

FEDERAL RAILROAD ADMINISTRATION
System Safety Program Plan (49 CFR 270)
SUPPORTING JUSTIFICATION
RIN 2130-AC31; OMB No. 2130-XXXX

Summary of Submission

- The information collection associated with this proposed rule is new and is entirely associated with FRA's new Part 270 that will be added to chapter 49 of the CFR.
- FRA is publishing a Notice of Proposed Rulemaking titled System Safety Program on September 7, 2012. See 77 FR 55372.
- The total number of burden hours requested for this submission is **5,696 hours**.
- The total number of responses requested for this submission is **1,157**.
- Total **program changes** amount to **5,696 hours**.
- Since this is a new collection of information, there are no **adjustments**.

The answer to question **number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 19-41).

1. **Circumstances that make collection of the information necessary.**

Railroads operate in a dynamic, fast-paced environment that at one time posed extreme safety risks. Through concerted efforts by railroads, labor organizations, the U.S. DOT, and many other entities, railroad safety has vastly improved. But even though FRA has issued safety regulations and guidance that address many aspects of railroad operations, gaps in safety exist, and hazards and risks may arise from these gaps. FRA believes that railroads are in an excellent position to identify some of these gaps and take the necessary action to mitigate or eliminate the arising hazards and resulting risks. Rather than prescribing the specific actions the railroads need to take, FRA believes it would be more effective to allow the railroads to use their knowledge of their unique operating environment to identify the gaps and determine the best methods to mitigate or eliminate the hazards and resulting risks. A System Safety Program (SSP) would provide a railroad with the tools to systematically and continuously evaluate its system to identify the hazards and risks that result from gaps in safety and to mitigate or eliminate these hazards and risks.

There are many programs that are similar to the SSP proposed by this part. Most notably, the Federal Aviation Administration (FAA) has published an NPRM proposing to require each certificate holder operating under 14 CFR Part 121 to develop and implement a safety management system (SMS). 75 FR 68224, Nov. 5, 2010; and 76 FR 5296, Jan. 31, 2011. An SMS “is a comprehensive, process-oriented approach to managing safety throughout the organization.” 75 FR 68224, Nov. 5, 2010. An SMS includes: “an organization-wide safety policy; formal methods for identifying hazards, controlling, and continually assessing risk; and promotion of safety culture.” *Id.* Under FAA’s proposed regulation, an SMS would have four components: Safety Policy, Safety Risk Management, Safety Assurance, and Safety Promotion. *Id.* at 68225.

The U.S. Department of Defense (DoD) has also set forth guidelines for a System Safety Program. In July 1969, DoD published “System Safety Program Plan Requirements” (MIL-STD-882). MIL-STD-882 is DoD’s standard practice for system safety, with the most recent version, MIL-STD-882E, published on May 11, 2012. DoD, MIL-STD-882E, Department of Defense Standard Practice System Safety (May 11, 2012). MIL-STD-882 is used by many industries in the U.S. and internationally and certainly could be of use to a railroad when trying to determine which methods to use to comply with the proposed rule. In fact, MIL-STD-882 is cited in FRA’s safety regulations for railroad passenger equipment, 49 CFR part 238, as an example of a formal safety methodology to use in complying with certain analysis requirements in that rule. *See* 49 CFR 238.103 and 238.603.

System safety is not a new concept to FRA. On February 20, 1996, in response to New Jersey Transit (NJT) and Maryland Rail Commuter Service accidents in early 1996, FRA issued Emergency Order No. 20, Notice No. 1 (EO 20). 61 FR 6876, Feb. 22, 1996. EO 20 required, among other things, commuter and intercity passenger railroads to promptly develop an interim system safety plan addressing the safety of operations that permit passengers to occupy the leading car in a train. In particular, EO 20 required “railroads operating scheduled intercity or commuter rail service to conduct an analysis of their operations and file with FRA an interim safety plan indicating the manner in which risk of a collision involving a cab car is addressed.” *Id.* at 6879. FRA intended these plans to serve as a temporary measure in the light of the passenger equipment safety standards that the agency was developing. The plans were submitted to FRA, and FRA initially determined that they were inadequate. As part of the Advance Notice of Proposed Rulemaking for the passenger equipment safety standards, FRA proposed system safety program and plans for railroads. 61 FR 30672, 30684, June 17, 1996.

On June 24, 1996, the chairman of APTA’s Commuter Railroad Committee sent a letter to FRA to announce that APTA commuter railroads were in compliance with the requirements of EO 20 and agreed to adopt additional safety measures, including comprehensive system safety plans. These comprehensive system safety plans were broader in scope than the interim plans had been and were modeled after the Federal

Transit Administration's (FTA) Part 659 system safety plans, which were being successfully used by rapid transit authorities and include a triennial audit process. See 49 CFR Part 659. In 1997, APTA and the commuter railroads, in conjunction with FRA and the U.S. DOT, developed the Manual for the Development of System Safety Program Plans for Commuter Railroads. Pursuant to APTA's manual, the existing commuter railroads developed system safety plans, and the triennial audit process of these plans began in early 1998 with FRA's participation.

In January of 2005, in Glendale, CA, a Southern California Regional Rail Authority (Metrolink) commuter train derailed after striking an abandoned vehicle left on the tracks. The derailment caused the Metrolink train to collide with the trains on both sides of it, a Union Pacific Railroad Company (UP) freight train and another Metrolink train and resulted in the death of 11 people. After this incident, FRA developed a Collision Hazard Analysis Guide to assist in conducting collision hazard assessments. The Collision Hazard Analysis Guide supports APTA's Manual for the Development of System Safety Program Plans for Commuter Railroads by providing a "step-by-step procedure on how to perform hazard analysis and how to develop effective mitigation strategies that will improve passenger rail safety." FRA, Collision Hazard Analysis Guide: Commuter and Intercity Passenger Rail Service, 5 (October 2007), available on FRA's Web site at www.fra.dot.gov. The hazard guidelines used in the Collision Hazard Analysis Guide are based on MIL-STD-882 and the hazard identification/resolution processes described in APTA's Manual for the Development of System Safety Program Plans for Commuter Railroads." Id. After the publication of the Collision Hazard Analysis Guide, the commuter railroads, in conjunction with APTA, requested a meeting with FRA to discuss the implications of conducting a collision hazard analysis and having a record of such an analysis. The railroads expressed concern that, to the extent the analysis revealed information about a railroad's operations that was not currently available, the information could be used against the railroad in court proceedings.

FRA has codified certain discrete aspects of system safety planning in the Passenger Train Emergency Preparedness regulations, issued in May 1998, and the Passenger Equipment Safety Standards, issued in May 1999, but comprehensive system safety planning has remained the province of the individual passenger railroads. A majority of commuter railroads still participate in the system safety program established in 1997 by APTA. The latest version of APTA's Manual for the Development of System Safety Program Plans for Commuter Railroads was published on May 15, 2006. As mentioned previously, the Manual for the Development of System Safety Program Plans for Commuter Railroads was developed jointly with FRA, and FRA participates in the audits of the railroad's system safety plans based on this guide. From this experience, FRA has gained substantial knowledge regarding the best methods to develop, implement, and evaluate an SSP. Many components of the proposed rule are modeled after elements in APTA's Manual for the Development of System Safety Program Plans for Commuter Railroads.

In 1991, Congress required FTA to establish a program that required State-conducted oversight of the safety and security of rail fixed guideway systems that were not regulated by FRA. See Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, sec. 3029, also codified at 49 U.S.C. 5330. In December 1995, FTA adopted 49 CFR Part 659, Rail Fixed Guideway Systems; State Safety Oversight, which implemented Congress's mandate. 60 FR 67034, Dec. 27, 1995. In April 2005, FTA amended Part 659 to incorporate the experience and insight it had gained regarding the benefits of and recommended practices for implementing State safety oversight requirements. 70 FR 22562, Apr. 29, 2005.

FTA's Part 659 program applies only to rapid transit systems or portions thereof not subject to FRA's regulations. 49 CFR §§ 659.3 and 659.5. Therefore, the requirements of FTA's Part 659 would not overlap with any of the requirements proposed in this SSP regulation. However, as mentioned previously, APTA's Manual for the Development of System Safety Program Plans for Commuter Railroads is based on FTA's Part 659, so many of the elements in APTA's system safety program are based on FTA's Part 659 program. FRA has always maintained a close working relationship with FTA and the implementation of the Part 659 program and proposes to use many of the same concepts from the Part 659 program in the SSP rule.

The proposed System Safety Program (SSP) rule would implement Sections 103 and 109 Railroad Safety Improvement Act (RSIA) of 2008 as they apply to railroad carriers that provide intercity rail passenger or commuter rail passenger transportation (passenger railroads). See 49 U.S.C. 20156, 20118, and 20119. In Section 103, Congress directed the Secretary to issue a regulation requiring certain railroads to develop, submit to the Secretary for review and approval, and implement a railroad safety risk reduction program. The Secretary has delegated this responsibility to the FRA Administrator. See 49 CFR 1.49(o), 74 FR 26981, Jun. 5, 2009; see also 49 U.S.C. 103(g). The railroads required to be subject to such a regulation include the following: (1) Class 1 railroads; (2) Railroad carriers with inadequate safety performance, as determined by the Secretary; and (3) Railroad carriers that provide intercity rail passenger or commuter rail passenger transportation (passenger railroads).

This proposed SSP rule would implement this railroad safety risk reduction mandate (and the other specific safety risk reduction program requirements found in Section 103) for passenger railroads. The SSP rule is a risk reduction program in that it would require a passenger railroad to assess and manage risk and to develop proactive hazard management methods to promote safety improvement. The proposed rule contains provisions that, while not explicitly required by the RSIA safety risk reduction program mandate, are necessary to properly implement the mandate and are consistent with the intent behind the mandate. Further, as mentioned previously, many of the elements in the proposed rule are modeled after APTA's Manual for the Development of System Safety Program Plans for Commuter Railroads. The majority of railroads, therefore, will have

already implemented those elements. The proposed rule would also implement Section 109 of the RSIA, which addresses the protection of information in railroad safety risk analyses.

2. How, by whom, and for what purpose the information is to be used.

This is a new collection of information entirely associated with FRA's proposed new Part 270. The information collected under the proposed rule will be used by FRA to ensure that commuter and intercity passenger railroads establish and implement System Safety Programs (SSPs) to improve the safety of their operations and to ensure compliance. Each railroad will use its SSP to proactively identify and mitigate or eliminate hazards at an early stage and the resulting risk on its system to reduce the number of railroad accidents, incidents, and associated injuries, fatalities, and property damage. SSPs are intended then to promote a positive safety culture.

FRA will review waiver requests to determine whether it is safe and in the public interest to allow an exemption from all or any part of the proposed rule. After reviewing information from the petitioning party and others, FRA will either grant or deny the petition. In certain circumstances, FRA may impose conditions on the grant of a waiver if FRA concludes that the conditions are necessary to assure safety or are in the public interest, or both.

To properly implement an SSP, railroads will be required to develop a System Safety Program (SSP) Plan. Under the proposed rule, each railroad is required to consult with its directly affected employees on its SSP Plan. As part of that consultation, a railroad must utilize good faith and best efforts to reach agreement with its directly affected employees on the contents of its plan. Consultation statements must contain a detailed description of the process the railroad utilized to consult with directly affected employees and should contain information such as (but not limited to) the following: (1) how many meetings the railroad held with its directly affected employees; (2) what materials the railroad provided its directly affected employees regarding the draft SSP plan; and (3) how input from directly affected employees was received and handled during the consultation process. If the railroad is unable to reach agreement with its directly affected employees on the contents of its SSP Plan, the consultation statement must identify any areas of non-agreement and provide an explanation for why it believes agreement was not reached.

The consultation statement must also identify if the SSP Plan would affect a collective bargaining agreement between a railroad and a non-profit employee labor organization and explain how the railroad's SSP would affect it. Moreover, a consultation statement must include a service list containing the names and contact information for the international/national president and general chairperson of any non-profit employee labor organization representing directly affected employees; any labor representative who

participated in the consultation process; and any directly affected employee who significantly participated in the consultation process independently of a non-profit labor organization. FRA will review required railroad consultation statements to confirm that railroads consulted with their directly affected employees. Requiring each railroad to provide individuals identified in the service list with a copy of its submitted SSP Plan and consultation statement notifies those individuals that they now have 60 days (under § 270.102(c)(2)) to submit a statement to FRA if they are not able to come to reach agreement with the railroad on the contents of the SSP plan. FRA will consider both railroad consultation statements and employee comments/statements in making its determination regarding approval of the railroad's SSP Plan.

FRA will review and evaluate each SSP Plan to ensure that it meets all the requirements set forth in the proposed rule (under § 270.103) (including training of employees and establishing a fatigue management program) and to ensure that each SSP Plan promotes and supports a positive safety culture. In particular, each SSP Plan must have a policy statement that endorses the railroad's SSP. The policy statement should define, as clearly as possible, the railroad's authority for the establishment and implementation of the SSP. The policy statement would be required to be signed by the chief official of the railroad. This signature would indicate that the top level of management at the railroad endorses the SSP. Also, each SSP Plan must contain a statement that describes the purpose and scope of the railroad's SSP. This statement would be required to have three elements, at a minimum. First, the statement would describe the safety philosophy and safety culture of the railroad. Second, the railroad would describe the railroad's management responsibilities within the SSP to clarify who within the railroad's management are responsible for various aspects of the SSP. Last, the railroad would be required to describe how railroads, contractors, shared track/corridor operators and any other entity or person that provides significant safety-related service would support and participate in the railroad's SSP. These elements of the SSP Plan will provide FRA with an overview of the railroad's system safety and help the agency to understand how all the various actors and entities can work together to maintain and enhance railroad safety.

Particularly important in each railroad SSP Plan will be the risk-based hazard management program and risk-based hazard analysis. A properly implemented risk-based hazard management program and risk-based hazard analysis would identify the hazards and resulting risks on the railroad's system, develop methods to mitigate or eliminate, if practicable, these hazards and risks, and set forth a plan to implement these methods. As part of its risk-based hazard analysis, a railroad would consider various technologies that may mitigate or eliminate the identified hazards and risks, as well as consider the role of fatigue in creating hazards and risks. The risk-based hazard management program and risk-based hazard analysis will be used by railroads to assess the nature and severity of risks and will enable them to address them in a systematic and comprehensive way, where possible. FRA will evaluate each railroad's risk-based hazard management program and risk-based hazard analysis to ensure that the railroad has a

structured program and set methodology to address the various hazards it has discovered after carefully examining its entire system for potential dangers. Each SSP Plan will also articulate system safety goals and FRA will review each SSP Plan to determine whether the stated goals are realistic and achievable. In its approval or disapproval of each SSP Plan, FRA will provide essential feedback to railroads that their System Safety Programs (SSPs) and implementing SSP Plans meet statutory and regulatory objectives.

Once FRA approves a railroad's SSP plan, the proposed rule requires the railroad to conduct an annual assessment to determine the extent: (1) the SSP is fully implemented; (2) the railroad's compliance with the implemented elements of the approved SSP plan; and (3) the railroad has achieved the goals set forth in proposed § 270.103(d). Each commuter and intercity passenger railroad will use this internal assessment to evaluate the progress of its SSP implementation and the areas in which improvement is necessary.

Finally, under proposed section 270.305, FRA will conduct safety audits of each commuter and intercity passenger railroad's SSP. FRA will use these audits to determine the extent of each railroad's compliance with elements required by this Part in the railroad's SSP Plan. During the audit, FRA will maintain communication with the railroad and attempt to resolve any issues before completion of the audit. Once the audit is completed, FRA will provide the railroad with written notification of the audit results. These results will identify any areas where the railroad is not properly complying with its SSP, any areas that need to be addressed by the SSP but are not, or any other areas in which FRA believes the railroad and its plan are not in compliance with this part.

If the results of the audit require the railroad to take any corrective action, the railroad is provided 60 days to submit an improvement plan, for FRA approval, to address the audit findings. The improvement plan will identify who is responsible for carrying out the necessary tasks to address the audit findings and specify target dates and milestones to implement the improvements that address the audit findings. Specification of milestones is important because it will allow the railroad to determine the appropriate progress of the improvements while allowing FRA to gauge the railroad's compliance with its improvement plan. If FRA does not approve a railroad's improvement plan, FRA will notify the railroad of the specific deficiencies in the improvement plan. The railroad will then amend the improvement plan to correct the deficiencies identified by FRA and provide FRA a copy of the amended improvement plan no later than 30 days after the railroad received notice from FRA that its improvement plan was not approved. Upon request, the railroad must provide a report for review to FRA and States participating under Part 212 of this chapter regarding the status of the implementation of the improvements set forth in the improvement plan established pursuant to paragraph (b)(1) of this section. FRA will review these reports to monitor the progress of improvements spelled out in the railroad's improvement plan.

3. **How, by whom, and for what purpose the information is to be used.**

Over the years, FRA has strongly supported and highly encouraged the use of advanced automated technology, particularly electronic recordkeeping, to reduce burden on railroads and other entities that submit or retain information required by the agency. In this proposed rule, FRA is requesting public comment on the electronic submission of System Safety Program Plans (SSPPs) to the agency. FRA will address comments received on this issue both in the final rule and associated information collection submission.

As noted in the summary on the first page of this document, the estimated burden for this entire collection of information is less than 6,000 hours. So, the burden is already fairly minimal, and it is not expected that an electronic option (such as submission of SSPPs) would further significantly reduce burden as gathering the information for each requirement accounts for the great majority of the burden.

4. **Efforts to identify duplication.**

This is a new collection of information associated with new Part 270 of Chapter 49 of the CFR. FRA is not aware of any relevant Federal rules and associated information collections that may duplicate, overlap, or conflict with the proposed rule. The proposed regulation and associated information collection, in fact, support most other safety regulations for railroad operations.

Data collected are not available from any other source.

5. **Efforts to minimize the burden on small businesses.**

“Small entity” is defined in 5 U.S.C. 601(3) as having the same meaning as “small business concern” under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation.

The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is “for profit” may be and still be classified as a “small entity” is 1,500 employees for “Line Haul Operating Railroads” and 500 employees for “Switching and Terminal Establishments.” Additionally, 5 U.S.C. 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities 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. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1-1. FRA is proposing to use this definition for this rulemaking. Any comments received pertinent to its use will be addressed in the final rule.

Commuter and intercity passenger railroads would have to comply with all provisions of Part 270; however, the amount of effort to comply with the proposed rule is commensurate with the size of the entity.

There are two intercity passenger railroads, Amtrak and the Alaska Railroad. Neither can be considered a small entity. Amtrak is a Class I railroad and the Alaska Railroad is a Class II railroad. The Alaska Railroad is owned by the State of Alaska, which has a population well in excess of 50,000. There are 28 commuter or other short-haul passenger railroad operations in the U.S. Most of these railroads are part of larger transit organizations that receive Federal funds and serve major metropolitan areas with populations greater than 50,000. However, two of these railroads do not fall in this category and are considered small entities: Saratoga & North Creek Railway (SNC), and the Hawkeye Express, which is operated by the Iowa Northern Railway Company (IANR). All other passenger railroad operations in the United States are part of larger governmental entities whose service jurisdictions exceed 50,000 in population.

In 2011, Hawkeye Express transported approximately 5,000 passengers per game over a 7-mile round-trip distance to and from University of Iowa (University) football games. Iowa Northern has approximately 100 employees and is primarily a freight operation totaling 184,385 freight train miles in 2010. The service is on a contractual arrangement with the University, a State of Iowa institution. (The population of Iowa City, Iowa, is approximately 69,000.) Iowa Northern owns and operates the 6 bi-level passenger cars used for this small passenger operation which runs on average 7 days over a calendar year. FRA expects that any costs imposed on the railroad by this regulation will likely be passed on to the University as part of the transportation cost, and requests comment on this assumption.

SNC began operation in the summer of 2011 and currently provides daily rail service over a 57-mile line between Saratoga Springs and North Creek, New York. The SNC, a

Class III railroad, is a limited liability company, wholly owned by San Luis & Rio Grande Railroad (SLRG). SLRG is a Class III rail carrier and a subsidiary of Permian Basin Railways, Inc. (Permian), which in turn is owned by Iowa Pacific Holdings, LLC (IPH). The SNC primarily transports visitors to Saratoga Springs, tourists seeking to sightsee along the Hudson River, and travelers connecting to and from Amtrak service. The railroad operates year round, with standard coach passenger trains. Additional service activity includes seasonal ski trains, and specials such as “Thomas The Train.” This railroad operates under a five-year contract with the local government, and is restarting freight operations as well. The railroad has about 25 employees. SNC has already developed and is starting to utilize an SSP plan which follows the APTA model of SSP plan features and processes.

FRA has assisted and plans to continue to assist “new start” passenger railroads, including small business entities, in the development of their SSPs, starting at the design and planning phase through implementation. FRA will also provide guidance to those railroads so that the scope and content of their SSPs is proportionate to their size and nature of their operation.

The cost burden to the two small entities will be considerably less on average than that of the other 28 railroads. FRA estimates impacts on these two railroads could range on average between \$1,375 and \$3,150 per annum to comply with the regulation, depending on the existing level of compliance and discount rate. Since one of these railroads provides service under contract to a State institution, it may be able to pass some or all of the compliance cost on to that institution. The small entity itself may not be significantly impacted. As indicated above, FRA will assist an entity like the Hawkeye Express in preparing its program and plan if it is not already preparing an SSP. FRA envisions the SSP plan of such an entity as a very concise and brief document. FRA seeks comment on these findings and conclusions.

Most of the passenger railroads affected by this proposal already participate in APTA’s system safety program and are currently participating in the APTA audit program. Railroads that are still negotiating contracts or not participating directly with APTA have developed, or are in the process of developing an APTA system safety program. There is one railroad that does not currently have or is developing an APTA system safety program, a small event commuter railroad in Iowa. That railroad has a very simple system, and FRA believes that the costs to develop its SSP pursuant to the proposed rule will be relatively low. Since the majority of intercity passenger or commuter railroads already have APTA system safety programs, there will not be a significant burden for these railroads to implement the regulatory requirements set forth in this proposed rule. Thus, the economic impact of the proposed rule is generally incremental in nature for documentation of existing information and inclusion of certain elements not already addressed by railroads in their programs. Regarding new start intercity passenger or commuter railroads, FRA currently and will continue to provide technical assistance to

these type of railroads for the development and implementation of system safety programs and conduct of preliminary hazard analyses in the design phase leading to operations implementation.

There are reporting, recordkeeping, and compliance costs associated with the proposed regulation. This NPRM proposes what almost all passenger railroads have for the most part been doing voluntarily for some time. FRA believes that the added burden due to these proposed requirements is marginal. The total 20-year cost of this proposed rulemaking is \$4.1 million (undiscounted), of which FRA estimates 2.9 percent or less will be attributable to small entities. FRA estimates that the approximate total burden for small railroads for the 20-year period could range between \$33,384 and \$120,217, depending on discount rates and extent of costs relative to larger railroads. FRA believes this would not be a substantial burden.

FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a final determination regarding the economic impact on small entities.

6. Impact of less frequent collection of information.

If this collection of information were not conducted, or conducted less frequently, rail safety in the U.S. might be considerably hampered. Specifically, without the proposed collection of information, FRA could not be assured that commuter and intercity passenger railroads establish and implement a System Safety Program (SSP) to improve their operations. Without SSPs, there would not be concerted efforts by railroads to proactively identify and mitigate or eliminate hazards throughout their systems at an early stage. Hazards would remain unnoticed and unaddressed and would likely increase in terms of the risk that they present to both railroad employees and to the general public. Greater numbers of rail accidents and incidents and corresponding increases in injuries, fatalities, and property damage would result without the risk reduction efforts associated with SSPs and SSP Plans.

Without the required railroad consultation statement, FRA would have no way to know whether commuter and intercity passenger railroads informed their employees of their SSP Plans. FRA would be unable to determine if railroads used good faith and made best efforts to reach agreement with their directly affected employees on the contents of their SSP Plans. Employee input to the content of the SSP Plan is essential to have the most comprehensive and best SSP Plan. Without the required consultation statement, FRA would not know how many meetings the railroad held with its directly affected employees; would not know what materials the railroad provided to its directly affected employees regarding the draft SSP Plan; and would not know how input from directly affected employees was received and handled during the consultation process. Without

the railroad consultation statements and corresponding employee statements, FRA would be working with incomplete and inadequate information regarding its approval decision of an SSP Plan.

Without the required risk-based hazard management program and risk-based hazard analysis provided in the SSP Plan, FRA would not be able to determine whether railroads have a structured program and set methodology to address the various hazards they discover after carefully examining their entire systems for potential dangers. These components of the SSP Plan provide important information that FRA will use in determining whether each railroad's articulated safety goals are realistic and achievable. Effective SSP Plans will meet all of the proposed rule's requirements and promote a culture of safety to reduce the number of rail accidents/incidents that take place each year in this country.

Without the required internal annual assessment of their approved SSP Plans, railroads would not have an accurate and informed view of the progress they are making in implementing their SSPs. This annual assessment will provide a yardstick at any given point in time for the railroads to see where they are in fully implementing their SSPs and in complying with carrying out the various elements of their SSP Plans as well as in achieving their stated system safety goals. Without this internal assessment of their approved SSP Plans, safety gains might be temporary and incomplete. Without extensive systematic and long lasting safety gains through the complete implementation of each railroad SSP Plan, increased numbers of accidents and incidents and corresponding injuries, fatalities, and property damage are bound to occur.

Finally, without the external audits conducted by agency staff of each commuter and intercity passenger railroad's SSP, FRA would be unable to determine the extent of each railroad's compliance with the proposed rule's requirements and would be unable to convey to each railroad any areas where it is not complying with its SSP, any areas that need to be addressed by the SSP but are not, or any other areas in which FRA believes the railroad and its SSP Plan are not in compliance with this Part. Without these audits, rail safety will suffer from potential risks unexposed and unaddressed and more rail accidents/incidents will likely ensue.

In sum, this collection aids FRA and railroads in promoting and maintaining a safe rail environment. As such, it makes furthers FRA's main mission.

7. Special circumstances.

All reporting and recordkeeping requirements are within these guidelines.

8. Compliance with 5 CFR 1320.8.

As required by the Paperwork Reduction Act of 1995, FRA is publishing a Notice of Proposed Rulemaking (NPRM) titled System Safety Program in the Federal Register on September 7, 2012, soliciting comment from the public, interested parties, and the regulated community on the proposed rule and associated information collection. *See 77 FR 55372.*

FRA will respond to any comments received relating to the proposed rule and associated information collection in the final rule and associated information collection submission.

Background

In March 1996, FRA established the Railroad Safety Advisory Committee (RSAC), which provides a forum for collaborative rulemaking and program development. RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties.

An alphabetical list of RSAC members includes the following:

- American Association of Private Railroad Car Owners (AAPRCO);
- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- American Public Transportation Association (APTA);
- American Short Line and Regional Railroad Association (ASLRRRA);
- American Train Dispatchers Association (ATDA);
- Amtrak;
- Association of American Railroads (AAR);
- Association of Railway Museums;
- Association of State Rail Safety Managers;
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employees Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- Chlorine Institute;
- FTA;*
- Fertilizer Institute;
- High Speed Ground Transportation Association;
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers;
- Labor Council for Latin American Advancement;*
- League of Railway Industry Women;*

- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women;*
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association (NRCMA);
- National Transportation Safety Board (NTSB);*
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte;*
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association Inc.;
- Transport Canada;*
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU);
- Transportation Security Administration (TSA); and
- United Transportation Union (UTU).

*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. The working group may establish one or more task forces or other task groups to develop facts and options on a particular aspect of a given task. The task force, or other task group, reports to the working group. If a working group comes to consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, and because the RSAC recommendation constitutes the consensus of some of the industry's leading experts on a given subject, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended regulatory proposal achieves the agency's regulatory goals, is soundly supported, and is in accordance with applicable policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. However, to the maximum extent practicable, FRA utilizes RSAC to provide consensus recommendations with respect to both proposed and final agency actions. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action.

The RSAC established the Passenger Safety Working Group to handle the task of reviewing passenger equipment safety needs and programs. The Passenger Safety Working Group recommends consideration of specific actions that could be useful in advancing the safety of rail passenger service and develop recommendations for the full RSAC to consider. Members of the Passenger Safety Working Group, in addition to FRA, include the following:

- Association of American Railroads (AAR), including members from BNSF Railway Company, CSX Transportation, Inc., and UP;
- American Association of Private Railroad Car Owners (AAPRCO);
- American Association of State Highway and Transportation Officials (AASHTO);
- Amtrak;
- American Public Transportation Association (APTA), including members from Bombardier, Inc., Herzog Transit Services, Inc., Interfleet Technology, Inc. (Interfleet, formerly LDK Engineering, Inc.), Long Island Rail Road, Maryland Transit Administration, Metrolink, Metro-North Commuter Railroad Company, Northeast Illinois Regional Commuter Railroad Corporation, and Southeastern Pennsylvania Transportation Authority;
- American Short Line and Regional Railroad Association (ASLRRA);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Railroad Signalmen (BRS);
- Federal Transit Administration (FTA);
- National Association of Railroad Passengers (NARP);
- National Transportation Safety Board (NTSB);
- Railway Supply Institute (RSI);
- Sheet Metal Workers International Association (SMWIA);
- Safe Travel America (STA);
- Transportation Communications International Union/Brotherhood of Railway Carmen (TCIU/BRC);
- Transportation Security Administration (TSA);
- Transport Workers Union of America (TWU); and
- United Transportation Union (UTU).

In 2006, the General Passenger Safety Task Force was established under the Passenger Safety Working Group to focus on door securement, passenger safety in train stations, and system safety plans. Members of the General Passenger Safety Task Force, in addition to FRA, include the following:

- Association of American Railroads (AAR), including members from BNSF, CSXT, Norfolk Southern Railway Co., and UP);
- American Association of State Highway and Transportation Officials (AASHTO);
- Amtrak;
- American Public Transportation Association (APTA), including members from

Alaska Railroad Corporation, Peninsula Corridor Joint Powers Board (Caltrain), LIRR, Massachusetts Bay Commuter Railroad Company, Metro-North, MTA, NJT, New Mexico Rail Runner Express, Port Authority Trans-Hudson, SEPTA, Metrolink, and Utah Transit Authority;

- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association (ATDA);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Federal Transit Administration (FTA);
- National Association of Railroad Passengers (NARP);
- National Railroad Construction and Maintenance Association (NRCMA);
- National Transportation Safety Board (NTSB);
- Transport Canada; and
- United Transportation Union (UTU).

The General Passenger Safety Task Force was formed from the membership of the Passenger Safety Working Group and held its first meeting in February 2007 and the second meeting in April 2007 in conjunction with Passenger Safety Working Group. At the April 2007 meeting, the decision was made to create a System Safety Task Group to focus on the core elements and features of a system safety regulation and to draft language to recommend to the full RSAC for a system safety regulation.

The System Safety Task Group was formed from the membership of the General Passenger Safety Task Force and first met as an independent group in June 2008 in Baltimore, MD. Additional meetings were held on December 2-4, 2008 in Cambridge, MA, August 25-27, 2009 in Washington, DC, October 6-8, 2009 in Orlando, FL, March 16-17, 2010 in Washington, DC, February 1-2, 2012 in Cambridge, MA, and March 8, 2012 by teleconference. The System Safety Task Group produced recommended draft language for a system safety regulation, but work on this language was delayed until completion of the study to determine whether it was in the public interest to withhold from discovery or admission into evidence in a Federal or State court proceeding for damages involving personal injury or wrongful death against a carrier any information (including a railroad's analysis of its safety risks and its statement of the mitigation measures with which it will address those risks) compiled or collected for the purpose of evaluating, planning, or implementing a risk reduction program. See 49 U.S.C. 20119(a). This study was completed in October 2011 and is discussed further in the Statutory Background section of this preamble. The General Passenger Safety Task Force, including the members of the System Safety Task Group, met on February 1-2, 2012, and continued work on finalizing the language that it would recommend to the Passenger Safety Working Group. A final combined General Passenger Safety Task Force and System Safety Task Group meeting was held by teleconference on March 8, 2012.

On May 2, 2012, the General Passenger Safety Task Force formally voted to unanimously accept the system safety regulation language recommended by the System

Safety Task Group. On May 10, 2012, the Passenger Safety Working Group voted to unanimously accept the system safety regulation language recommended by the General Passenger Safety Task Force. On May 21, 2012, the RSAC unanimously voted to accept the system safety regulation language recommended by the Passenger Safety Working Group. Thus, the Passenger Safety Working Group's recommendation was adopted by the full RSAC as a formal recommendation to FRA.

The proposed rule incorporates the majority of RSAC's recommendations. FRA decided not to incorporate certain recommendations because they were unnecessary or duplicative and their exclusion would not have a substantive effect on the rule. The proposed rule also contains elements that were not part of RSAC's recommendations. The majority of these elements are added to provide clarity and to conform with Federal Register formatting requirements.

9. Payments or gifts to respondents.

There are no monetary payments or gifts made to respondents associated with the information collection requirements contained in this regulation.

10. Assurance of confidentiality.

Section 109 of the RSIA (codified at 49 U.S.C. 20118-20119) authorizes FRA to issue a rule protecting risk analysis information generated by railroads. These provisions would apply to information generated by passenger railroads pursuant to the proposed system safety rulemaking and to any railroad safety risk reduction programs required by FRA for Class I railroads and railroads with inadequate safety performance.

In section 109 of the RSIA, Congress determined that for risk reduction programs to be effective, the risk analyses must be shielded from production in response to Freedom of Information Act (FOIA) requests. See 49 U.S.C. 20118. FOIA is a Federal statute establishing certain requirements for the public disclosure of records held by Federal agencies. See 5 U.S.C. 552. Generally, FOIA requires a Federal agency to make most records available upon request, unless a record is protected from mandatory disclosure by one of nine exemptions.

Section 109(a) of RSIA specifically provides that a record obtained by FRA pursuant to a provision, regulation, or order related to a risk reduction program or pilot program is exempt from disclosure under FOIA. The term "record" includes, but is not limited to, "a railroad carrier's analysis of its safety risks and its statement of the mitigation measures it has identified with which to address those risks." Id. This FOIA exemption also applies to records made available to FRA for inspection or copying pursuant to a risk reduction program or pilot program.

Railroad system safety records in FRA's possession, therefore, are generally exempt from mandatory disclosure under FOIA. The RSIA, however, establishes two exceptions to this prohibition on FOIA disclosure. The first exception permits disclosure when it is necessary to enforce or carry out any Federal law. The second exception permits disclosure when a record is comprised of facts otherwise available to the public and when FRA, in its discretion, has determined that disclosure would be consistent with the confidentiality needed for a risk reduction program or pilot program.

The RSIA also addressed the disclosure and use of risk analysis information in litigation. Section 109 directed FRA to conduct a study to determine whether it was in the public interest to withhold from discovery or admission into evidence in a Federal or State court proceeding for damages involving personal injury or wrongful death against a carrier any information (including a railroad's analysis of its safety risks and its statement of the mitigation measures with which it will address those risks) compiled or collected for the purpose of evaluating, planning, or implementing a risk reduction program. See 49 U.S.C. 20119(a). In conducting this study, the RSIA required FRA to solicit input from railroads, railroad non-profit employee labor organizations, railroad accident victims and their families, and the general public. See id. The RSIA also states that upon completion of the study, if in the public interest, FRA may prescribe a rule to address the results of the study (i.e., a rule to protect risk analysis information from disclosure during litigation). See 49 U.S.C. 20119(b). The RSIA prohibits any such rule from becoming effective until one year after its adoption. See id.

FRA contracted with a law firm, Baker Botts L.L.P., to conduct the study on FRA's behalf. Various documents related to the study are available for review in public docket number FRA-2011-0025, which can be accessed online at www.regulations.gov. As a first step, the contracted law firm prepared a comprehensive report identifying and evaluating other Federal safety programs that protect risk reduction information from use in litigation. See Report on Federal Safety Programs and Legal Protections for Safety-Related Information, FRA, docket no. FRA-2011-0025-0002, April 14, 2011. Next, as required by section 109 of the RSIA, FRA published a Federal Register notice seeking public comment on the issue of whether it would be in the public interest to protect certain railroad risk reduction information from use in litigation. See 76 FR 26682, May 9, 2011. Comments received in response to this notice may be viewed in the public docket.

On October 21, 2011, the contracted law firm produced a final report on the study. See Study of Existing Legal Protections for Safety-Related Information and Analysis of Considerations for and Against protecting Railroad Safety Risk Reduction Program Information, FRA, docket no. FRA-2011-0025-0031, Oct. 21, 2011, available at <http://www.fra.dot.gov/Downloads/FRA-Final-Study-Report.pdf>. The final report contained analyses of other Federal programs that protect similar risk reduction data, the public comments submitted to the docket, and whether it would be in the public interest,

including the interests of public safety and the legal rights of persons injured in railroad accidents, to protect railroad risk reduction information from disclosure during litigation. The final report concluded that it would be within FRA's authority and in the public interest for FRA to promulgate a regulation protecting certain risk analysis information held by the railroads from discovery and use in litigation and makes recommendations for the drafting and structuring of such a regulation. See id. at 63-64.

In response to the final study report, this NPRM is proposing to protect any information compiled or collected solely for the purpose of developing, implementing or evaluating an SSP from discovery, admission into evidence, or consideration for other purposes in a Federal or State court proceeding for damages involving personal injury, wrongful death, and property damage. The information protected would include a railroad's identification of its safety hazards, analysis of its safety risks, and its statement of the mitigation measures with which it would address those risks and could be in the following forms: plans, reports, documents, surveys, schedules, lists, or data. (Similar protection will be proposed for railroad safety risk reduction programs required by FRA for Class I railroads and railroads with inadequate safety performance.)

11. Justification for any questions of a sensitive nature.

These requirements have nothing to do with sensitive matters such as sexual behavior and attitudes, religious beliefs, and other matters commonly considered private.

12. Estimate of burden hours for information collected.

Note: Approximately 30 commuter and intercity passenger railroads will be affected by this proposed rulemaking.

Waivers (§ 270.7)

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for a waiver under this section shall be filed in the manner and contain the information required by Part 211 of this chapter.

FRA estimates that approximately two (2) waiver requests will be received annually under the above requirement. It is estimated that it will take approximately eight (8) minutes/hours to complete each waiver request and send it FRA. Total annual burden for this requirement is 16 hours.

Respondent Universe:

30
railroads

Burden time per response:

8 hours

Frequency of Response:

On occasion

Annual number of Responses: 2 waiver requests

Annual Burden: 16 hours

Calculation: 2 waiver requests x 8 hrs. = 16 hours

System Safety Program; General (§ 270.101)

Each railroad subject to this part shall establish and fully implement a system safety program that continually and systematically evaluates railroad safety hazards on its system and manages the resulting risks to reduce the number and rates of railroad accidents, incidents, injuries, and fatalities. A system safety program shall include a risk-based hazard management program and risk-based hazard analysis designed to proactively identify hazards and mitigate the resulting risks. The system safety program shall be fully implemented and supported by a written system safety program plan described in § 270.103. A railroad's SSP shall be designed so that it promotes and supports a positive safety culture at the railroad.

The burden for this requirement is included under that of § 270.103. Consequently, there is no additional burden associated with this requirement.

Consultation Requirements (§ 270.102)

(a) General duty.

(1) Each railroad required to establish a system safety program under this part shall in good faith consult with, and use its best efforts to reach agreement with, all of its directly affected employees on the contents of the system safety program (SSP) plan.

(2) For purposes of this part, the term directly affected employees includes any non-profit employee labor organization representing a class or craft of directly affected employees of the railroad. A railroad that consults with such a non-profit employee labor organization is considered to have consulted with the directly affected employees represented by that organization.

(3) A railroad shall meet no later than (180 days after the effective date of the final rule) with its directly affected employees to discuss the consultation process. The railroad shall notify the directly affected employees of this meeting no less than 60 days before it is scheduled.

(4) Appendix B to this part contains guidance on how a railroad might comply with the requirements of this section.

FRA estimates that approximately four (4) good faith consultations will be conducted by railroads with affected employees/employee labor organizations under the above requirement. It is estimated that it will take approximately four (4) hours to complete each good faith consultation. Total annual burden for this requirement is 16 hours.

Respondent Universe:

28 railroads

Burden time per response:

4 hours

Frequency of Response:

One-time

Annual number of Responses: 4 consultations

Annual Burden: 16 hours

Calculation: 4 consultations x 4 hrs. = 16 hours

(b) Railroad consultation statements. A railroad required to submit an SSP plan under § 270.201 must also submit, together with that plan, a consultation statement that includes the following information:

(1) A detailed description of the process the railroad utilized to consult with its directly affected employees;

(2) If the railroad was not able to reach agreement with its directly affected employees on the contents of its SSP plan, identification of any known areas of non-agreement and an explanation why it believes agreement was not reached;

(3) If the SSP plan would affect a provision of a collective bargaining agreement between the railroad and a non-profit employee labor organization, identification of any such provision and an explanation how the SSP plan would affect it; and

(4) A service list containing the names and contact information for the international/national president and general chairperson of any non-profit employee labor organization representing a class or craft of the railroad's directly affected employees; any labor organization representative who participated in the consultation process; and any directly affected employee who significantly participated in the consultation process independently of a non-profit employee labor organization. When a railroad submits its SSP plan and consultation statement to FRA, it must also send a copy of these documents to all individuals identified in the service list.

FRA estimates that approximately 30 consultation statements will be completed by railroads that meet the provisions of the above requirement. It is estimated that it will take approximately 20 minutes to complete each good faith consultation statement. Total annual burden for this requirement is 10 hours.

Respondent Universe:

30 railroads

Burden time per response:

20
minute
s

Frequency of Response:

One-time

Annual number of Responses: 30 consultation statements
Annual Burden: 10 hours

Calculation: 30 consultation statements x 20 min. = 10 hours

Additionally, FRA estimates that approximately 30 copies of consultation statements will be electronically sent to all individuals identified in the service list under the above requirement. It is estimated that it will take approximately one (1) minute to e-mail each copy to the identified individual. Total annual burden for this requirement is one (1) hour.

Respondent Universe: 30 railroads

Burden time per response: 1 minute

Frequency of Response: One-time

Annual number of Responses: 30 copies of consultation statements/SSP plans

Annual Burden: 1 hour

Calculation: 30 copies of consultation statements/SSP plans x 1 min. = 1 hour

(c) Statements from directly affected employees.

(1) If a railroad and its directly affected employees cannot reach agreement on the proposed contents of an SSP plan, then directly affected employees may file a statement with the FRA Associate Administrator for Railroad Safety/Chief Safety Officer explaining their views on the plan on which agreement was not reached. The FRA Associate Administrator for Railroad Safety/Chief Safety Officer shall consider any such views during the plan review and approval process.

(2) A railroad's directly affected employees have 60 days following the railroad's submission of a proposed SSP plan to submit the statement described in paragraph (c)(1) of this section.

FRA estimates that zero (0) statements will be filed by directly affected employees who disagree with the railroad's system safety program plan under the above requirement. Consequently, there is no additional burden associated with this requirement.

(d) Consultation requirements for system safety program plan amendments. As required by § 270.201(c)(1), a railroad's system SSP plan must include a description of the process the railroad will use to consult with its directly affected employees on any subsequent substantive amendments to the railroad's system safety program. The requirements of this paragraph do not apply to non-substantive amendments (e.g., amendments that update names and addresses of railroad personnel).

The burden for this requirement is included under that of § 270.103 below. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 27 hours (16 + 10 + 1).

System Safety Program Plan (§ 270.103)

(a) General. (1) Each railroad subject to this part shall adopt and fully implement a system safety program through a written SSP plan that, at a minimum, contains the elements in this section. This SSP plan shall be approved by FRA under the process specified in § 270.201.

(2) Each railroad subject to this part shall communicate with each railroad that hosts passenger train service for that railroad and coordinate the portions of the SSP plan applicable to the railroad hosting the passenger train service.

(b) System safety program policy statement. Each railroad shall set forth a policy statement that endorses the railroad's system safety program. This policy statement shall:

(1) Define the railroad's authority for establishment and implementation of the system safety program; and

(2) Be signed by the chief official at the railroad.

(c) Purpose and scope of system safety program. Each railroad shall set forth in its SSP plan a statement defining the purpose and scope of the system safety program. The purpose and scope statement shall describe:

(1) The safety philosophy and safety culture of the railroad;

(2) The railroad's management responsibilities within the system safety program; and

(3) How host railroads, contractor operators, shared track/corridor operators, contractors who provide significant safety-related services, and any other entity or person that provides significant safety-related services as identified by the railroad pursuant to

paragraph (e)(2) of this section will, as appropriate, support and participate in the railroad's system safety program.

(d) System safety program goals. Each railroad shall set forth in its SSP plan a statement defining the goals for the railroad's system safety program. This statement shall describe clear strategies on how the goals will be achieved and what management's responsibilities are to achieve them. At a minimum, the goals shall be: (1) Long-term; (2) Meaningful; (3) Measurable; and (4) Focused on the identification of hazards and the mitigation or elimination of the resulting risks.

(e) Railroad system description. (1) Each railroad shall set forth in its SSP plan a statement describing the railroad's system. The description shall include: a history of the railroad's operations, including any host operations; the physical characteristics of the railroad; the scope of service, the railroad's maintenance, and identification of the physical plant and any other pertinent aspects of the railroad's system.

(2) Each railroad shall identify the persons that provide significant safety-related services to the railroad.

(f) Railroad management and organizational structure. Each railroad shall set forth a statement in its SSP plan describing the management/organizational structure of the railroad. This statement shall include:

(1) A chart or other visual representation of the organizational structure of the railroad;

(2) A description of how safety responsibilities are distributed within the railroad organization;

(3) Clear identification of the lines of authority used by the railroad to manage safety issues; and

(4) A description of the relationships and responsibilities between the railroad, host railroads, contract operators, shared track/corridor operators, and other entities or persons that provide significant safety-related services. The statement shall set forth the roles and responsibilities in the railroad's system safety program for each host railroad, contract operator, shared track/corridor operator, or other entity or person that provides significant safety-related services.

(g) System safety program implementation plan. Each railroad shall set forth a plan in its SSP plan describing how the system safety program will be implemented on that railroad. This plan shall include a description of the:

(1) Roles and responsibilities of each position or job function that has significant responsibility for implementing the system safety program, including those held by employees, contractors who provide significant safety-related services, and other entities or persons that provide significant safety-related services; and

(2) Milestones necessary to be reached to fully implement the program.

(h) Maintenance, inspection and repair program. (1) Each railroad shall identify and describe in its SSP plan the processes used for maintenance and repair of infrastructure and equipment directly affecting railroad safety. Examples of infrastructure and equipment that directly affect railroad safety include: fixed facilities and equipment, rolling stock, signal and train control systems, track and right-of-way, and traction power distribution systems.

(2) Each description of the processes used for maintenance and repair of infrastructure and equipment directly affecting safety shall include the processes and procedures used to conduct testing and inspections of the infrastructure and equipment.

(i) Rules compliance and procedures review. Each railroad shall set forth a statement describing the processes used by the railroad to develop, maintain, and comply with the railroad's rules and procedures directly affecting railroad safety and to comply with the applicable railroad safety laws and regulations found in this chapter. The statement shall include:

(1) Identification of the railroad's operating and safety rules and procedures that are subject to review under this chapter;

(2) Techniques used to assess the compliance of the railroad's employees with the railroad's operating and safety rules and maintenance procedures, and applicable FRA regulations; and

(3) Techniques used to assess the effectiveness of the railroad's supervision relating to the compliance with the railroad's operating and safety rules and maintenance procedures, and applicable railroad safety laws and regulations.

(j) System safety program employee/contractor training. (1) Each railroad shall set forth a statement in its SSP plan that describes the railroad's system safety program training plan. A system safety program training plan shall set forth the procedures in which employees who are responsible for implementing and supporting the SSP, contractors who provide significant safety-related services, and any other entity or person that provides significant safety-related services will be trained on the railroad's system safety program. A system safety program training plan shall help ensure that all personnel who are responsible for implementing and supporting the system safety program understand

the goals of the program, are familiar with the elements of the railroad's program, and have the requisite knowledge and skills to fulfill their responsibilities under the program. The railroad shall keep a record of training conducted under this part and update that record as necessary.

(2) For each position or job function identified pursuant to paragraph (g)(1) of this section, the training plan shall describe the frequency and content of the system safety program training the position receives.

(3) If a position or job function is not identified under paragraph (g)(1) of this section as having significant responsibilities to implement and support the system safety program but the position or job function is safety related or has a significant impact on safety, personnel in those positions or performing those job functions shall receive training in basic system safety concepts and the system safety implications of their position or job function.

(4) Training under this subpart may be conducted by interactive computer-based training, video conferencing, or formal classroom training.

(5) The system safety program training plan shall set forth the process used to maintain and update the necessary training records required by this part.

(6) The system safety program training plan shall set forth the process used by the railroad to ensure that it is complying with the training requirements set forth in the training plan.

(k) Emergency management. Each railroad shall set forth a statement in its SSP plan that describes the processes used by the railroad to manage emergencies that may arise within its system including, but not limited to, the processes to comply with applicable emergency equipment standards contained in Part 238 of this chapter and the passenger train emergency preparedness requirements contained in Part 239 of this chapter.

(l) Work place safety. Each railroad shall set forth a statement in its SSP plan that describes the programs established by the railroad that protect the safety of the railroad's employees and contractors. The statement shall describe any:

(1) Processes that help ensure the safety of employees and contractors while working on or in close proximity to the railroad's property as described in paragraph (e) of this section;

(2) Processes that help ensure the employees and contractors understand the requirements established by the railroad pursuant to paragraph (g)(1) of this section; and

(3) Fitness-for-duty programs, including standards for the control of alcohol and drug use contained in Part 219 of this chapter, fatigue management programs established by this part, and medical monitoring programs.

(m) Public safety outreach program. Each railroad shall establish and set forth a statement in its SSP plan that describes a public safety outreach program that provides safety information to railroad passengers and the general public.

(n) Accident reporting and investigation. Each railroad shall set forth a statement in its SSP plan that describes the processes that the railroad uses to receive notification of accidents, investigate and report those accidents, and develop, implement, and track any corrective actions found necessary to address the investigation's finding(s).

(o) Safety data acquisition. Each railroad shall set forth a statement in its SSP plan that describes the processes used to collect, maintain, analyze, and distribute safety data in support of the system safety program.

(p) Contract procurement requirements. Each railroad shall set forth a statement in its SSP plan that describes the process to help ensure that safety concerns and hazards are adequately addressed during the safety-related contract procurement process.

(q) Risk-based hazard management program. Each railroad shall establish a risk-based hazard management program as part of the railroad's system safety program. The risk-based hazard management program shall be fully described in the SSP plan. The description of the risk-based hazard management program shall include:

(1) The identity of the individual(s) responsible for administering the risk-based hazard management program;

(2) The identities of stakeholders who will participate in the risk-based hazard management program;

(3) The structure and participants in any hazard management teams or safety committees that a railroad may establish to support the risk-based hazard management program;

(4) The process for setting goals for the risk-based hazard management program and how performance against the goals will be reported;

(5) The processes used in the risk-based hazard analysis to identify hazards on the railroad's system;

(6) The processes or procedures that will be used in the risk-based hazard analysis to analyze hazards and support the risk-based hazard management program;

(7) The methods used in the risk-based hazard analysis to determine the severity and frequency of hazards and to calculate the resulting risk;

(8) The methods used in the risk-based hazard analysis to identify actions that mitigate or eliminate hazards and corresponding risks.

(9) How decisions affecting safety of the rail system will be made relative to the risk-based hazard management program;

(10) The methods used in the risk-based hazard management program to support continuous safety improvement throughout the life of the rail system.

(11) The method used to maintain records of identified hazards and risks and mitigations throughout the life of the rail system.

(r) Risk-based hazard analysis. (1) Once FRA approves a railroad's SSP pursuant to § 270.201(b), the railroad shall apply the risk-based hazard analysis methodology identified in paragraph (q)(5) – (7) of this section to identify and analyze hazards on the railroad system and to determine the resulting risks. At a minimum, the aspects of the railroad system that should be analyzed include: operating rules and practices, infrastructure, equipment, employee levels and schedules, management structure, employee training, employee fatigue as identified in paragraph (s) of this section, new technology as identified in paragraph (t) of this section, and other aspects that have an impact on railroad safety not covered by railroad safety regulations or other Federal regulations.

(2) A risk-based hazard analysis shall identify and implement specific actions using the methods described in paragraph (q)(8) of this section that will mitigate or eliminate the hazards and resulting risks identified by paragraph (r)(1) of this section.

(3) A railroad shall also conduct a risk-based hazard analysis pursuant to paragraphs (r) (1) and (2) of this section when there are significant operational changes, system extensions, system modifications, or other circumstances that have a direct impact on railroad safety.

(s) Technology analysis and implementation plan. (1) A railroad shall conduct a technology analysis that evaluates current, new, or novel technologies that may mitigate or eliminate hazards and the resulting risks identified in the risk-based hazard analysis process. The railroad shall analyze the safety impact, feasibility, and cost and benefits of implementing technologies that will mitigate or eliminate hazards and the resulting risks. At a minimum, the technologies a railroad shall consider as part of its technology analysis are: processor-based technologies, positive train control systems, electronically-controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning

systems, switch position monitors and indicators, trespasser prevention technology, and highway-rail grade crossing warning and protection technology. The railroad shall make the results of the technology analysis conducted pursuant to this paragraph available upon request to representatives of FRA upon request and States participating under part 212 of this chapter.

(2) A railroad shall establish a technology implementation plan as part of its SSP plan that contains the results of the technology analysis conducted pursuant to paragraph (s)(1) of this section. If a railroad decides to implement any of the technologies identified in the technology analysis based on the technology's safety impact, feasibility, or costs and benefits, the technology implementation plan shall describe the railroad's plan and a prioritized implementation schedule for the development, adoption, implementation and maintenance of those technologies over a 10-year period.

(3) Except as required by subpart I of part 236 of this chapter, if a railroad decides to implement positive train control systems as part of its technology implementation plan, the railroad shall set forth and comply with a schedule for implementation of the positive train control system no later than December 31, 2018.

(t) Fatigue management plan. A railroad shall set forth in its SSP plan a Fatigue Management Plan no later than (three years after the effective date of the final rule).

(u) Safety Assurance. (1) Change management. Each railroad shall establish and set forth a statement in its SSP plan describing processes and procedures used by the railroad to manage significant operational changes, system extensions, system modifications, or other significant changes that will have a direct impact on railroad safety.

(2) Configuration management. Each railroad shall establish a configuration management program in its SSP plan. The configuration management program shall:

(i) State who within the railroad has authority to make configuration changes;

(ii) Establish processes to make configuration changes to the railroad's system; and

(iii) Establish processes to ensure that all departments of the railroad affected by the configuration changes are formally notified and approve of the change.

(3) Safety certification. Each railroad shall establish and set forth a statement in its SSP plan describing the certification process used by the railroad to help ensure that safety concerns and hazards are adequately addressed prior to the initiation of operations and major projects to extend, rehabilitate, or modify an existing system or replace vehicles and equipment.

(v) Safety culture. A railroad shall set forth a statement in its SSP plan that describes how it measures the success of its safety culture identified in paragraph (c)(2) of this section.

FRA estimates that approximately 30 written system safety program plans (SSPPs) will be developed/adopted meeting all of the requirements stipulated above and then implemented by affected railroads. It is estimated that it will take approximately 40 hours to develop each SSPP. Total annual burden for this requirement is 1,200 hours.

Respondent Universe: 30 railroads

Burden time per response: 40 hours

Frequency of Response: One-time

Annual number of Responses: 30 SSPPs
Annual Burden: 1,200 hours

Calculation: 30 SSPPs x 40 hrs. = 1,200 hours

Additionally, FRA estimates that approximately 450 railroad employees (15 employees per RR x 30 RRs) will undergo system safety program training as required under section 270.103(j) above. It is estimated that it will take approximately two (2) hours to train each employee and approximately two (2) minutes to complete each employee training record. Total annual burden for this requirement is 915 hours.

Respondent Universe: 30 railroads

Burden time per response: 2 hours + 2 minutes

Frequency of Response: One-time

Annual number of Responses: 450 trained employees + 450 records
Annual Burden: 915 hours

Calculation: 450 trained employees x 2 hrs. + 450 records x 2 min. = 915 hours

Further, FRA estimates that the agency will request approximately 10 results of railroads risk-based hazard analyses under section 270.103 (r)(1) above. It is estimated that it will take approximately 20 hours to complete each railroad risk based analysis and produce it upon FRA/Participating Part 212 State request. Total annual burden for this requirement is 200 hours.

Respondent Universe: 30 railroads

Burden time per response: 20 hours

Frequency of Response: On occasion

Annual number of Responses: 10 risk-based hazard analyses
Annual Burden: 200 hours

Calculation: 10 risk-based hazard analyses x 20 hrs. = 200 hours

Moreover, as stipulated under section 270.103(r)(2) above, FRA estimates that the agency will request approximately 10 descriptions of railroads' specific mitigation methods that address the hazards and resulting risks identified in the each railroad's risk-based hazard analysis. It is estimated that it will take approximately 10 hours to complete description and send it to FRA. Total annual burden for this requirement is 100 hours.

Respondent Universe: 30 railroads

Burden time per response:

10
hours

Frequency of Response:

On occasion

Annual number of Responses: 10 mitigation methods descriptions
Annual Burden: 100 hours

Calculation: 10 mitigation methods descriptions x 10 hrs. = 100 hours

Finally, as stipulated under section 270.103(s)(1)) above, FRA estimates that the agency/States participating under Part 212 of this Chapter will request approximately 30 results of the technology analysis conducted by railroads pursuant to this section. It is estimated that it will take approximately 40 hours to complete each technology analysis and send the results to FRA/participating States. Total annual burden for this requirement is 1,200 hours.

Respondent Universe:

30 railroads

Burden time per response:

40
hours

Frequency of Response:

On occasion

Annual number of Responses: 30 technology analysis results
Annual Burden: 1,200 hours

Calculation: 30 technology analysis results x 40 hrs. = 1,200 hours

Total annual burden for this entire requirement is 3,615 hours (1,200 + 915 + 200 + 100 + 1,200).

Filing and Approval (§ 270.201)

(a) **Filing.** (1) Each railroad to which this part applies shall submit one copy of its SSP plan to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer at Mail Stop 25, 1200 New Jersey Avenue SE, Washington, DC 20590, not more than [395 days after the effective date of the final rule] or not less than 90 days prior to commencing operations, whichever is later.

(2) The railroad shall not include in its SSP plan the risk-based hazard analysis conducted pursuant to § 270.103(r). The railroad shall make the results of any risk-based hazard analysis available upon request to representatives of FRA and States participating under Part 212 of this chapter.

(3) The SSP plan shall include the signature, name, title, address, and telephone number of the chief safety officer who bears primary managerial authority for implementing the program for the submitting railroad. The system safety plan shall also include the name and contact information for:

(i) The primary person responsible for managing the system safety program, and

(ii) The senior representatives of host railroads, contract operators, shared track/corridor operators, and others who provide significant safety-related services.

(4) As required by section 270.102(b), each railroad must submit with its system safety program plan a consultation statement describing how it consulted with its directly affected employees on the contents of its system safety program. Directly affected employees may also file a statement in compliance with section 270.102(c).

(5) The chief official responsible for safety who bears primary managerial authority for implementing the program for the submitting railroad shall certify that the contents of the SSP plan are accurate and that the railroad will implement the contents of the program as approved by FRA pursuant to paragraph (b) of this section.

The burden for the above requirement is included under that of § 270.103 above.

Consequently, there is no additional burden associated with this requirement.

(b) **Approval.** (1) Within 90 days of receipt of a SSP plan, or within 90 days of receipt of each system SSP plan submitted prior to the commencement of railroad operations, FRA will review the proposed SSP plan to determine if the elements prescribed in this part are

sufficiently addressed in the railroad’s submission. This review will also consider any statement submitted by directly affected employees pursuant to section 270.102.

(2) FRA will notify the primary contact person of each affected railroad in writing whether the proposed plan has been approved by FRA, and if not approved, the specific points in which the plan is deficient. FRA will also provide this notification to each individual identified in the service list accompanying the consultation statement required under section 270.102(b).

(3) If a proposed system safety plan is not approved by FRA, the affected railroad shall amend the proposed plan to correct all deficiencies identified by FRA and provide FRA with a corrected copy of the SSP plan not later than 60 days following receipt of FRA’s written notice that the proposed SSP plan was not approved.

FRA estimates that approximately four (4) written system safety program plans (SSPPs) will be found deficient, be disapproved by the agency, and need to be amended by railroads under the above requirement. It is estimated that it will take approximately 40 hours to amend each SSPP. Total annual burden for this requirement is 160 hours.

Respondent Universe:

30 railroads

Burden time per response:

40
hours

Frequency of Response:

One-time

Annual number of Responses:

4 amended SSPPs

Annual Burden:

160 hours

Calculation:

4 amended SSPPs x 40 hrs. = 160 hours

(c) Review of Amendments. (1)(i) Railroads shall submit amendment(s) to the SSP plan to FRA not less than 60 days prior to the proposed effective date of the amendment(s). The railroad shall file the amended SSP plan with a cover letter outlining the changes made to the original approved system SSP plan by the proposed amendment(s). The cover letter shall also describe the process it used pursuant to § 270.102(d) to consult with directly affected employees on the amendment(s).

(ii) If the amendment(s) is safety-critical and the railroad is unable to submit the amended SSP plan to FRA 60 days prior to the proposed effective date of the amendment(s), the railroad shall submit the amended SSP plan to FRA as soon as possible thereafter.

(2)(i) FRA will review each proposed amended SSP plan within 45 days of receipt. FRA will then notify the primary contact person of each affected railroad, whether the proposed amendment has been approved by FRA, and if not approved, the specific points in which the proposed amendment(s) to the SSP plan is deficient.

(ii) If FRA has not notified the railroad by the proposed effective date of the amendment whether the amendment(s) has been approved or not, the railroad may implement the amendment, subject to FRA's decision.

(iii) If a proposed SSP plan amendment is not approved by FRA, the affected railroad shall correct all deficiencies identified by FRA. The railroad shall provide FRA with a corrected copy of the amended SSP plan not later than 60 days following receipt of FRA's written notice that the proposed amendment was not approved.

FRA estimates that approximately one (1) amended written system safety program plans (SSPPs) will be found deficient and disapproved by FRA under the above requirement. It is estimated that it will take approximately 40 hours to further amend/correct each SSPP. Total annual burden for this requirement is 40 hours.

Respondent Universe:

30 railroads

Burden time per response:

40
hours

Frequency of Response:

On occasion

Annual number of Responses:

1 further amended/corrected SSPP

Annual Burden:

40 hours

Calculation:

1 further amended/corrected SSPPs x 40 hrs.
= 40 hours

(d) Reopened Review. Following initial approval of a plan, or amendment, FRA may reopen consideration of the plan, or amendment, for cause stated.

FRA estimates that approximately two (2) written system safety program plans (SSPPs) will be reopened by the agency for cause stated and require changes to the initial written SSPP or to the amended SSPP. It is estimated that it will take approximately 40 hours to change each SSPP. Total annual burden for this requirement is 80 hours.

Respondent Universe: 30 railroads

Burden time per response: 40 hours

Frequency of Response: On occasion

Annual number of Responses: 2 amended SSPPs
Annual Burden: 80 hours

Calculation: 2 amended SSPPs x 40 hrs. = 80 hours

Total annual burden for this entire requirement is 280 hours (160 + 40 + 80).

Retention of System Safety Program Plan (§ 270.203)

Each railroad to which this part applies shall retain at its system and at any division headquarters one copy of the SSP plan required by this part and one copy of each subsequent amendment to that plan. These records shall be made available to representatives of FRA and States participating under Part 212 of this chapter for inspection and copying during normal business hours.

FRA estimates that approximately 30 copies of written system safety program plans (SSPPs) will be kept by railroads under the above requirement. It is estimated that it will take approximately 10 minutes to copy each SSPP and make it available to representatives of FRA/participating Part 212 States. Total annual burden for this requirement is five (5) hours.

Respondent Universe:

30 railroads

Burden time per response:

10
minute
s

Frequency of Response:

On occasion

Annual number of Responses:

30 copies of written SSPPs

Annual Burden:

5 hours

Calculation:

30 written SSPP copies x 10 min. = 5 hours

Internal System Safety Program Assessment (§ 270.303)

(a)(1) Following FRA's initial approval of the railroad's SSP plan pursuant to section 270.201, the railroad shall annually conduct an assessment of the extent to which:

(i) The system safety program is fully implemented;

(ii) The railroad is in compliance with the implemented elements of the approved system safety program; and

(iii) The railroad has achieved the goals set forth in section 270.103(d).

FRA estimates that approximately 30 internal system safety program plan assessments will be conducted by railroads annually under the above requirement. It is estimated that it will take approximately 40 hours to conduct each internal system safety program assessment and complete the required report. Total annual burden for this requirement is 1,200 hours.

Respondent Universe:

30 railroads

Burden time per response:

40
hours

Frequency of Response: Annually

Annual number of Responses: 30 SSPP assessments/reports

Annual Burden: 1,200 hours

Calculation: 30 SSPP assessments/reports x 40 hrs. =
1,200 hours

(b) As part of its system safety plan, the railroad shall set forth a statement describing the processes used to:

(1) Conduct internal system safety program assessments;

(2) Internally report the findings of the internal system safety program assessments;

(3) Develop, track, and review recommendations as a result of the internal system safety program assessment;

(4) Develop improvement plans based on the internal system safety program assessments. Improvement plans shall, at a minimum, identify who is responsible for carrying out the necessary tasks to address assessment findings and specify a schedule of target dates with milestones to implement the improvements that address the assessment findings;

(5) Manage revisions and updates to the SSP plan based on the internal system safety program assessments; and

(6) Comply with the reporting requirements set forth in section 270.201.

The burden for the above requirement is included under that of § 270.103 and § 270.201 above. Consequently, there is no additional burden associated with this requirement.

(c)(1) Within 60 days of completing its internal SSP plan assessment pursuant to paragraph (a) of this section, the railroad shall:

(i) Submit to FRA a copy of the railroad's internal assessment report that includes a system safety program assessment and the status of internal assessment findings and improvement plans; and

(ii) Outline the specific improvement plans for achieving full implementation of the SSP plan, as well as achieving the goals of the plan.

The burden for the above requirement is included under that of § 270.303(a)(1) above. Consequently, there is no additional burden associated with this requirement.

(2) The railroad's chief official responsible for safety shall certify the results of the railroad's internal SSP plan assessment.

FRA estimates that approximately 30 certifications of the results of its internal system safety program plan assessments will be completed by the appropriate railroads official under the above requirement. It is estimated that it will take approximately eight (8) hours to complete each certification. Total annual burden for this requirement is 240 hours.

Respondent Universe:

30 railroads

Burden time per response:

8 hours

Frequency of Response:

On occasion

Annual number of Responses:

30 certifications

Annual Burden:

240 hours

Calculation:

30 certifications x 8 hrs. = 240 hours

Total annual burden for this entire requirement is 1,440 hours (1,200 + 240).

External Safety Audit (§ 270.305)

(a) FRA may conduct, or cause to be conducted, external audits of a railroad's system safety program. Each audit will evaluate the railroad's compliance with the elements required by this part in the railroad's approved SSP plan. FRA shall provide the railroad written notification of the results of any audit.

(b)(1) Within 60 days of FRA’s written notification of the results of the audit, the railroad shall submit to FRA for approval, if necessary, improvement plans to address all audit findings. Improvement plans submitted shall, at a minimum, identify who is responsible for carrying out the necessary tasks to address audit findings and specify target dates and milestones to implement the improvements that address the audit findings.

FRA estimates that approximately six (6) improvement plans will be submitted by railroads official in response to agency audits under the above requirement. It is estimated that it will take approximately 40 hours to develop and submit each improvement plan. Total annual burden for this requirement is 240 hours.

Respondent Universe: 30 railroads

Burden time per response: 40 hours

Frequency of Response: Annually

Annual number of Responses: 6 improvement plans
Annual Burden: 240 hours

Calculation: 6 improvement plans x 40 hrs. = 240 hours

(2) If FRA does not approve the railroad’s improvement plan, FRA will notify the railroad of the specific deficiencies in the improvement plan. The affected railroad shall amend the proposed plan to correct the deficiencies identified by FRA and provide FRA with a corrected copy of the improvement plan no later than 30 days following receipt of FRA’s written notice that the proposed plan was not approved.

FRA estimates that approximately two (2) improvement plans will be amended by railroads after being disapproved by the agency audits under the above requirement. It is estimated that it will take approximately 24 hours amend each improvement plan. Total annual burden for this requirement is 48 hours.

Respondent Universe: 30 railroads

Burden time per response: 24 hours

Frequency of Response: On occasion

Annual number of Responses: 2 amended improvement plans

Annual Burden: 48 hours

Calculation: 2 amended improvement plans x 24 hrs. = 48 hours

(3) Upon request, the railroad shall provide to FRA and States participating under Part 212 of this chapter for review a report upon request regarding the status of the implementation of the improvements set forth in the improvement plan established pursuant to paragraph (b)(1) of this section.

FRA estimates that approximately two (2) status reports will be provided to FRA/Part 212 Participating States upon their request under the above requirement. It is estimated that it will take approximately four (4) hours complete each status reports and send it to FRA/participating State. Total annual burden for this requirement is eight (8) hours.

Respondent Universe: 30 railroads

Burden time per response: 4 hours

Frequency of Response: On occasion

Annual number of Responses: 2 status reports
Annual Burden: 8 hours

Calculation: 2 status reports x 4 hrs. = 8 hours

Total annual burden for this entire requirement is 296 hours (240 + 48 + 8).

Appendix B to Part 270—Federal Railroad Administration Guidance on the System Safety Program Consultation Process

A railroad required to develop a system safety program under this part must in good faith consult with and use its best efforts to reach agreement with its directly affected employees on the contents of the SSP plan.

The burden for the above requirement is included under that of § 270.102 above. Consequently, there is no additional burden associated with this requirement.

. . . When reviewing SSP plans, FRA will determine on a case-by-case basis whether a railroad has met its § 270.102 good faith and best efforts obligations. This determination will be based upon the consultation statement submitted by the railroad pursuant to § 270.102(b) and any statements submitted by employees pursuant to § 270.102(c). If FRA finds that these statements do not provide sufficient information to determine whether a railroad used good faith and best efforts to reach agreement, FRA may investigate further and contact the railroad or its employees to request additional information.

FRA estimates that it will make approximately two (2) requests for additional information from railroads/railroad employees and that two (2) additional information documents will be completed under the above requirement. It is estimated that it will take approximately 30 minutes complete additional information document. Total annual burden for this requirement is one (1) hour.

Respondent Universe: 30 railroads

Burden time per response: 30
minute
s

Frequency of Response: One-time

Annual number of Responses: 2 additional information documents

Annual Burden: 1 hour

Calculation: 2 additional info. documents x 30 min. = 1 hour

If FRA determines that a railroad did not use good faith and best efforts, FRA may disapprove the SSP plan submitted by the railroad and direct the railroad to comply with the consultation requirements of § 270.102.

FRA estimates that approximately zero (0) consultations will take place as a result of SSPP good faith/best efforts disapprovals by FRA. Consequently, there is no additional burden associated with this requirement.

Pursuant to § 270.201(b)(3), if FRA does not approve the system safety program plan, the railroad will have 60 days, following receipt of FRA's written notice that the plan was not approved, to correct the deficiencies identified. In such cases, the identified deficiency would be that the railroad did not use good faith and best efforts to consult and reach agreement with its directly affected employees. If a railroad then does not submit to FRA within 60 days a SSP plan meeting the consultation requirements of § 270.102, the railroad could be subject to penalties for failure to comply with § 270.201(b)(3).

The burden for the above requirement is included under that of § 270.201 above. Consequently, there is no additional burden associated with this requirement.

Employees who are not represented by a non-profit employee labor organization.

FRA recognizes that some (or all) of a railroad's directly affected employees may not be represented by a non-profit employee labor organization. For such non-represented employees, the consultation process described for represented employees may not be appropriate or sufficient. For example, FRA believes that a railroad with non-represented employees must make a concerted effort to ensure that its non-represented employees are aware that they are able to participate in the development of the railroad's SSP plan. FRA, therefore, is providing the following guidance regarding how a railroad may utilize good faith and best efforts when consulting with non-represented employees on the contents of its SSP plan.

- Within 60 days of the effective date of the final rule, a railroad should notify non-represented employees that —

(1) The railroad is required to consult in good faith with, and use its best efforts to reach agreement with, all directly affected employees on the proposed contents of its SSP plan;

(2) Non-represented employees are invited to participate in the consultation process (and include instructions on how to engage in this process); and

FRA estimates that approximately two (2) notifications/consultations meeting the above requirements will be sent by railroads to employees who are not represented by a non-profit labor organization. It is estimated that it will take approximately eight (8) hours to complete each consultation. Total annual burden for this requirement is 16 hours.

Respondent Universe:

2 railroads

Burden time per response:

8 hours

Frequency of Response:

On occasion

Annual number of Responses:

2 notifications/consultations

Annual Burden:

16 hours

Calculation:

2 notifications/consultations x 8 hrs. = 16 hours

(3) If a railroad is unable to reach agreement with its directly affected employees on the contents of the proposed SSP plan, an employee may file a statement with the FRA Associate Administrator for Safety/Chief Safety Officer explaining his or her views on the plan on which agreement was not reached.

- This initial notification (and all subsequent communications, as necessary or appropriate) could be provided to non-represented employees in the following ways:

(1) Electronically, such as by e-mail or an announcement on the railroad's

website;

(2) By posting the notification in a location easily accessible and visible to non-represented employees; or

(3) By providing all non-represented employees a hard copy of the notification. A Railroad could use any or all of these methods of communication, so long as the notification complies with the railroad's obligation to utilize best efforts in the consultation process.

- Following the initial notification (and before the railroad submits its SSP plan to FRA), a railroad should provide non-represented employees a draft proposal of its SSP plan. This draft proposal should solicit additional input from non-represented employees, and the railroad should provide non-represented employees 60 days to submit comments to the railroad on the draft.
- Following this 60-day comment period and any changes to the draft SSP plan made as a result, the railroad should submit the proposed SSP plan to FRA, as required by this part.
- As provided by § 270.102(c), if agreement on the contents of an SSP plan cannot be reached, then a non-represented employee may file a statement with the FRA Associate Administrator for Railroad Safety/Chief Safety Officer explaining his or her views on the plan on which agreement was not reached.

The burden for the above requirement is included under that of § 270.102(c) above. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 17 hours (1 + 16).

Total annual burden for this entire information collection is 5,696 hours.

13. Estimate of total annual costs to respondents.

There are no other costs to respondents other than the ones reflected in the response to question 12 above

14. Estimate of Cost to Federal Government.

FRA will need to use two (2) full-time employees at the one at the GS-13 level (Step 5) and one at the GS-14 level (Step5) or contractor equivalents to review all the required documents and conduct the external audits associated with this proposed rule.

1 Full-time 1 GS-13-5 @\$100,904 = \$100,904

1 Full-time 1 GS-14-5 @\$119,238 = \$119,238

\$ 220,142 TOTAL

15. Explanation of program changes and adjustments.

This is a new collection of information. By definition, the entire burden of 5,696 hours is a **program change**.

There are no additional costs to respondents regarding this proposed rule other than the burden hours specified in the answer to question number of this document.

16. Publication of results of data collection.

There are no publications involving these information collection requirements.

17. Approval for not displaying the expiration date for OMB approval.

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the Federal Register.

18. Exception to certification statement.

No exceptions are taken at this time.

This information collection supports the top DOT strategic goal, namely transportation safety. Without the proposed collection of information, FRA could not be assured that commuter and intercity passenger railroads establish and implement a System Safety Program (SSP) to improve their operations. Without SSPs, there would not be concerted efforts by railroads to proactively identify and mitigate or eliminate hazards throughout their systems at an early stage. Hazards would remain unnoticed and unaddressed and would likely increase in terms of the risk that they present to both railroad employees and to the general public. Greater numbers of rail accidents and incidents and corresponding increases in injuries, fatalities, and property damage would result without the risk reduction efforts associated with SSPs and SSP Plans.

Without the required railroad consultation statement, FRA would have no way to know whether commuter and intercity passenger railroads informed their employees of their SSP Plans. FRA would be unable to determine if railroads used good faith and made best efforts to reach agreement with their directly affected employees on the contents of their SSP Plans. Employee input to the content of the SSP Plan is essential to have the most comprehensive and best SSP Plan. Without the required consultation statement, FRA would not know how many meetings the railroad held with its directly affected employees; would not know what materials the railroad provided to its directly affected employees regarding the draft SSP Plan; and would not know how input from directly affected employees was received and handled during the consultation process. Without the railroad consultation statements and corresponding employee statements, FRA would be working with incomplete and inadequate information regarding its approval decision of an SSP Plan.

Without the required risk-based hazard management program and risk-based hazard analysis provided in the SSP Plan, FRA would not be able to determine whether railroads have a structured program and set methodology to address the various hazards they discover after carefully examining their entire systems for potential dangers. These components of the SSP Plan provide important information that FRA will use in determining whether each railroad's articulated safety goals are realistic and achievable. Effective SSP Plans will meet all of the proposed rule's requirements and promote a culture of safety to reduce the number of rail accidents/incidents that take place each year in this country.

Without the required internal annual assessment of their approved SSP Plans, railroads would not have an accurate and informed view of the progress they are making in implementing their SSPs. This annual assessment will provide a yardstick at any given point in time for the railroads to see where they are in fully implementing their SSPs and in complying with carrying out the various elements of their SSP Plans as well as in achieving their stated system safety goals. Without this internal assessment of their approved SSP Plans, safety gains might be temporary and incomplete. Without extensive

systematic and long lasting safety gains through the complete implementation of each railroad SSP Plan, increased numbers of accidents and incidents and corresponding injuries, fatalities, and property damage are bound to occur.

Finally, without the external audits conducted by agency staff of each commuter and intercity passenger railroad's SSP, FRA would be unable to determine the extent of each railroad's compliance with the proposed rule's requirements and would be unable to convey to each railroad any areas where it is not complying with its SSP, any areas that need to be addressed by the SSP but are not, or any other areas in which FRA believes the railroad and its SSP Plan are not in compliance with this Part. Without these audits, rail safety will suffer from potential risks unexposed and unaddressed and more rail accidents/incidents will likely ensue.

In this information collection, as in all its information collection activities, FRA seeks to do its utmost to fulfill DOT Strategic Goals and to be an integral part of One DOT.