);

(2) Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57): Change from Injury to Fatality, change in Grade Crossing ID, change in the Rail Equipment Involved;

(3) Rail Equipment Accident/Incident Report (Form FRA F 6180.54): Change from Injury to Fatality, change in Grade Crossing ID, Rail Equipment Involved, Primary Cause Code, Contributing Cause Code, Type of Territory, Number of Cars Releasing or Evacuation.

FRA further proposes that railroads shall continue to file amended reports for five years after the end of the calendar year to which they relate for the additional changes listed below:

(1) Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a): A significant change in the number of reportable days away from work or days restricted; a significant change is at least a 10% variance in the number of actual reportable days away from work or days restricted compared to the number of days already reported.

(2) Railroad Equipment Accident/ Incident Report (Form FRA F 6180.54): A significant change in the damage costs for reportable rail equipment accidents/incidents; a significant change is a 10% variance between the damage amount reported to FRA and the current cost figures.

B. *Chapter 2, "Definitions."* FRA proposes to revise or add certain definitions for clarification or ease of reference and to remove definitions that are simply reiterations of definitions set forth in § 225.5. FRA proposes to add definitions for "Barricaded Crossing" to mean "a highway-rail grade crossing that is temporarily closed to highway users"; and "Closed Crossing" to mean a location where a crossing has been physically removed or where rail operations or highway traffic is not possible. This does not include crossings that are temporarily closed for repairs to the track structure, crossing surface, or roadway approaches. Examples are locations where the crossing has been barricaded and highway crossing surface material removed; where the railroad tracks have been cut or barricaded or physically removed; where a connecting turnout has been removed; or where rail operations are not possible because the railroad tracks are paved over, etc. Crossings along such inactive railroad lines are closed. FRA adds these

definitions to the FRA Guide to eliminate confusion about the meaning of a “closed” versus “barricaded” crossing and to revise the definition of “closed crossing” to agree with the definition used in the Grade Crossing Inventory System (GCIS). The GCIS is a voluntary system used by states, railroads and the Federal government to profile crossings and determine which crossings need improved warning systems for highway users. The FRA and other users regularly compare information from the Highway-Rail Crossing Accident/Incident Reports (Form FRA F 6180.57) to the GCIS. Clearly defining “closed crossing” and “barricaded crossing,” and making the GCIS and FRA definitions consistent will reduce confusion and aid in grade crossing accident/incident reporting accuracy.

FRA proposes to add a definition for “Gap” to mean, “the horizontal space between the edge of the passenger boarding platform and the edge of the rail car door threshold plate, and the vertical difference from the top of the passenger boarding platform and the top of the rail car threshold.” This definition with minor variation was recommended by the RSAC General Passenger Safety (GPS) Task Force reported to the full RSAC on October 25, 2007, along with the Cause Code Recommendations for platform gap related injuries (see discussion for Appendix F of the FRA Guide). The full RSAC agreed to the recommendations on October 25, 2007.

FRA proposes to add a definition for “Gap Incident” to mean, “an event involving a person who, while involved in the process of boarding or alighting a passenger train at a rail car door threshold plate at a high level passenger boarding platform (*i.e.*, a platform that is 48” or more above the top of the rail), has one or more body parts enter the area between the car body and the edge of the platform. The following are examples of a Gap Incident:

- While boarding or alighting a passenger train at a high level passenger boarding platform a person misjudges the gap, resulting in the person’s leg entering the gap.
- While boarding or alighting a passenger train at a high level passenger boarding platform, a person is struck by a closing door, resulting in the person’s leg entering the gap.

The following are not examples of a Gap Incident:

- While boarding or alighting a passenger train at a high level passenger boarding platform, a person misjudges the gap and falls into the

vestibule or platform, without a body part entering the gap.

- While walking on a passenger station at a high level passenger boarding platform, a person slips on the platform, at a location other than the rail car door threshold, resulting in the person’s leg entering the gap.

The definition and examples of “Gap Incident” was recommended by the RSAC General Passenger Safety (GPS) Task Force reported to the full RSAC on October 25, 2007, along with Cause Code Recommendations for platform gap related injuries (see discussion for Appendix F of the FRA Guide). The full RSAC agreed to these recommendations on October 25, 2007. FRA has adopted these recommendations with slight variation. See section on Changes to the FRA Guide, discussion of Appendix F.

FRA proposes to amend the definition of “locomotive” to support changes necessary to include EMU and DMU cars on FRA Form F 6180.54, “Rail-Equipment Accident/Incident Report.” In the current FRA Guide (May 1, 2003), a cab car is defined as a locomotive; there is no definition for EMU and DMU cars, which created confusion because these cars provide power to the consist can therefore also be classified as locomotives.

FRA proposes to add a definition for “vehicle” to include automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, and all other modes of surface transportation, motorized and unmotorized.

C. *Chapter 3, Form FRA F 6180.55, “Railroad Injury and Illness Summary.”* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. See Section-by-Section Analysis for § 225.27, “Retention of records” § 225.37, “Magnetic media transfer and submission,” and Proposed Revisions to the FRA Guide, Appendix H, “Forms” for additional information.

D. *Chapter 4, Form FRA F 6180.98, “Railroad Employee Injury and/or Illness Record.”* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. See Section-by-Section Analysis for § 225.5, “Definitions” definition for Accountable Injury or Illness; § 225.25, “Recordkeeping” and Proposed Revisions to the FRA Guide, Appendix H, “Forms” for additional information.

E. *Chapter 5, Form FRA F 6180.97, “Initial Rail Equipment Accident/Incident Record.”* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. See Section-by-

Section Analysis for § 225.25, “Recordkeeping” and Proposed Revisions to the FRA Guide, Appendix H, “Forms” for additional information.

F. *Chapter 6, Form FRA F 6180.55a, “Railroad Injury and Illness Summary (Continuation Sheet).”* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. FRA also proposes to add instructions that if an injury is due to a gap incident, the railroad must use in block 5n (“Cause”), “Probable Reason for Injury/Illness Circumstance Codes” code number 18—Slipped, fell, stumbled due to Gap, regardless of whether other codes may also be applicable. See Section-by-Section Analysis for §§ 225.5, “Definitions”; § 225.15, “Accidents/Incident not to be reported”; § 225.19 “Primary Groups of Accidents/Incidents” and Proposed Revisions to the FRA Guide, Appendix H, “Forms” for additional information.

FRA also proposes to revise Chapter 6 to instruct railroads that they must presume that a highway user who is involved in a highway-rail grade crossing accident/incident and is transported from the scene of a highway-rail grade crossing accident/incident to a medical facility via ambulance or other form of medical conveyance, did, more likely than not, sustain an FRA reportable injury (*i.e.*, an injury meeting the general reporting criteria set forth at § 225.19(d)(1) through (d)(6)). Absent evidence to rebut the presumption, the railroad must report the injury to FRA on Form FRA F 6180.55a, and include the casualty on Form FRA F 6180.57. If the railroad later discovers that the highway user did not sustain a reportable injury, the railroad must notify FRA in accordance with the late reporting instructions set forth at § 225.13. FRA is proposing this change because the agency has found that railroads are under-reporting highway-rail grade crossing accidents/incidents related to injuries to persons other than railroad employees due to the railroads’ limited access to injured highway users’ medical records, especially in light of privacy protections related to health information provided by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191.

FRA emphasizes, however, that this presumption does not relieve railroads of their duty to make reasonable inquiry to determine the nature and severity of highway-rail grade crossing injuries and to accurately report such injuries. FRA has found that railroads often do not make such reasonable inquiry.

Accordingly, FRA is clarifying that in order to fulfill its responsibilities in determining the nature and severity of highway-rail grade crossing injuries and to accurately report such injuries, a railroad must try to contact the injured individual or their representative by telephone and, if unsuccessful in obtaining the needed information, in writing. The railroad must keep a record of its efforts to make such contact. This record and documentation of any information obtained must be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35 (b).

Lastly, FRA is concerned that fatalities that are actually suicides are being reported as trespasser fatalities. Often this occurs because railroads do not always make reasonable inquiry in their efforts to determine the cause of death. In fact, FRA has found that a number of reported trespasser fatalities are actually suicides. Accordingly, FRA is revising Chapter 6 to clarify that in order to fulfill its responsibilities in determining the nature of a trespasser fatality and to accurately report such fatality, a railroad must try to obtain documentation indicating the cause of death by contacting the coroner or other public official by telephone and, if unsuccessful in obtaining the needed information, in writing. The railroad must continue its efforts to obtain this documentation for a period of six months following the month in which the fatality occurred. The railroad must keep a record of its efforts to obtain such documentation. This record and any documentation obtained must be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35 (b).

G. *Chapter 7, pertaining to Form FRA F 6180.54, "Rail Equipment Accident/ Incident Report."* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. FRA also proposes to add instructions to Chapter 7 requiring that if an accident is caused by a bond wire attachment issue (see proposed Appendix C "Train Accident Cause Codes"), information on the methods and locations of those attachments be provided in the narrative block 52. See Section-by-Section Analysis for §§ 225.5, "Definitions"; § 225.15, "Accidents/Incident not to be reported"; § 225.19 "Primary Groups of Accidents/Incidents" and Proposed Revisions to the FRA Guide, Appendix H, "Forms" for additional information. See Section-by-Section Analysis for § 225.5, "Definitions," § 225.15, "Accidents/Incident not to be reported" and Proposed Revisions to the FRA

Guide, Appendix H, "Forms" for additional information.

H. *Chapter 10, pertaining to Form FRA F 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report."* FRA proposes to revise the instructions for the use of this form consistent with the changes proposed in this NPRM. See Section-by-Section Analysis for § 225.15, "Accidents/Incident not to be reported" and Proposed Revisions to the FRA Guide, Appendix H, "Forms" for additional information.

FRA also proposes to revise Chapter 10 to instruct railroads that they must presume that a highway user who is involved in a highway-rail grade crossing accident/incident and is transported from the scene of a highway-rail grade crossing accident/incident to a medical facility via ambulance or other form of medical conveyance, did, more likely than not, sustain an FRA reportable injury (i.e., an injury meeting the general reporting criteria set forth at § 225.19(d)(1) through (d)(6)). Absent evidence to rebut the presumption, the railroad must report the injury to FRA on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)" and include the casualty on Form FRA F 6180.57. In order to fulfill its responsibilities in determining the nature and severity of a highway-rail grade crossing injury and to accurately report such injury, a railroad must try to contact the injured individual or their representative by telephone and, if unsuccessful in obtaining the needed information, in writing. The railroad must keep a record of its efforts to make such contact. This record and documentation of any information obtained must be available for review and copying by an FRA representative under the same criteria as set forth in § 225.35(b). For additional information see Section-by-Section Analysis for § 225.15 "Accidents/Incidents not to be reported" and Proposed Revisions to the FRA Guide, Subsection F, Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)."

I. *Chapter 13, pertaining to Form FRA F 6180.107, "Alternative Record for Illness Claimed to be Work-Related."* FRA proposes to revise the instructions for the use of the form consistent with the changes proposed in this NPRM. See Section-by-Section Analysis for § 225.21, "Forms," § 225.25, "Recordkeeping," § 225.27 "Record Retention," § 225.33, "Internal Control Plan" and Proposed Revisions to the FRA Guide, Appendix H, "Forms" for additional information.

J. *Appendix A, "Railroad Codes."* FRA proposes to provide updates to the railroad codes.

K. *Appendix C, "Train Accident Cause Codes."* FRA proposes to add or revise the following Train Accident Cause Codes:

- T224 "Rail defect originating from bond wire attachment." FRA proposes to add Train Accident Cause Code T224 response to the National Transportation Safety Board's (NTSB) 2005 recommendation that FRA provide a train accident cause code for derailments caused by bond wire attachments. This recommendation arose from the NTSB's investigation of the derailment of northbound National Railroad Passenger Corporation (Amtrak) train No. 58 while operating on Canadian National (CN) track near Flora, Mississippi, on April 6, 2004. The derailment resulted in one fatality, 35 injuries (that were reportable to FRA), and damage costs of approximately \$7 million. The NTSB recommended that FRA include in the FRA Guide a train accident cause code for derailments caused by rail cracks originating from bond wire attachments, and that information on the methods and locations of those attachments be provided in the narrative section of the accident/incident report ((NTSB Recommendation Number RAR-05/02);
- S104 "Radio controlled switch not locked effectively." FRA proposes to amend Train Accident Cause Code S104 by adding "(equipment failure)" to the code's description. The description of Cause Code S104 as amended would read, "Radio controlled switch not locked effectively (equipment failure)." FRA incorporated this change in order to clarify that S104 pertains to equipment failure, not human error.
- H707 "Radio controlled switch not locked effectively." FRA proposes to amend Train Accident Cause Code H707 by adding "(human error)" to the code's description. The proposed description for Cause Code H707 denotes "Radio controlled switch not locked effectively (human error)." FRA incorporated this change in order to clarify that H707 pertains to human error, not equipment failure.
- M 309 "Grade Crossing Suicide"; M310 "Grade Crossing Attempted Suicide"; M509 "Suicide Resulting in Train Accident"; and M510 "Attempted Suicide Resulting in

Train Accident” for use in block 38 of Form FRA F 6180.54, “Rail Equipment Accident/Incident Report.” See Section-by-Section Analysis for § 225.15, “Accidents/incidents not to be reported” and Proposed Revisions to the FRA Guide, Appendix H, “Forms” for additional information.

L. *Appendix F, “Circumstance Codes.”* FRA added the following “Probable Reason for Injury/Illness Circumstance Codes,” (Probable Reason Circumstance Code) under the subtitle “Remotely controlled locomotive(s) environment” to the Remote Control Locomotive Switching Operations Fatality Analysis Codes (RCL SOFA Codes) to the May 1, 2003, guide as amended:

- R1 Object fouling track, related to using RCL.
- R2 Outside caused (e.g., assaulted/attacked), related to using RCL.
- R3 Lack of communication, related to using RCL.
- R4 Slack adjustment during switching operation, related to using RCL.
- R5 Insufficient training, related to using RCL.
- R6 Failure to provide adequate space between equipment during switching operation, related to using RCL.
- R7 Close or no clearance, related to using RCL.
- R8 Act of God, related to using RCL.
- U1 Object fouling track, unrelated to using RCL.
- U2 Outside caused (e.g., assaulted/attacked), unrelated to using RCL.
- U3 Lack of communication, unrelated to using RCL.
- U4 Slack adjustment during switching operation, unrelated to using RCL.
- U5 Insufficient training, unrelated to using RCL.
- U6 Failure to provide adequate space between equipment during switching operations unrelated to using RCL.
- U7 Close or no clearance, unrelated to using RCL.
- U8 Act of God, unrelated to using RCL.

In the final regulation to 49 CFR part 225, 68 FR 10107, March 3, 2003, new codes and form changes were made to accommodate the recording events when remote control locomotive operations (RCL) were involved.

A special task group of railroad safety officers representing labor and industry and FRA members was created in the RSAC Accident/Incident Working Group to discuss the coding of RCL. The results of the special task group would

be presented to the entire working group for approval. The concern of the reporting officers was to prevent any major changes to the then current forms or databases. In part, this rested on their information technology offices’ internal charges for making major programming changes. The FRA team was tasked with finding a way to include RCL involved accidents and incidents on the following three forms: Form FRA F 6180.54, “Rail Equipment Accident/Incident Report”; Form FRA F 6180.57, “Highway-Rail Crossing Accident/Incident Report”; and Form FRA F 6180.55a, “Railroad Injury/Illness Summary (Continuation Sheet),” without changing the database structures.

The FRA found a way to capture RCL-related incidents on both the Form FRA F 6180.54, “Rail Equipment Accident/Incident Report,” and Form FRA F 6180.57, “Highway-Rail Crossing Accident/Incident Report” without expanding the database or making a major change on the form or the respective database. Capturing this information on Form FRA F 6180.55a, “Railroad Injury and Illness (Continuation Sheet),” remained problematic due to the small number of data fields and limited amount of data collected for each reportable event. FRA developed a solution by expanding the number of Probable Causes in the Circumstance Codes. The method chosen by FRA, and accepted by the RSAC Working Group, was to take each code for Probable Reason Circumstance Codes and create two additional codes, one for RCL-related to the event and another for RCL involved but unrelated to the event. Therefore, the probable reason of “Equipment,” code 04 had two additional codes: “Equipment, related to using RCL,” code 24, and “Equipment, unrelated to using RCL,” code 44. This technique, although clumsy, satisfied railroad safety reporting officers, rail labor officials, and the FRA.

Codes 21 through 59 in Probable Reason for the “Remotely Controlled Locomotive(s) Environment” was approved by the full RSAC Working Group for Accident/Incident Reporting. At a later RSAC Working Group Meeting in New Orleans, LA, a new discussion started about the Probable Reason Circumstance Codes. This discussion centered on Switching Operations Fatality Analysis (SOFA). SOFA events were claiming 40 to 50 percent of all fatalities of railroad workers. The Working Group decided to include new codes to insure that fatal and non-fatal SOFA events were culled from other injuries. A small task group was formed,

and worked one evening to develop the eight new codes. The full Working Group approved these SOFA codes the next day. However, there was an oversight by the Working Group in the process. There should have been two additional sets of codes for SOFA RCL events (related to RCL and unrelated to RCL). This oversight was not discovered until October 2003, well after the publication and effective date of the revised regulation.

All of the parties to the Full Working Group agreed that any omission in capturing SOFA related injuries was a serious problem. FRA developed 16 additional codes to correspond to the previous eight codes. The new codes R1 through R8 and U1 through U8 were promulgated in December 2003, and were subsequently added to the FRA Guide to remedy the immediate concern. While the initial publication of these SOFA codes was not subject to a notice and comment period, FRA invites comments on the addition of these SOFA codes in this NPRM.

FRA is also proposing to add new Circumstance Codes to Appendix F of the FRA Guide for use on Form FRA F 6180.55a, “Railroad Injury and Illness Summary (Continuation Sheet),” to better identify injuries that occur in or due to platform gaps. FRA believes that the collection of this information will allow the agency to assess the magnitude of these types of injuries, identify locations where platform gap related injuries frequently occur, and ultimately aid FRA in efforts to reduce such injuries.

The RSAC General Passenger Safety (GPS) Task Force reported to the full RSAC on October 25, 2007, its Cause Code Recommendations for platform gap related injuries as follows:

(1) To the “Physical Act Circumstance Codes” add codes for:

- Passenger Train-Boarding.
- Passenger Train-Alighting.

Also revise the “Physical Act Circumstance Codes” to clarify that codes 63 (stepping up) and 64 (stepping over) are to be used for boarding/alighting at high level platforms.

(2) To Part III of the “Location Circumstance Codes” add codes for:

- Rail Car Door Threshold Plate to Edge of Platform Gap.
- Area Between Coupled Cars and Platform.
- Area Along Car body, other than Threshold Plate and Platform Edge.
- Car in Vestibule.
- On Platform—Other.

Also change Location Circumstance Code C2—“On Platform” to “On Platform Station.”

(3) To the “Event Circumstance Codes” add a code for:

- Slipped, fell, stumbled due to Gap.

(4) To Part I of the “Location Circumstance Codes” add a code for:

- Other than Platform.

Also change the Location Circumstance Code “P—Passenger Terminal” to “P—Passenger Station on Platform.”

(5) To the “Tools, Machinery, Appliances, Structures, Surfaces, (etc.) Circumstance Codes” add codes for:

- Door, End or Side—Passenger Train.
- Door, Trap.

The full RSAC agreed to these recommendations on October 25, 2007.

Subsequently, FRA’s Safety Knowledge Management Division’s (SKMD) database experts reviewed the RSAC approved coding scheme in an effort to prevent redundant codes, develop ease in coding for reporting officers and clerks not familiar with all the nuances in gap incidents, and to develop a system to easily cull gap incidents from the casualty database. Based on this review, FRA proposes to add the following new codes to Appendix F—Circumstance Codes as follows:

(1) To the “Physical Act Circumstance Codes” FRA proposes to add code:

- 80—Stepping across (passenger cars).

(2) To Part III of the “Location Circumstance Codes” FRA proposes to add codes:

- G1—Rail Car Door Threshold Plate to Edge of Platform—Gap.
- G2—Area Between Coupled Cars and Platform.
- G3—Area Along Car body, other than Threshold Plate and Platform Edge.
- G4—Car in Vestibule.

(3) To the “Probable Reason for Injury/Illness Circumstance Codes” FRA proposes to add code:

- 18—Slipped, fell, stumbled due to Gap.

(4) To the “Tools, Machinery, Appliances, Structures, Surfaces, (etc.) Circumstance Codes” FRA proposes to add codes:

- 1G—Door, End or Side—Passenger Train.
- 2G—Door, Trap—Passenger Train.

The instructions for coding gap incidents will be included in the proposed revisions to the FRA Guide.

M. *Appendix G, “FRA Regional Offices and Headquarters.”* FRA proposes to update these entries.

N. *Appendix H, “Forms.”* FRA proposes to revise its forms, as follows:

(1) *Form FRA F 6180.97 and Form FRA F 6180.98.* FRA proposes to revise block 36 on Form FRA F 6180.97 “Date”

to state “Date Initially Signed/Completed”; and block 44 on Form FRA F 6180.98 “Date” to state “Date Initially Signed/Completed” to clarify that the block must contain the initial date the form was completed. FRA finds it necessary to make such change because certain railroads do not retain the initial date a record was completed, but only the date of the most recent update to the record. Consequently, FRA is unable to discern if the railroad entered each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident on the appropriate record, as required by § 225.25 (a)–(e), no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred, as required by § 225.25(f). FRA believes that specifying the date which is required to be maintained on the record will resolve any confusion regarding the requirement.

(2) *Form FRA F 6180.97.* FRA proposes to rename block 12, “Division” to “Subdivision” and require railroads to provide train accident location by providing subdivision data in this block as a means of improving railroad safety in the area of train accidents. If the railroad is not so divided, enter the word “system.” If subdivision data are not applicable, the railroad must enter terminal/yard name. This change would also apply to alternative railroad-designed Form FRA 6180.97. This change is consistent with the proposed “Division” to “Subdivision” change on Form FRA F 6180.54. See paragraph N(6) of this appendix, “Form FRA F 6180.54” for additional information.

FRA also wishes to clarify that in situations of joint operations, block 26, “Equipment Damage (in dollars)” refers to the aggregate amount of equipment damage incurred for all railroads involved, and that Block 27, “Track, Signal, Way & Structure Damage (in dollars)” refers to the aggregate amount of track, signal, way and structure damage incurred for all track owners. This revision does not change existing reporting requirements, and should not represent an additional reporting burden, because both railroads should already be exchanging relevant cost data to determine if the accident was FRA reportable.

(3) *Form FRA F 6180.98.* FRA proposes to replace the “Social Security Number” requirement in block 6 with a requirement for “Employee Identification Number.” FRA proposes this change in response to privacy concerns. This chapter will include instructions addressing FRA’s proposed

requirement that (by amending the definition for “Accountable Injury or Illness”) railroads complete a Form FRA F 6180.98, “Railroad Employee Injury and/or Illness Record” of all injuries and illnesses when such abnormal condition or disorder manifests *within* the work environment regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment.

(4) *Form FRA F 6180.55.* FRA has eliminated the notary requirement on Form FRA F 6180.55 block 10, and replace it with a requirement that the report be signed under penalty of perjury as follows:

(1) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature).”

(2) If executed without (i.e., outside of) the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature).”

FRA is able to replace the oath requirement, mandated by 49 U.S.C. 20901 with a signature under penalty of perjury under 28 U.S.C. 1746. See Section-by-Section analysis for proposed § 225.37, “Magnetic media transfer and electronic submission,” for additional information.

(5) *Form FRA 6180.55a.* FRA proposes to require railroads to place an “X” representative of “suicide” or “attempted suicide” be in block 5r when reporting a suicide or attempted suicide. FRA also proposes to add instructions that if an injury is due to a gap incident, the railroad must use in block 5n (“Cause”), “Probable Reason for Injury/Illness Circumstance Codes” code number 18—Slipped, fell, stumbled due to Gap, regardless of whether other codes may also be applicable. See Section-by-Section analysis for § 225.15, “Accidents/incidents not to be reported,” for additional information. FRA also proposes to change the title of block 5m from “Result” to “Tools” to remain consistent with the wording in Appendix F.

(6) *Form FRA F 6180.54.* FRA proposes to revise block 30 by changing the name of the block from “Methods of Operation” to “Type of Territory.” The block will have five coding blocks. Each of the five coding blocks printed in block 30 will be labeled for exclusive use in accordance with codes listed in the proposed Appendix J. The coding

blocks are representative of the following information: The first block (mandatory) will indicate the type of territory (signaled or non-signaled); the second block (mandatory) will indicate the authority for movement; and the third, fourth, and fifth blocks (optional) will indicate additional information through the use of supplemental codes.

FRA proposes to make this change because in the past few years, with the advancement of Positive Train Control (PTC), there has been a growing requirement for FRA to definitively identify signaled versus "dark" territory.

The revisions should make completing the block less burdensome and allow for the identification of territory in a manner compatible with the railroads' internal railroad coding system. These changes are consistent with suggestions by railroads and the AAR that such coding be made easier and that the FRA Guide provide clearer instruction. They also take into consideration railroad concerns about expense associated with having to revise the form and expressed the desire for FRA to retain the current form and redesign the coding system but not change the database structure. *See Proposed Revisions to the FRA Guide, Appendix J, "Type of Territory Codes"* for additional information.

FRA proposes to rename block 12, "Division" to "Subdivision" and require railroads to provide train accident location by subdivision data (proposed block 12) on Form FRA F 6180.54 as a means of improving railroad safety in the area of train accidents. If the railroad is not so divided, enter the word "system." If subdivision data is not applicable, the railroad must enter terminal/yard name.

FRA needs a permanent means of determining the location of an accident. This is especially meaningful when a release of hazardous materials or leakage of diesel fuel has occurred. Having the location information for all train accidents will allow FRA to develop better inspection planning, identify locations of hazardous materials contamination affecting the health and/or environment, and provide to the Transportation Security Administration another tool for security planning. Traditionally, FRA and the railroad industry have relied on the railroad milepost system to reference location, and in many cases, location data derived from the milepost system is accurate for short-term issues. Over the long-term, however, railroads do change mileposts during mergers and reorganizations. Also, mileposts can be inaccurate when a railroad is able to

build a shorter link, or when a railroad does not remove old mileposts when replacement mileposts, which have a different starting location, are installed.

Ultimately, FRA believes geographic coordinates (*i.e.*, latitude/longitude) are the best indicator of location, and the agency is requesting public comment whether FRA should require railroads to complete longitude and latitude data fields on Form FRA F 6180.54 and Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)." *See Background section of this notice.* In the interim, FRA believes that subdivision data is the best location identifier available, and as such is proposing its inclusion on Form FRA F 6180.54.

FRA proposes to add to block 49, "Special Study Block" descriptive references "a." to line one and "b." to line two for ease of reference. FRA proposes to require railroads to indicate in block "Special Study Block" 49a the type of track an accident/incident occurred on, by using the codes "CWR" for continuous welded rail or "OTH" for other. FRA notes that the special study block was created to allow for the collection of specific accident information as the need arises. *See 61 FR 30940, June 18, 1996.* The primary purpose of these revisions to the rule is to increase the accuracy, completeness, and utility of FRA's accident database and the clarity of the definitions and requirements. In light of recent track-related accidents/incidents, FRA finds it necessary to gather and analyze data of this nature. The collection and analysis of this data is consistent with 49 CFR part 213 regarding joint bar inspection and reporting.

To account for suicides and attempted suicides on Form FRA F 6180.54, FRA proposes add four Miscellaneous Cause Codes to Appendix C for use in block 38, Primary Cause Code: M309 "Suicide (Highway-Rail Grade Crossing)"; M310 "Attempted Suicide (Highway-Rail Grade Crossing)"; M509 "Suicide (Other Misc.)"; and M510 "Attempted Suicide (Other Misc.)" to Appendix C, "Train Accident Cause Codes" to indicate "Suicide or Attempted Suicide." Additionally, FRA proposes to require railroads to include suicides and attempted suicides in the casualty counts in boxes 46, 47, and 48, as applicable, and to maintain consistent casualty counts between the different reporting forms.

FRA proposes, for all highway-rail grade crossing fatalities, to require railroads to include a brief description in narrative block 52 of the circumstances of the accident.

FRA also proposes that if an accident is caused by a bond wire attachment issue (*see* proposed Appendix C "Train Accident Cause Codes"), information on the methods and locations of those attachments be provided in the narrative block 52.

(7) *Forms FRA F 6180.54 and FRA F 6180.57.* FRA proposes to amend the "Type of Equipment," block 25 on Form FRA F 6180.54 and block 24 on Form FRA F 6180.57 as follows:

- Code of "2" was "Passenger Train"; this will be changed to "Passenger Train—Pulling."
- Code of "3" was "Commuter Train"; this will be changed to "Commuter Train—Pulling."
- New code "B" will read "Passenger Train—Pushing."
- New code "C" will read "Commuter Train—Pushing."
- New Code "D" will read "EMU Train."
- New Code "E" will read "DMU Train."

These amendments will allow for the delineation of additional types of equipment in FRA's database. Specifically, locomotives pushing or pulling, and EMU and DMU trains. The need for such requirement comes in light of the 2004 passenger train collision in Glendale, California, wherein a number of individuals were killed or injured. Subsequent to this collision, FRA realized that under its current reporting criteria, it could not determine from the database if the passenger or commuter equipment being used was in "pull" or "push" mode at the time of an accident/incident (*i.e.*, whether the locomotive unit providing power was in the front or back of the train); necessary analysis was completed by determining railroad equipment and practice on individual routes. Also, since EMU and DMU trains are neither pushing nor pulling since all the cars are involved in providing power to the train, FRA needed to provide a code to accurately describe that circumstance as well.

(8) *FRA Form FRA F 6180.57.* FRA proposes to amend block 16, "Position" to read (1) Stalled or stuck on crossing (currently "Stalled on Crossing"); (2) Stopped on Crossing; (3) Moving over crossing; (4) Trapped on crossing by traffic (currently "Trapped"); (5) Blocked on crossing by gates. In doing so, FRA is clarifying the difference between choices (1) and (4). FRA has found that under the current options railroads do not necessarily understand that current option (4) "Trapped" means trapped by traffic. FRA is also adding a fifth option, (5) "Blocked on crossing by gates" to indicate those situations

wherein a highway-user perceives that the user is prevented from leaving the crossing because the highway user is blocked in by crossing gates.

FRA proposes to amend Form FRA F 6180.57 by changing the title of block 34 from "Whistle Ban" to "Roadway Conditions" and include the following options: (A) Dry; (B) Wet; (C) Snow/Slush; (D) Ice; (E) Sand, Mud, Dirt, Oil, Gravel; (F) Water (Standing, Moving). In this block the railroad is to indicate roadway conditions at the time of the highway-rail grade crossing accident/incident. This information is needed, as data provided to FRA regarding "Weather Conditions" block 23 does not necessarily indicate road conditions. For example, while the weather may be clear at the time of a highway-rail grade crossing accident/incident, the roadway may be wet, covered with snow, or icy. This change will provide FRA with vital information useful in assessing risks and causes of highway rail grade crossing accident/incidents. FRA no longer needs to capture Whistle Ban/ Quiet Zone information of Form FRA 6180.57, as this information is provided to FRA in Quiet Zone Notices of Establishment. See FRA 49 CFR part 222.

FRA proposes to change the title of blocks 38, "Driver's Age"; 39, "Driver's Gender"; 40, "Driver Drove Behind or in Front of Train and Struck or Was Struck by Second Train"; and 41, "Driver," by replacing the term "Driver" or "Driver's" with "Highway User" or "Highway User's" as applicable; and in blocks 40 (in block title) and 41 (in block's response options) also replace the term "drove" with "went." Such change clarifies that FRA proposes that railroads provide the information for all highway users involved in a highway-rail grade crossing accident/incident, rather than just for drivers. FRA is reviewing how best to collect this information, including revising these blocks on Form FRA F 6180.57 and amending the instructions in the FRA Guide for completing the form. Any such form revisions and corresponding changes to the FRA Guide will be published in the Final Rule. In the meantime, FRA welcomes comments and suggestions on this issue.

FRA proposes to add the following descriptive options to block 41: "Went around or thru temporary barricade" and "Suicide or attempted suicide." FRA also proposes to revise the "Drove around or thru the gate" descriptor to two separate descriptive choices: "Went around gate"; and "Went thru gate."

If "Went around or thru temporary barricade" is selected in block 41 due to the temporary closure of the crossing,

explain in the narrative block 54 the circumstance of the closure (e.g., the roadway was closed for repair of crossing surface; maintenance/testing of automated warning devices; etc.). Additionally, explain how the closure was accomplished (e.g., roadway closed to traffic with jersey barriers on both approaches; roadway closed with construction barrels on easterly approach; etc.).

In the event of a suicide or attempted suicide, option 8, "Suicide or attempted suicide" must be indicated in block 41, regardless of whether other choices may also be applicable. FRA proposes to require the inclusion of the suicide or attempted suicide in the casualty counts in blocks 46, 49, and 52, as applicable, and to maintain consistent casualty counts between the different reporting forms.

FRA proposes to amend the title of block 48, "Total Number of Highway-Rail Crossing Users" to read "Total Number of Vehicle Occupants (including driver)." Collection of this data allows FRA to cross-check "Casualty to:" block 46 with the number of vehicle occupants in block 48. FRA has found that collecting this information serves as an important tool in analyzing reports and ensuring continuity and compliance in reporting. In accordance with Chapter 2 of the FRA Guide, vehicles include automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, and all other modes of surface transportation, motorized and unmotorized.

FRA proposes to require in "Special Study Block" 53a, that railroads are to indicate whether the highway-rail crossing accident/incident was recorded by a locomotive video recorder; and if so, whether information gathered in viewing the recording was used by the railroad to complete the FRA Highway-Rail Grade Crossing Accident/Incident Report. To facilitate the collection of this information, FRA will include instructions in the FRA Guide and place two sets of "yes or no" options in block 53a; one for "video taken" and one for "video used." Collecting this information will provide FRA with knowledge as to the availability of video footage for particular accidents/incidents; give FRA an indication of how often and to what degree railroads are collecting and reviewing video footage of these accidents/incidents; and make available to FRA an additional tool to study the causes and circumstances of these accidents/incidents. Whether or not video footage was captured and reviewed for a particular accident/incident may also serve as an indicator as to the accuracy

or detail of the railroad's accident/incident report. For additional information on requirements related to event recorders, see 49 CFR 229.135, "Event Recorders."

FRA is proposing to include instructions that railroads should limit the use of the "unknown" option in block 36, "Crossing warning Interconnected with Highway Signals" and block 37, "Crossing Illuminated by Street Lights or Special Lights." FRA has found that an inordinate number of completed Form FRA F 6180.57 forms are submitted to the agency with "unknown" marked box 36 and/or 37. Railroads have an obligation to submit accurate reports to FRA and not simply mark "unknown" without investigating the matter. Therefore, FRA is using this opportunity to require that in Block 36, a railroad must only enter option 3, "unknown" after having first consulted with the signal department of the railroad responsible for track maintenance in an effort to obtain the information. In Block 37, the railroad must only enter option 3, "unknown" after the railroad has first made a diligent effort to discern the relevant lighting conditions in an effort to obtain the information, but still cannot make a determination. FRA proposes these limitations in order to increase the quantity and accuracy of data the agency gathers related to highway-rail grade crossing accidents/incidents by requiring railroads to make an effort to gather the information.

FRA notes that the agency is proposing many of the Form FRA F 6180.57 revisions in response to a November, 28, 2005, report by the Department of Transportation's Office of Inspector General, "Audit of Oversight of Highway-Rail Grade Crossing Accident Reporting, Investigations, and Safety Regulations, Report No. MH-2006-016.

(9) *Form FRA F 6180.107.* FRA proposes to revise block 6 on Form FRA F 6180.107, "Employee Number or Social Security Number" to "Employee Identification Number" to address privacy concerns.

FRA proposes to revise block 23 on Form FRA F 6180.107 "Date the Log Entry was Completed (mm/dd/yy)" to state "Date initially signed/completed." FRA proposes this change to clarify that the block must contain the initial date the form was completed. FRA finds it necessary to make such change because the agency has found certain railroads do not retain the initial date a record was completed, but only the date of the most recent update to the record. FRA is making this revision to ensure that it can discern if the railroad entered each

claimed occupational illness on the appropriate record no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred, as proposed in this NPRM in § 225.25(i)(2). FRA believes that by specifying the date required to be maintained on the record, any confusion regarding the requirement will be resolved.

O. *Appendix I, "Model Internal Control Plans, Including Model Statement of Policy against Harassment and Intimidation and Model Complaint Procedures."* FRA proposes to reorder the ICP components in Appendix I's sample Internal Control Plan (ICP) to more closely model the listing of components as set forth in § 225.33.

P. *Appendix J, "Type of Territory Codes."* FRA proposes the addition of an Appendix J, which will provide Type of Territory Codes and instructions for use of those codes when completing proposed block 30, "Type of Territory," on Form FRA F 6180.54, "Rail Equipment Accident/Incident Report." The codes will represent type of territory (*i.e.*, signaled territory versus non-signaled territory); the authority for movement (*i.e.*, signal indication; mandatory directive; other than main track—Rule 105); and additional miscellaneous supplemental codes. See Proposed Revisions to the FRA Guide, Appendix H, "Forms" for additional information.

Q. *Appendix K, "Electronic Submission of Reports to FRA."* FRA proposes to add this appendix to specifically provide electronic submission instructions and guidance.

R. *Appendix L, "49 CFR part 225."* FRA proposes to include in this section the full regulatory text of part 225.

Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures. 44 FR 11034, February 26, 1979. FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at <http://www.regulations.gov>.

Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC-10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA-2006-26173.

A regulatory system should protect and improve the health and safety of the American people. It should perform in a manner that improves the performance of the economy without imposing unacceptable or unreasonable costs on society. The changes in this proposed rulemaking would serve to simplify accident/incident reporting for railroads, ensure that railroad worker casualty statistics conform to the same criteria as statistics from other Federal agencies, and improve the quality of data available for analysis of railroad accidents and incidents.

FRA believes that the amendments to part 225 will increase the accuracy, precision, completeness of railroad accidents/incident records and reports, and correspondingly, FRA's and the railroad industry's information base related to accidents and incidents. This increased awareness will not only aid FRA in assessing and managing risk, but aid railroads and their employees in recognizing and correcting dangerous conditions and practices in order to maintain a safe and healthy environment for railroad workers and the public. Accordingly, FRA is proposing the following regulatory changes:

- Clarify ambiguous definitions and regulations;
- Add necessary definitions;
- Require railroads (by amending the definition of "Accountable Injury or Illness") to complete a Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" of all injuries and illnesses when such abnormal condition or disorder manifests *within* the work environment regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment;
- Require the reporting of additional types of injuries to all persons;
- Require the reporting of suicides and attempted suicides;
- Include a comprehensive list of accident/incident reporting exceptions;
- Allow for consolidated accident/incident reporting by integrated railroad systems;
- Set forth requirements for railroad electronic recordkeeping systems for purposes of part 225;
- Update regulatory text, as applicable;

- Enhance the quality of information available for railroad casualty analysis;

- Clarify and limit which highway-rail grade crossing fatalities must be telephonically reported to the National Response Center;

- Clarify and refine the criteria for using and retaining Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related," and the alternative railroad-designed record;

- Eliminate the oath and notarization requirements for Form FRA F 6180.55, "Railroad Injury and Illness Summary";

- Allow for the electronic submission via CD ROM or the Internet of Forms FRA F 6180.55, "Railroad Injury and Illness Summary" and 6180.81, "Employee Human Factor Attachment" in .pdf or .jpg format;

- Set forth record retention requirements for certain accident/incident recording and reporting records not previously addressed; and

- Update FRA's address information.

In addition to proposing revisions to its regulations, FRA is proposing revisions to the *FRA Guide* and to certain accident/incident recording and reporting forms.

For the twenty-year period, the estimated quantified costs would total \$6,721,717, and the PV of the estimated quantified costs is \$3,640,099. For the twenty-year period, the estimated quantified benefits would total \$1,772,811, and the PV of the estimated quantified benefits would total \$885,565.

The NPV of this analysis is a negative \$2,754,533. This means that, according to this analysis and methodology it utilizes for the given twenty-year period, the discounted value of the estimated costs would exceed the discounted value of the estimated benefits by approximately \$2,754,533.

FRA anticipates further substantial benefits flowing from more precise and complete accident/incident reporting data. Not only does the analysis of reported data provide information as to the cause of an accident/incident, this data can help determine trends, assess hazards, and assist in the development of effective countermeasures that may then be implemented to prevent similar accidents and incidents from occurring in the future. More precise and complete data will also help to identify where safety-oriented programs should be focused and aid railroads and the Agency in setting priorities among establishments for inspection and safety improvement efforts.

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), FRA has prepared and placed in the docket a Certification Statement that assesses the small entity impact of this proposed rule, and certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities.

Document inspection and copying facilities are available at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at <http://www.regulations.gov>. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, Mail Stop 10, Room W31-109, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA 2006-26173.

“Small entity” is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500

employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars. See “Size Eligibility Provisions and Standards,” 13 CFR part 121 subpart A. SBA’s “size standards” may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR part 209. The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1-1.

This proposed rule applies to railroads. There are approximately 665 small railroads that could potentially be affected. FRA anticipates that most of the recording and reporting burdens imposed by this proposed regulation will be born by railroads that are not considered small, due to the decreased likelihood that a small railroad will experience an accident/incident necessitating such recording and/or reporting. For example, on average over the 2005 to 2007 period, small railroads reported approximately only nine percent of all reportable casualties and

only 10 percent of all reportable accidents/incidents.

FRA also anticipates that proposed computer related burdens will be born by the larger railroads since smaller railroads since the large railroads choose to retain their accident/incident records and reports electronically in their own systems. Large railroads also submit their accident/incident reports to FRA electronically via their own systems. Most small railroads do their federally required accident/incident recordkeeping and reporting on a personal computer using FRA supplied Accident/Incident Report Generator (AIRG) software. This software allows railroads to send reports to FRA on a CD-ROM or to transmit the information to FRA over the Internet. FRA will send a free updated or new version of the AIRG software to any railroad that requests it. Other small railroads do not use a computer system for reporting. Accordingly, FRA does not anticipate that these burdens will be imposed on small entities.

FRA invites comments from all interested parties concerning the potential economic impact on small entities caused by the proposed rule amendments.

Paperwork Statement—Accident/ Incident Reporting and Recordkeeping

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections of this regulation that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.6—Consolidated Reporting (New Requirements).	718 railroads	10 Reports	40 hours	400	\$20,400
—Written agreements on subsidiaries.	718 railroads	10 agreements	2 hours	20	1,020
—Notifications on changes to subsidiaries and amended written agreement.	718 railroads	2 notifications + 2 agreements.	1 hr. + 1 hr.	4	204
225.9—Telephone Reports—Certain Accidents/Incidents and Other Events.	718 railroads	3,300 Reports	15 minutes	825	42,075
225.11—Reporting of Rail Equipment Accidents/ Incidents (Form FRA F 6180.54).	718 railroads	3,600 forms	2 hours	7,200	367,200
225.12(a)—Rail Equipment Accident/Incident Reports—Human Factor (Form FRA F 6180.81).	718 railroads	1,600 forms	15 minutes	400	20,400
225.12(b)—Rail Equipment Accident/Incident Reports—Human Factor—Part I Form FRA F 6180.78.	718 railroads	1,000 notices + 4,010 copies.	10 minutes + 3 minutes.	367	18,717
225.12(c)—Rail Equipment Accident/Incident Reports—Human Factor—Joint Operations.	718 railroads	100 requests	20 minutes	33	1,683

CFR section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.12(d)—Rail Equipment Accident/Incident Reports—Human Factor—Late Identification.	718 railroads	20 attachments + 20 notices.	15 minutes	10	510
225.12(g)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Supplement—Part II Form FRA F 6180.78.	Railroad Employees	75 statements	1.5 hours	113	5,311
225.12(g)—Rail Equipment Accident/Incident Reports—Human Factor—Employee Confidential Letter.	Railroad Employees	10 letters	2 hours	20	940
225.13—Late Reports	718 railroads	25 reports	1 hour	25	1,275
—Amended Rail Equipment Accident/ Incident Reports.	718 railroads	50 amended reports/40 copies.	1 hour + 3 minutes	52	2,652
225.18—Alcohol or Drug Involvement	718 railroads	80 reports	30 minutes	40	2,040
—Appended Reports	718 railroads	5 reports	30 minutes	3	153
225.19(a)—Highway-Rail Grade Crossing Accident/Incident Reports—(Form FRA F 6180.57).	718 railroads	2,880 forms	2 hours	5,760	293,760
—(c) Death, Injury, or Occupational Illness—Form FRA F 6180.55a.	718 railroads	12,180 forms	20 min.; 50 min.	4,810	245,310
225.21—Forms:					
—Form FRA F 6180.55—Railroad Injury/Illness Summary.	718 railroads	8,616 forms	10 minutes	1,436	73,236
—Form FRA F 6180.56—Railroad Annual Report of Manhours By State.	718 railroads	718 forms	15 minutes	180	9,180
—Form FRA F 6180.98—Railroad Employee Injury and/or Illness Record.	718 railroads	22,500 forms	1 hour	22,500	1,147,500
—Form FRA F 6180.98—Copies	718 railroads	675 copies	2 minutes	23	1,081
—Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record.	718 railroads	14,000 forms	30 minutes	7,000	357,000
—Form FRA F 6180.107—Alternate Record For Illnesses Claimed to Be Work Related.	718 railroads	300 forms	15 minutes	75	3,825
—Form FRA F 6180.39i—Notific. & Investigation Rpt..	654 railroads	1,000 forms	90 minutes	1,500	76,500
225.25—Posting of Monthly Summary	718 railroads	8,616 lists	16 minutes	2,298	117,198
225.27—Retention of Records	718 railroads	1,900 records	2 minutes	63	3,213
225.33—Internal Control Plans—Amended.	718 railroads	25 amendments	14 hours	350	17,850
225.35—Access to Records and Reports—Lists.	15 railroads	400 lists	20 minutes	133	6,783
—Subsequent Years	4 railroads	16 lists	20 minutes	5	255
225.37—Optical Media Transfer and Electronic Submission.	8 railroads	200 transfers	3 minutes	10	510
	718 railroads	2,400 elec submissions.	3 minutes	120	6,120

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 functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; 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 Mr. Robert Brogan, Information Clearance Officer, at 202-493-6292, or Ms. Nakia Jackson at 202-493-6073.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Nakia Jackson, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Jackson at the following address: robert.brogan@dot.gov; nakia.jackson@dot.gov.

OMB is required to make a decision concerning the collection of information

requirements contained in this proposed 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. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the

effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Federalism Implications

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects 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." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the proposed regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This is a rule with preemptive effect. The requirements of this rule establish uniform Federal railroad safety laws that must be met, and State requirements covering the same subject are displaced, whether those standards are in the form of State statutes, regulations, local ordinances, or other forms of State law, including State common law. Section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. This is consistent with past practice at FRA, and within the Department of Transportation.

However, while FRA's regulations under part 225 preempt States from prescribing accident/incident reporting requirements, there is nothing in our regulations that preempts States from having their own accident notification

requirements. Under § 225.1, "[i]ssuance 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 that occur in that State." FRA does not propose to change this provision that a State may require a railroad to submit to the State copies of accident/incident and injury/illness reports that occur in that State. However, FRA may need to amend the provision with respect to "suicide data." FRA is requesting comments on how to ensure that restrictions on the use and public availability of suicide data at the State level remain consistent with those FRA has prescribed in proposed § 225.41. Specifically, that suicide data (as defined in § 225.5) will not be included in any summaries of data on the number of injuries and illnesses associated with railroad operations; that suicide data is not publicly accessible; and that suicide data will only be available to the public in aggregate format.

Additionally, section 20902 of title 49 of the United States Code, which authorized the Secretary of Transportation to investigate certain accidents and incidents, provides: "[i]f the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission's investigation." This section contemplates that States have an interest in carrying out simultaneous investigation in coordination with the Secretary, where convenient. It would be consistent with this interest to permit States to adopt their own accident notification requirements so as to allow a prompt, and perhaps coordinated investigation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. This proposed 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 various levels of government. FRA concludes that this proposed rule will not impose any direct compliance costs on State and local governments and has no federalism implications, other than the preemption of State laws covering the subject matter of this final rule, which occurs by operation of law under 49

U.S.C. 20106 whenever FRA issues a rule or order. For the foregoing reasons, FRA believes that this proposed rule is in accordance with the principles and criteria contained in Executive Order 13132.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Environmental Impact

FRA has evaluated this final rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. See 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * * (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal

action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) [\$141,000,000 in 2008] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of \$141,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is

not a "significant energy action" within the meaning of Executive Order 13211.

Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). To get more information on this matter and to view the Regulations.gov Privacy Notice go to <http://www.regulations.gov/search/footer/privacyanduse.jsp>. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

List of Subjects in 49 CFR Part 225

Accident investigation, Penalties, Railroad safety, Railroads, Reporting and recordkeeping requirements, Safety and transportation.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 225 of chapter II, subtitle B of Title 49, Code of Federal Regulations as follows:

PART 225—[AMENDED]

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

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901-02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Section 225.3 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 225.3 Applicability.

* * * * *

(b) The Internal Control Plan requirements in § 225.33(a)(3) through (a)(11) do not apply to—

* * * * *

3. Section 225.5 is amended by adding definitions for discernable cause, event or exposure, injury or illness, railroad carrier, significant aggravation of a pre-existing injury or illness, and suicide data; and by revising paragraphs (1) and (3) of the definition for accident/incident, and the definitions of accountable injury or illness, accountable rail equipment accident/incident, event or exposure arising from the operation of a railroad, general reporting criteria, new case, qualified health care professional, railroad, work environment and work-related to read as follows:

§ 225.5 Definitions.

* * * * *

Accident/incident means:

(1) Any impact between railroad on-track equipment and a highway user (e.g., an automobile, bus, truck, motorcycle, bicycle, farm vehicle, pedestrian or other highway user) at a highway-rail grade crossing. Sidewalks, pathways, shoulders and ditches associated with the crossing are considered to be part of the crossing site. The term "highway user" includes pedestrians, cyclists, and all other modes of surface transportation, motorized and unmotorized.

* * * * *

(3) Each death, injury, or occupational illness that is a new case and meets the general reporting criteria listed in § 225.19(d)(1) through (d)(6) if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The event or exposure arising from the operation of a railroad need only be one of the discernable causes; it need not be the sole or predominant cause.

Accountable injury or illness means any abnormal condition or disorder of a railroad employee that causes or requires the railroad employee to be examined or treated by a qualified health care professional but does not meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6). When such condition or disorder manifests within the work environment it is an accountable injury or illness regardless of whether the condition or disorder is discernably caused by an event or exposure in the work environment. When such condition or disorder manifests outside the work environment it is an accountable injury or illness if the condition or disorder is discernably caused by an event or exposure in the work environment.

Accountable rail equipment accident/incident means a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that does not result in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed.

* * * * *

Discernable cause means a causal factor capable of being recognized by the senses or the understanding. An event or exposure arising from the operation of a railroad is a discernable cause of (i.e., discernably caused) an injury or illness if, considering the circumstances, it is more likely than not that the event or exposure is a cause of

the injury or illness. The event or exposure arising from the operation of a railroad need not be a sole, predominant or significant cause of the injury or illness, so long as it is a cause (i.e., a contributing factor).

* * * * *

Event or exposure includes an incident, activity, or occurrence.

Event or exposure arising from the operation of a railroad includes—

(1) With respect to a person who is not an employee of the railroad:

(i) An event or exposure that occurs on property owned, leased, or maintained by the railroad and is related to the performance of the railroad's rail transportation business; or

(ii) An event or exposure that occurs off property owned, leased, or maintained by the railroad directly resulting from one or more of the following railroad operations:

(A) A train accident, a train incident, or a highway-rail grade crossing accident or incident involving the railroad; or

(B) A release of a hazardous material from a railcar in the possession of the railroad or of another dangerous commodity that is related to the performance of the railroad's rail transportation business.

(2) With respect to a person who is an employee of the railroad, an event or exposure that is work-related.

* * * * *

General reporting criteria means the criteria listed in § 225.19(d)(1), (2), (3), (4), (5) and (6).

* * * * *

Injury or illness means an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as but not limited to, a skin disease, respiratory disorder, or poisoning. A musculoskeletal disorder is also an injury or illness. Pain is an injury or illness when it is sufficiently severe to meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6).

* * * * *

New case means a case in which either the injured or ill person has not previously experienced a reported injury or illness of the same type that affects the same part of the body, or the injured or ill person previously experienced a reported injury or illness of the same type that affected the same part of the body but had recovered completely (all signs had disappeared) from the previous injury or illness, and an event or exposure arising from the operation of a railroad discernably

caused the signs or symptoms to reappear.

* * * * *

Qualified health care professional is a health care professional operating within the scope of his or her license, registration, or certification. In addition to licensed physicians, the term qualified health care professional includes members of other occupations associated with patient care and treatment such as chiropractors, podiatrists, physicians assistants, psychologists, and dentists.

Railroad means a railroad carrier.

Railroad carrier means a person providing railroad transportation.

* * * * *

Significant aggravation of a pre-existing injury or illness means aggravation of a pre-existing injury or illness that is discernably caused by an event or exposure arising from the operation of a railroad that results in:

(1) With respect to any person:

(i) Death, provided that the pre-existing injury or illness would likely not have resulted in death but for the event or exposure; or

(ii) Loss of consciousness, provided that the pre-existing injury or illness would likely not have resulted in loss of consciousness but for the event or exposure; or

(iii) Medical treatment in a case where no medical treatment was needed for the injury or illness before the event or exposure, or a change in the course of medical treatment that was being provided before the event or exposure.

(2) With respect to a railroad employee, one or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the event or exposure.

* * * * *

Suicide data means data regarding the death of an individual due to that individual's commission of suicide as determined by a coroner or other public authority; or injury to an individual due to that individual's attempted commission of suicide as determined by a public authority. Only the death of, or injury to, the individual who committed the suicidal act is suicide data.

* * * * *

Work environment means the establishment and other locations where one or more railroad employees are working or present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials processed or used by an employee during the course of his or her work, 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 an event or exposure occurring within the work environment. An injury or illness is presumed work related if an event or exposure occurring in the work environment is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The causal event or exposure need not be peculiarly occupational so long as it occurs at work. For example, a causal event or exposure may be outside the employer's control, such as a lightning strike; involve activities that occur at work but are not directly productive, such as horseplay; or involve activities that are not peculiar to work, such as walking on a level floor, bending down, climbing stairs or sneezing, which activities, along with other normal body movements, are considered work events. Regardless, so long as the event or exposure occurred at work and is a discernable cause of the injury or illness, the injury or illness is work related. It does not matter whether there are other or bigger causes as well, or that the activity at work is no different from actions performed outside work. If an injury is within the presumption of work-relatedness, the employer can rebut work-relatedness only by showing that the case falls within an exception listed in § 225.15. In cases where it is not obvious whether a precipitating event or exposure occurred at work or outside work, the employer must evaluate the employee's work duties and environment and decide whether it is more likely than not that an event or exposure at work was at least one of the causes of the injury or illness.

4. Section 225.6 is added to read as follows:

§ 225.6 Consolidated reporting.

A parent corporation may request in writing that FRA treat its commonly controlled railroad carriers, which operate as a single, seamless, integrated United States rail system, as a single railroad carrier for purposes of this part.

(a) The written request must include the following:

(1) A list of the subsidiary railroads controlled by the parent corporation; and

(2) An explanation as to how the subsidiary railroads operate as a single, seamless, integrated United States railroad system.

(b) The request must be sent to the FRA Docket Clerk, Federal Railroad Administration, U.S. Department of Transportation, RCC-10, Mail Stop 10,

West Building 3rd Floor, Room W31-109, 1200 New Jersey Avenue, SE., Washington, DC 20590. Each request received shall be acknowledged in writing. The acknowledgment shall contain the docket number assigned to the request and state the date the request was received.

(c) FRA will notify the applicant parent corporation of the agency's decision within 90 days of receipt of the application.

(d) If FRA approves the request, the parent corporation must enter into a written agreement with FRA specifying which subsidiaries are included in its railroad system, agreeing to assume responsibility for compliance with this part for all named subsidiaries making up the system, and consenting to guarantee any monetary penalty assessments or other liabilities owed to the United States government that are incurred by the named subsidiaries for violating Federal accident/incident reporting requirements. Any change in the subsidiaries making up the railroad system requires immediate notification to FRA and execution of an amended agreement. Executed agreements will be published in the docket.

5. Section 225.7 is amended by revising paragraph (a) to read as follows:

§ 225.7 Public examination and use of reports.

(a) Accident/Incident reports made by railroads in compliance with these rules shall be available to the public in the manner prescribed by part 7 of this title. Accident/Incident reports may be inspected at the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety, West Building 3rd Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Written requests for a copy of a report should be addressed to the Freedom of Information Act Coordinator, Office of Chief Counsel, Federal Railroad Administration, U.S. Department of Transportation, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W33-437, 1200 New Jersey Avenue, SE., Washington, DC 20590, and be accompanied by the appropriate fee prescribed in part 7 of this title. To facilitate expedited handling, each request should be clearly marked "FOIA Request for Accident/Incident Report." For additional information on submitting a FOIA request to FRA see FRA's Web site at <http://www.fra.dot.gov/us/foia>.

6. Section 225.9 is amended by revising paragraph (a)(2)(iii) and (iv) to read as follows:

§ 225.9 Telephonic reports of certain accidents/incidents and other events.

(a) * * *

(2) * * *

(iii) A fatality resulting from a train accident or train incident at a highway-rail grade crossing when death occurs within 24 hours of the accident/incident;

(iv) A train accident resulting in damage (based on a preliminary gross estimate) of \$150,000 or more to railroad and nonrailroad property; or

* * * * *

7. Section 225.11 is revised to read as follows:

§ 225.11 Reporting of accidents/incidents.

(a) Each railroad subject to this part shall submit to FRA a monthly report of all railroad accidents/incidents described below:

(1) Highway-rail grade crossing accidents/incidents described in § 225.19;

(2) Rail equipment accidents/incidents described in § 225.19; and

(3) Death, injury and occupational illness accidents/incidents described in § 225.19.

(b) The report shall be made on the forms prescribed in § 225.21 in hard copy or, alternatively, by means of optical media or electronic submission via the Internet, 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. A copy of the FRA Guide may be obtained from the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-22, Mail Stop 25 West Building 3rd Floor, Room W33-107, 1200 New Jersey Avenue, SE., Washington, DC 20590 or downloaded from FRA's Office of Safety Analysis Web site at <http://safetydata.fra.dot.gov/officeofsafety/>, and click on "Click Here for Changes in Railroad Accident/Incident Recordkeeping and Reporting."

8. Section 225.12 is amended by revising paragraph (g)(3) 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.

* * * * *

(g) * * *

(3) Information that the employee wishes to withhold from the railroad must not be included in this Supplement. 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, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report"), but rather provide such confidential information by other means, such as a letter to the employee's collective bargaining representative, or to the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-22, Mail Stop 25 West Building 3rd Floor, Room W33-306, 1200 New Jersey Avenue, SE., Washington, DC 20590. The letter should include the name of the railroad making the allegations, the date and place of the accident, and the rail equipment accident/incident number.

* * * * *

9. Section 225.15 is revised to read as follows:

§ 225.15 Accidents/incidents not to be reported.

The following accidents/incidents are not reportable:

(a) *With respect to persons other than railroad employees.* A railroad is not to report injuries that occur at highway-rail grade crossings that do not involve the presence or operation of on-track equipment, or the presence of railroad employees then engaged in the operation of a railroad;

(b) *With respect to railroad employees on duty.* A railroad is not to report the following injuries to or illnesses of a railroad employee as Class A—Worker on Duty—Employee, if any of the following conditions in paragraphs (b)(1) through (b)(3) of this section are met. This exception does not affect a railroad's obligation to report injuries to an employee not on duty (Class B—Employee not on Duty), or a railroad's obligation to maintain a "Railroad Employee Injury/Illness Record" (Form FRA F 6180.98 or alternative railroad-designed form).

(1) The injury or illness occurred in or about living quarters not arising from the operation of a railroad;

(2) At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee; or

(3) The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.

(c) *With respect to railroad employees on or off duty.* A railroad is not to report the following injuries to or illnesses of a railroad employee, Class A—Worker

on Duty—Employee or Class B—Employee not on Duty, if any of the following conditions in paragraphs (c)(1) through (c)(7) of this section are met.

(1) The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment;

(2) The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball;

(3) The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption. However, if the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related and reported as either a Class A—Worker on Duty—Employee or Class B—Employee not on Duty depending on the employee's duty status;

(4) The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours;

(5) The injury or illness is solely the result of personal grooming, self medication for a non-work-related condition, or is intentionally self-inflicted;

(6) The illness is the common cold or flu (Note: Contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work); or

(7) The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.

(d) *With respect to contractors and volunteers.* A railroad is not to report injuries to contractors and volunteers that are listed in paragraphs (b) and (c) of this section. For purposes of this paragraph only, an exception listed in paragraphs (b) and (c) referencing "work environment" is construed to mean for contractors and volunteers only, on property owned, leased, or maintained by the railroad.

(e) With respect to rail equipment accident/incidents. A railroad is not to report the following rail equipment accidents/incidents:

(1) Cars derailed on industry tracks by non-railroad employees or non-railroad employee vandalism, providing there is no involvement of railroad employees; and

(2) Damage to out of service cars resulting from high water or flooding (e.g., empties placed on a storage or repair track). This exception does not apply if such cars are placed into a moving consist and as a result of this damage a reportable rail equipment accident results.

10. Section 225.17 is amended by revising paragraph (a) and removing paragraph (d) to read as follows:

§ 225.17 Doubtful cases.

(a) The reporting officer of a railroad will ordinarily determine the reportability or nonreportability of an accident/incident after examining all evidence available. The FRA, however, cannot delegate authority to decide matters of judgment when facts are in dispute. In all such cases the decision shall be that of the FRA.

* * * * *

11. Section 225.18 is added to read as follows:

§ 225.18 Alcohol or drug involvement.

(a) In preparing Form FRA F 6180.54, "Rail Equipment Accident/Incident Report," under this part, the railroad shall make such specific inquiry as may be reasonable under the circumstances into the possible involvement of alcohol or drug use or impairment in such accident or incident. If the railroad comes into possession of any information whatsoever, whether or not confirmed, concerning alleged alcohol or drug use or impairment by an employee who was involved in, or arguably could be said to have been involved in, the accident/incident, the railroad shall report such alleged use or impairment as provided in the current FRA Guide. If the railroad is in possession of such information but does not believe that alcohol or drug impairment was the primary or contributing cause of the accident/incident, then the railroad shall include in the narrative statement of such report a brief explanation of the basis of such determination.

(b) For any train accident within the requirement for post-accident testing under § 219.201 of this chapter, the railroad shall append to the Form FRA F 6180.54, "Rail Equipment Accident/Incident Report," any report required by 49 CFR 219.209(b) (pertaining to failure

to obtain samples for post-accident toxicological testing).

(c) For any train or non-train incident, the railroad shall provide any available information concerning the possible involvement of alcohol or drug use or impairment in such accident or incident.

(d) In providing information required by this section, a railroad shall not disclose any information concerning use of controlled substances determined by the railroad's Medical Review Officer to have been consistent with 49 CFR 219.103.

12. Section 225.19 is amended by revising paragraph (d) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(d) Group III—*Death, injury, or occupational illness.* Each death, injury, or occupational illness that is a new case and meets the general reporting criteria listed in paragraphs (d)(1) through (d)(6) of this section shall be reported to FRA on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)" if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The event or exposure arising from the operation of a railroad need only be one of the discernable causes; it need not be the sole or predominant cause. The general injury/illness reporting criteria are as follows:

- (1) Death to any person;
- (2) Injury to any person that results in:
 - (i) Medical treatment;
 - (ii) Significant injury diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness; or
 - (iii) Loss of consciousness;
- (3) Injury to a railroad employee that results in:
 - (i) A day away from work; or
 - (ii) Restricted work activity or job transfer;
- (4) Occupational illness of a railroad employee that results in:
 - (i) A day away from work;
 - (ii) Restricted work activity or job transfer;
 - (iii) Loss of consciousness; or
 - (iv) Medical treatment;
- (5) Significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity

or job transfer, medical treatment, or loss of consciousness;

(6) Illness or injury that:

(i) Meets the application of any of the following specific case criteria:

(A) Needlestick or sharps injury to a railroad employee;

(B) Medical removal of a railroad employee;

(C) Occupational hearing loss of a railroad employee;

(D) Occupational tuberculosis of a railroad employee;

(E) Musculoskeletal disorder of a railroad employee if this disorder is reportable under one or more of the general reporting criteria; or

(ii) Is a covered data case.

* * * * *

13. Section 225.21 is amended by revising the introductory text and paragraph (j) to read as follows:

§ 225.21 Forms.

The following forms and copies of the "FRA Guide for Preparing Accident/ Incident Reports" may be obtained from the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-22, Mail Stop 25, West Building, 3rd Floor, Room W33-107, 1200 New Jersey Avenue, SE., Washington, DC 20590 or downloaded from FRA's Office of Safety Analysis Web site at <http://safetydata.fra.dot.gov/officeofsafety/>, and click on "Click Here for Changes in Railroad Accident/ Incident Recordkeeping and Reporting."

* * * * *

(j) *Form FRA 6180.107—Alternative Record for Illnesses Claimed To Be Work-Related.* Form FRA F 6180.107 or an alternative railroad-designed record may be used by a railroad in lieu of Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" (described in paragraph (h) of this section), to record each illness claimed by an employee to be work-related that is reported to the railroad for which there is insufficient information for the railroad to determine whether the illness is work-related. This record shall be completed and retained in accordance with the requirements set forth in § 225.25 and § 225.27.

14. Section 225.25 is amended by revising paragraphs (a), (b)(6) and (b)(28), paragraph (e)(28) and paragraph (i), and by adding paragraph (j) 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 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) * * *

(6) Employee identification number;

(28) The railroad shall identify the preparer's name; title; telephone number with area code; and the date the record was initially signed/completed.

* * * * *

(e) * * *

(28) Date the record was initially signed/completed.

* * * * *

(i) **Claimed Occupational Illnesses.** (1) Each railroad may maintain a Form FRA F 6180.107, "Alternative Records for Illnesses Claimed To Be Work-Related," or an alternate railroad-designed record as described in paragraph (j) of this section, in place of Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," only for those claimed occupational illnesses for which the railroad has not received information sufficient to determine whether the occupational illness is work-related.

(2) Each railroad shall enter each illness claimed to be work-related on the appropriate record, as required by paragraph (i)(1) of this section, as early as practicable, but no later than seven working days after receiving information or acquiring knowledge that an employee is claiming they have incurred an occupational illness.

(3) When a railroad does not receive information sufficient to determine whether a claimed occupational illness case is accountable or reportable, the railroad shall make a good faith effort to obtain the necessary information by December 1 of the next calendar year.

(4) Within seven calendar days of receiving additional information regarding a claimed occupational illness case, each railroad shall document receipt of the information, including date received and type of document/ information received, in narrative block 19 of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed To Be Work-Related."

(5) Within 30 calendar days of receiving additional information regarding a claimed occupational illness, each railroad shall re-evaluate the claimed occupational illness to determine work-relatedness, taking into account the new information, and document any findings resulting from the re-evaluation in narrative block 19

of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed To Be Work-Related."

(6) For any claimed occupational illness case determined to be accountable or reportable, each railroad shall:

(i) Complete a Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" or alternative railroad-designed form within seven days of making such determination;

(ii) Retain the Form FRA F 6180.98 "Railroad Employee Injury and/or Illness Record" in accordance with § 225.27; and

(iii) Report the occupational illness, as applicable, in accordance with § 225.11.

(7) For any claimed occupational illness case determined not to be accountable or reportable, each railroad shall include the following information in narrative block 19 of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed To Be Work-Related" or alternative railroad-designed form:

(i) Why the case does not meet reporting criteria;

(ii) The basis upon which the railroad made this determination; and

(iii) The most authoritative information the railroad relied upon to make the determination.

(8) Although Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related" (or the alternate railroad-designed form), may not include all supporting documentation, such as medical records, the alternative record shall note the custodian of those documents and where the supporting documents are located so that they are readily accessible to FRA upon request.

(j) An alternative railroad-designed record may be used in lieu of the Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related." Any such alternative record shall contain all of the information required on the Form FRA F 6180.107. Although this information may be displayed in a different order from that on Form FRA F 6180.107, 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 all of the railroad's reporting establishments. Railroads may list additional information in the alternative record beyond the information required on Form FRA F 6180.107. The alternative record shall contain, at a minimum, the following information:

(1) Name of Reporting Railroad;

(2) Case/Incident Number;

- (3) Employee's Name (first, middle, last);
- (4) Employee's Date of Birth (mm/dd/yy);
- (5) Employee's Gender;
- (6) Employee Identification Number;
- (7) Date Employee was Hired (mm/dd/yy);
- (8) Employee's Home Address (include street address, city, State and Zip code);
- (9) Employee's Home Telephone Number (with area code);
- (10) Name of Facility Where Railroad Employee Normally Reports to Work;
- (11) Location, or Last Know Facility, Where Employee Reports to Work;
- (12) Job Title of Railroad Employee;
- (13) Department to Which Employee is Assigned;
- (14) Date on Which Employee or Representative Notified Company Personnel of Condition (mm/dd/yy);
- (15) Name of Railroad Official Notified;
- (16) Title of Railroad Official Notified;
- (17) Nature of Claimed Illness;
- (18) Supporting Documentation;
- (19) Custodian of Documents (Name, Title, and Address);
- (20) Location of Supporting Documentation;
- (21) Narrative;
- (22) Preparer's Name;
- (23) Preparer's Title;
- (24) Preparer's Telephone Number (with area code); and
- (25) Date the record was initially signed/completed (mm/dd/yy).

15. Section 225.27 is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 225.27 Retention of records.

(a) Each railroad shall retain the Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record"; Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related"; 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 Form FRA F 6180.97, "Initial Rail Equipment Accident/Incident Record," required by § 225.25 for at least two years after the end of the calendar year to which it relates. Each railroad must retain the Employee Human Factor Attachments (Form FRA F 6180.81, "Employee Human Factor Attachment") required by § 225.12, the written notices to employees required by § 225.12 (Part I of 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"), and the Employee Statements Supplementing Railroad Accident Reports described in § 225.12(g) (Part II of 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") that have been received by the railroad for at least two years after the end of the calendar year to which they relate.

* * * * *

(c) Each railroad must retain the original hard copy of each completed and signed Form FRA F 6180.55, "Railroad Injury and Illness Summary," that the railroad submits to FRA on optical media (CD-ROM) or electronically via the Internet to *aireports@frasafety.net* for at least five years after the calendar year to which it relates. If the railroad opts to submit the report to FRA electronically via the internet, the railroad must also retain a hard copy print out of FRA's electronic notice acknowledging receipt of the railroad's submission for a period of five years after the calendar year to which the report acknowledged relates.

(d) Railroads may retain accident/incident records as required by paragraphs (a) and (b) of this section in hard copy format or in electronic format subject to the following system requirements:

(1) *Design Requirements.* Any electronic record keeping system used to retain a record required to be retained by this part shall meet the following design parameters:

(i) The electronic record system shall be designed such that the integrity of each record is retained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(ii) The electronic system shall ensure that each record cannot be modified, or replaced, once the record is submitted to FRA;

(iii) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall uniquely identify the person making the amendment and the date the amendment was made;

(iv) The electronic system shall provide for the maintenance of reports as originally submitted to FRA without corruption or loss of data; and

(v) Policies and procedures must be in place to prevent persons from altering

electronic records, or otherwise interfering with the electronic system.

(2) *Accessibility and Availability.* Any electronic record system used to create, maintain, or transfer a record required to be maintained by this part shall meet the following access and availability parameters:

(i) Paper copies of electronic records and amendments to those records that may be necessary to document compliance with this part shall be provided to any representative of the FRA or of a State agency participating in investigative and/or surveillance activities under part 212 of this chapter or any other authorized representative for inspection and photocopying upon request in accordance with § 225.35; and

(ii) Paper copies provided to FRA or of a State agency participating in investigative and/or surveillance activities under part 212 of this chapter or any other authorized representative shall be produced in a readable text format and all data shall be identified by narrative descriptions (e.g., "accident/incident number," "number of days away from work," "date of occurrence," etc.).

16. Section 225.33 is amended by revising paragraph (a)(11) to read as follows:

§ 225.33 Internal Control Plans.

(a) * * *

(11) In the case of the Form FRA F 6180.107 or the alternate railroad-designed form, a statement that specifies the name(s), title(s) and address(es) of the custodian(s) of these records, all supporting documentation, such as medical records, and where the documents are located.

* * * * *

17. Section 225.37 is revised to read as follows:

§ 225.37 Optical media transfer and electronic submission.

(a) A railroad has the option of submitting the following reports, updates, and amendments by way of optical media (CD-ROM), or by means of electronic submission via the Internet:

(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 Employee Human Factor Attachment (Form FRA F 6180.81) (the

Employee Human Factor Attachment must be in .pdf or .jpg format only).

(b) Each railroad utilizing the optical media option shall submit to FRA a computer CD-ROM containing the following:

(1) An electronic image of the completed and signed hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55) in .pdf or .jpg format only; and

(2) The completed accident/incident report submissions.

(c)(1) Each railroad utilizing the electronic submission via the Internet option shall submit to FRA at *aireports@frasafety.net*:

(i) An electronic image of the completed and signed hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55) in .pdf or .jpg format only; and

(ii) The completed accident/incident report submissions.

(2) FRA will provide to the railroad an electronic notice acknowledging receipt of submissions filed electronically via the Internet.

(d) Each railroad employing either the optical media or electronic submission

via the Internet 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.

(e) In addition to fulfilling the requirements stated in paragraph (b) through (d) of this section, each railroad initially utilizing either the optical media or electronic submission via the Internet option, shall also initially 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 the railroad has submitted by means of optical media or electronically via the Internet. Once the optical media or electronic submission via the Internet 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.

(f) A railroad choosing to use optical media or electronic submission via the Internet must use one of the approved formats specified in the Companion Guide. FRA will reject submissions that

do not adhere to the required formats, which may result in the issuance of one or more civil penalty assessments against a railroad for failing to provide timely submissions of required reports as required by § 225.11.

18. Section 225.41 is added to read as follows:

§ 225.41 Suicide data.

FRA does not include suicide data (as defined in § 225.5) in its periodic summaries of data on the number of injuries and illnesses associated with railroad operations. FRA will maintain suicide data in a database that is not publicly accessible. Suicide data will not be available on FRA's Web site for individual reports or downloads. Suicide data will be available to the public in aggregate format on FRA's Web site and via requests under the Freedom of Information Act.

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Joseph H. Boardman,

Administrator.

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