



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

FEB - 8 2012

Dear Colleague:

The Federal Railroad Administration's (FRA) Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirement Final Rule, 75 FR 68862, November 9, 2010, added Title 49 Code of Federal Regulations (CFR) Section 225.6, permitting a parent corporation to request that FRA allow it to use consolidated railroad accident/incident reporting (consolidated reporting) for certain integrated railroad systems. The existence of subsidiary railroads, or rail-related affiliated corporations, alone does not automatically permit the use of consolidated reporting by a parent railroad. Rather, a parent railroad must first demonstrate to FRA how those subsidiary railroads, or rail-related affiliated corporations, function as a single, larger commonly controlled integrated railroad system (as opposed to functioning as independent entities).

In the Notice of Proposed Rulemaking that preceded the final rule (73 FR 52502, September 9, 2008), FRA explained that consolidated reporting is appropriate when the operations of railroads become integrated to the point that it is difficult for the parent railroad, and consequently FRA, to differentiate their operations. The inability to differentiate operations increases the risk of inaccurate accident/incident reporting by the railroads and can potentially undermine FRA's safety data integrity. For example, the likelihood of inaccurate reporting arises in cases when a railroad has difficulty discerning which railroad employs a worker or owns the equipment or trackage involved in an accident/incident. As a result, the integrity of the data reported to FRA suffers. On the other hand, if a parent railroad's subsidiary railroads operate as independent entities and it is clear which railroad and/or employees are involved in particular operations, then the concerns with regard to potential reporting inaccuracies, stemming from integrated operations, do not exist. In situations where railroads function as independent entities, FRA will not permit consolidated reporting. Instead, FRA will require that the subsidiary railroads continue using separate reporting codes to lessen the potential of inaccurate reporting and to ensure that the agency is obtaining the most specific and detailed accident/incident data possible.

For enforcement and compliance purposes, it is also essential that FRA restrict the use of consolidated reporting to only integrated railroad systems. A parent railroad and its subsidiary railroads are often separate corporate entities and, as such, a parent railroad is usually not liable for the obligations of its subsidiaries. However, in cases in which a parent corporation and its subsidiary railroads function as an integrated system, then "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.” See 73 FR 52503. Therefore, a parent railroad that requests, and is approved, to use consolidated reporting pursuant to 49 CFR § 225.6 will be responsible for the entire system’s compliance with 49 CFR Part 225 and liable for any instances of noncompliance by a subsidiary railroad in the system.

Pursuant to 49 CFR § 225.6, a parent railroad must submit a written application to use consolidated reporting to FRA’s docket clerk. That request must indicate which subsidiary railroads, or rail-related affiliates, are part of its rail system. Moreover, the parent railroad must explain how its subsidiary railroads operate as a single, seamless, integrated, U.S. railroad system. If a parent railroad’s request does not provide sufficient information for FRA to make an initial determination, FRA may deny the request.

In accordance with 49 CFR § 225.6, FRA will notify the parent railroad of FRA’s decision within 90 days of receipt of the application requesting permission to use consolidated reporting. If an application is approved, the parent railroad must enter into a written agreement with FRA specifying which subsidiaries are included in its system, agree to assume responsibility for compliance with 49 CFR Part 225 for all subsidiaries named in the agreement, and consent to guarantee any monetary penalty assessments or other liabilities owed to the U.S. government that are incurred by the named subsidiaries for violating Federal accident/incident reporting requirements. In certain instances, if appropriate, FRA will assign a new reporting code to the parent railroad for the consolidated system. Finally, the parent railroad also is responsible for immediately notifying FRA of any change in the subsidiaries making up the railroad system so that an amended agreement may be executed.

In the enclosure to this letter, “Guidance for Written Requests to use Consolidated Railroad Accident/Incident Reporting,” FRA has provided a list of the essential factors it will consider in determining whether the parent railroad and its subsidiary railroads qualify as an integrated railroad system. This list is not exhaustive and FRA encourages a parent railroad to provide any additional relevant information with its application. FRA will review each application individually and make a case-by-case determination depending on the particular facts and circumstances of the railroad operations at issue.

FRA expects a parent railroad to submit supporting documentation along with its written request to use consolidated reporting. The submission of supporting documentation will facilitate FRA’s review. However, if it is impracticable to submit supporting documentation with its application, a parent railroad should indicate where that documentation will be available for FRA’s review. As necessary, FRA plans to conduct field evaluations as part of its review of applications filed pursuant to 49 CFR § 225.6 to confirm their content and, if appropriate, obtain additional information.

FRA is concerned that parent railroads currently may be using consolidated reporting without having obtained approval pursuant to 49 CFR § 225.6. The unauthorized use of consolidated reporting undermines FRA's safety data and its ability to accurately evaluate rail safety. As such, any parent railroad currently using consolidated reporting without FRA's approval must, within 90 days from the date of this letter, submit a written request pursuant to 49 CFR § 225.6 to continue such reporting or discontinue using consolidated reporting. If a railroad is found to be using consolidated reporting without proper FRA approval, that railroad may be subject to enforcement action by FRA.

Once a parent railroad is approved and begins using consolidated reporting so that it is reporting accident/incident data for its subsidiaries under one reporting code, FRA will no longer be able to disaggregate safety data, from that point forward, for any of those subsidiary railroads reporting under the new consolidated reporting code. Safety data collected prior to the use of consolidated reporting will still be available in the aggregated and disaggregated format.

Regardless of whether a parent railroad elects to use consolidated reporting, FRA is continuing its practice of displaying safety data collected from railroads in its aggregated form on its Web site. FRA has historically aggregated railroad accident/incident data for display on its Web site based on the Class I Railroad Annual Reports (Form R-1) filed by railroads with the Surface Transportation Board.

Over the course of the next 12 months, FRA will review its railroad database to identify railroads by system, parent railroad, prior mergers, affiliations, and subsidiary relationships. To assist in this effort, FRA will be contacting each railroad, via letter, to confirm its current operating status, lineage and holdings, and associated reporting obligations.

If you have questions about consolidated reporting, please contact Ms. Mary Beth Butts, Program Analyst, FRA Knowledge Management Division, at (202) 493-6296 or MaryBeth.Butts@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Lauby', with a large flourish extending to the left and a smaller flourish below the main signature.

Robert C. Lauby
Acting Associate Administrator for Railroad Safety/Chief Safety Officer

Enclosure

Enclosure

Guidance for Written Requests to Use Consolidated Railroad Accident/Incident Reporting

Below are the key factors that the Federal Railroad Administration (FRA) will consider when reviewing a request to use Consolidated Reporting. A parent railroad should address these factors in its written request to use Consolidated Reporting pursuant to Title 49 Code of Federal Regulations (CFR) Section 225.6. These factors will assist FRA in determining whether a parent railroad's subsidiary railroads function as an integrated railroad system. The factors listed below are not exhaustive. As such, a parent corporation also may raise any other relevant factors that will assist FRA in determining whether its subsidiary railroads are commonly controlled. Again, FRA is interested in information demonstrating that the parent railroad and its subsidiary railroads function as one large railroad as opposed to separate and independent entities.

In addition to addressing these factors in its written request, FRA expects a parent corporation to submit supporting evidence or documentation to the extent reasonably practicable. If it is not practical to submit documentation for certain factors, a parent railroad should identify the location of the supporting evidence. Moreover, the request should identify a point of contact to address questions related to the petition for Consolidated Reporting for FRA. As necessary, FRA plans to conduct field evaluations as part of its review of applications filed pursuant to 49 CFR § 225.6 to confirm their content and, if appropriate, obtain additional information.

When reviewing written requests from a parent corporation to use Consolidated Reporting for its subsidiary railroads, FRA will consider the following factors:

- Whether all of the properties are physically connected, and by what means (i.e., is the track contiguous, are the properties connected by track rights).¹
- Whether the parent and its subsidiaries are held out to the public as a single entity.
- Whether the parent is involved in the decisionmaking of its subsidiaries, and to what extent.
- Whether the parent and/or subsidiaries share officers, equipment, and/or other personnel.
- Whether the operation of trains and crews are seamless, as trains and crews move over various properties with most employees unaware that they have changed property owners.
- Whether there is a single set of operating rules over all of the properties (there may be different signal and train control systems).

¹ While FRA plans to weigh all of the above factors, track connectivity is a key factor for FRA in approving the use of Consolidated Reporting. Therefore, a parent railroad is encouraged to provide as much information as possible with regards to this factor.

- Whether there is a single Internal Control Plan and/or a reporting or claims officer.
- Whether there is a single dispatching center.

FRA will consider all of the above factors when reviewing a request in addition to any other information contained in the request. FRA does recognize that Consolidated Reporting may be appropriate even in situations when one or more of the above factors are not met. However, FRA will make that determination on a case-by-case basis.