

SUPPORTING JUSTIFICATION
Critical Incident Stress Plans
OMB No. 2130-NEW; RIN 2130-ACOO

Summary

- This is a new collection of information solely associated with FRA's Proposed Rule titled Critical Incident Stress Plans pertaining to new 49 CFR Part 272.
- FRA is publishing this Proposed Rule in the **Federal Register** on June 28, 2013. See 78 FR 38878.
- The total number of burden hours **requested for this submission is 14,981 hours.**
- The total number of **responses is 170,504.**
- By definition, this entire submission is a **program change.**

** The answer to question **number 12** itemizes the hourly burden associated with each requirement of this rule (See pp. 13-20).

1. Circumstances that make collection of the information necessary.

Highway-rail grade crossing accidents and trespasser incidents along the railroad right of way are an unfortunate reality for employees in the railroad industry. Railroad work carries the risk that a covered employee will be directly involved in a critical incident, often outside the control of the railroad employees, which can lead to severe emotional and psychological distress, including Post Traumatic Stress Disorder (PTSD) and the more immediate Acute Distress Disorder (ASD). There are concerns about the impact of exposure to traumatic incidents on employees in safety-sensitive jobs, most notably locomotive engineers and conductors. *[Note: According to the U.S. Department of Veteran Affairs National Center for PTSD, Acute Stress Disorder is "mental disorder that can occur in the first month following a trauma. The symptoms that define ASD overlap with those for PTSD." ASD can lead to PTSD, but does not always. A "PTSD diagnosis cannot be given until symptoms have lasted for one month."]*

Until this proposed rule, a national, uniform approach to critical incident response in the railroad industry did not exist, with only a handful of States taking action through statutes or regulations to aid critical incident response in the railroad industry. With this proposed rule, FRA seeks to define the term "critical incident" in the railroad setting, which if met, would trigger the requirement that appropriate support services be offered to railroad employees affected by such incidents.

PTSD and ASD can develop following any traumatic event that threatens personal safety or the safety of others, or causes serious physical, cognitive, or emotional harm. While such disorders are most often initiated by a threat to one's life or the witnessing of brutal injury or traumatic death – in combat situations, for example, or during violent accidents or disasters – any overwhelming life experience can trigger the disorders, especially if the event is perceived as unpredictable and uncontrollable. Individuals exposed to traumatic events experience alterations in their neurologic, endocrine, and immune systems, which have been linked to adverse changes in overall health.¹ These changes and symptoms can be ameliorated if treated appropriately, usually with psychotherapy and/or medications. However, PTSD and ASD often go undiagnosed, as few primary care providers routinely assess for it and more often than not, attribute the symptoms to less serious forms of depression, anxiety, and general emotional distress.²

In recent years approximately 2,500 highway-rail crossing accidents and 900 casualties to persons trespassing on railroad property (trespassers) have occurred in the United States annually. Each one of these incidents, as well as other traumatic events such as railroad accidents or incidents resulting in serious injury or death to railroad employees, hold potential for causing ASD, PTSD, or other health and safety-related problems, in any railroad employee who is present. Some locomotive engineers and conductors have had the misfortune of experiencing multiple potential PTSD/ASD-invoking events over the course of their careers.³

Exposure of railroad employees, particularly locomotive engineers and conductors, to prototypical potentially traumatic exposures is well established. Incursion events, such as vehicular accidents at highway-rail grade crossings and pedestrian incursions onto the railroad right of way (frequently as a method of suicide) often involve fatalities and the injuries sustained may be gruesome. Locomotive engineers and conductors, because of their proximity to the accident scene, must often tend to the injured and secure the scene, compounding the extent and the duration of exposure. In particular, locomotive

¹ In a study of 830 train drivers in Norway, the 48 percent of participants who had experienced at least one on-the-track accident reported considerably more health problems than those who reported no such exposure. Their symptoms included musculoskeletal, gastrointestinal, and sleep pattern issues and continued from the incident to the time of the study (for some participants up to ten years). This study also revealed that the more pronounced initial reactions to on-the-track accidents, the more severe and persistent were the health complaints post-exposure. Vatshelle, A. & Moen, B. E. (1996). Serious on-the-track accidents experienced by train drivers: Psychological reactions and long-term health effects. *Journal of Psychosomatic Research*, 42(1), 43-52. See also Wignall, E. L., Dickson, J. M., Vaughan, P., Farrow, T. F. D., Wilkinson, I. D., Hunter, M. D., & Woodruff, P. W. R. (2004). Smaller hippocampal volume in patients with recent-onset posttraumatic stress disorder. *Biological Psychiatry*, 56(11), 832–836.

² Gerrity M. S., Corson, K., & Dobscha S. K. (2007). Screening for posttraumatic stress disorder in Veterans' Affairs primary care patients with depression symptoms. *Journal of General Internal Medicine*, 22(9), 1321–1324.

³ The Associated Press, Fatal Collisions Traumatize Nation's Train Engineers, August 14, 2009. Saed Hindash, *The Star-Ledger*. Death by Train. June 18, 2009. http://www.nj.com/insidejersey/index.ssf/2009/06/death_by_train.html (“Over a 40-year career, the average engineer will be involved in five to seven incidents, says Darcy, who has had seven fatalities.”).

engineers may be alone in the cab when an on-the-track accident occurs. Further, train crews are required to report the incident, secure the train, leave the train and examine the victims. Crew members may even provide first aid if victims are alive, and wait, sometimes for long periods, for assistance or instructions.

Systematic empirical studies of the health impact on railroad personnel of this kind of experience are limited. The best designed studies have been European and show clinically diagnosed PTSD in 7 to 14 percent of those exposed. FRA has found no empirical studies of treatment efficacy and impact within the U.S. railroad population, presumably due to the relatively small population annually treated and the different locations and systems involved in railroad employees' identification and care.

If left untreated, mental health conditions carry significant costs for employers in the form of "presenteeism," when employees come to work, but have lowered productivity.⁴ Presenteeism can have catastrophic safety consequences for railroads. Symptoms such as sleep difficulties, trouble concentrating, hyper-vigilance and exaggerated sensory reactions – often leading sufferers to misuse alcohol to reduce the stress – compromise workers' safety at work and the safety of others, and lower employees' productivity on the job. One study revealed that employees are more likely to engage in workplace presenteeism than calling in sick (absenteeism).⁵

Most major railroads have plans to provide their employees with assistance and intervention following traumatic events. Most of these programs have been in existence for a number of years, usually as part of a railroad's "Employee Assistance Program" (EAP). The descriptions of interventions, timing, and delivery in these programs are often "transplanted" from programs created for fire, rescue, and emergency services personnel in the 1980s and 1990s. These approaches, particularly those built around "critical incident stress debriefing" and related interventions, have come under increasing scrutiny as independent research has reported such interventions to not be helpful in certain situations and even to paradoxically inhibit the natural recovery of certain vulnerable participants. Accordingly, most authoritative guidelines now caution against the routine application of these approaches and some now list them as directly contraindicated.

While there are variations among railroads' existing programs, there are also substantial similarities reflected with respect to critical elements mandated by statute.⁶ For example, many railroads provide assistance and intervention following critical incidents, often

⁴ Kessler, R.C. (2000). Posttraumatic stress disorder: The burden to the individual and society. *Journal of Clinical Psychiatry*, 61(suppl. 5), 4-12. Kessler, R.C., & Greenberg, P.E. (2002). The economic burden of anxiety and stress disorders. In K.L. Davis, D. Charney, J.T. Coyle, & C. Nemeroff (Eds.), *Neuropsychopharmacology: The Fifth Generation of Progress*. Philadelphia: Lippincott, Williams & Wilkins. Pilette, P. C. (2005). Presenteeism and productivity: Two reasons employee assistance programs make good business cents. *Annals of the American Psychotherapy Association*, 8(1), 12-14.

⁵ Caverley, N., Cunningham, J. B., & MacGregor, J. M. (2007). Sickness presenteeism, sickness absenteeism, and health following restructuring in a public service organization. *Journal of Management Studies*, 44(2), 304-319.

through the use of the railroad's EAP. The majority of existing plans allow for immediate relief from duty upon request for the remainder of the tour of duty, as well as transportation to the home terminal for affected employees. Finally, many plans allow for additional leave following the tour of duty upon request, often involving contact with occupational medicine or EAP representatives.⁷ Therefore, several of these common elements are incorporated into this proposed rule.

On October 16, 2008, the Rail Safety Improvement Act of 2008 (Public Law 110-432, Division A) (RSIA) was enacted. Section 410 of the RSIA (Section 410) mandates that the Secretary of Transportation (Secretary) require "each Class I railroad carrier, each intercity passenger railroad carrier, and each commuter railroad carrier to develop and submit for approval to the Secretary a critical incident stress plan that provides for debriefing, counseling, guidance, and other appropriate support services to be offered to an employee affected by a critical incident." See Section 410(a). RSIA mandates that the plans include provisions for relieving employees who are involved in, or who witness, critical incidents from their tours of duty, and for providing leave for such employees from their normal duties as may be necessary and reasonable to receive preventive services and treatment related to the critical incident. See Section 410(b). The Secretary is specifically required to define the term "critical incident" for purposes of this rulemaking. See Section 410(c). The Secretary has delegated his responsibilities under the RSIA to the Administrator of FRA. See 49 CFR 1.89(b). In addition to the statutory mandate in Section 410, this proposed rule is also issued pursuant to FRA's general rulemaking authority at 49 U.S.C. 20103.

As required by Section 410(c), within 30 days after enactment of the RSIA, FRA initiated action within the DOT to commence a rulemaking to define the term "critical incident." Additionally, as required by Section 410(a), FRA consulted with the Department of Health and Human Services (HHS) and the Department of Labor (DOL) in preparing this proposed rule. Specifically, in addition to consulting with representatives of HHS and DOL, FRA provided those departments with an advance copy of this proposed regulation and requested input on FRA's approach. FRA has incorporated the suggestions provided by both HHS's Substance Abuse and Mental Health Services Administration (SAMHSA) and DOL's Wage and Hour Division.

FRA issues this proposed rule in accordance with a statutory mandate that the Secretary of Transportation require certain major railroads to develop, and submit to the Secretary for approval, critical incident stress plans that provide for appropriate support services to

⁶ The Association of American Railroads (AAR) provided a matrix to the Critical Incident Working Group (CIWG) that summarized key characteristics of programs as submitted by nine member railroads. Several railroads also submitted their current policies regarding critical incidents in the workplace.

⁷ Unpaid, job-protected leave under the Family and Medical Leave Act (FMLA) may be available to an employee involved in a critical incident. FMLA leave may be considered where an eligible employee of a covered employer suffers a serious health condition as a result of the incident. For additional guidance on the FMLA, please contact the United States Department of Labor or visit www.dol.gov.

be offered to their employees who are affected by a “critical incident” as defined by the Secretary. The NPRM proposes a definition of the term “critical incident,” the elements appropriate for the rail environment to be included in a railroad’s critical incident stress plan, the type of employees to be covered by the plan, a requirement that a covered railroad submit its plan to FRA for approval, and a requirement that a railroad adopt and comply with its FRA-approved plan.

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

This is a new collection of information. The information to be collected under this proposed rule will be used by FRA to ensure that Class I, intercity passenger, and commuter railroads that already have critical incident stress plans meet the minimum standards proposed in this NPRM. Specifically, FRA will review written critical incident stress plans/material modifications to critical incident stress plans to ensure that they have provisions for the following: (a) Informing each directly-involved employee as soon as practicable of the stress relief options that he or she may request; (b) Offering timely relief from the balance of the duty tour for each directly-involved employee, after the employee has performed any actions necessary for the safety of persons and contemporaneous documentation of the incident; (c) Offering timely transportation to each directly-involved employee’s home terminal, if necessary; (d) Offering counseling, guidance, and other appropriate support services to each directly-involved employee; (e) Permitting relief from the duty tour(s) subsequent to the critical incident, for an amount of time to be determined by each railroad, if requested by a directly-involved employee as may be necessary and reasonable; (f) Permitting each directly-involved employee such additional leave from normal duty as may be necessary and reasonable to receive preventive services or treatment related to the incident or both; and (g) Addressing how the railroad’s employees operating or otherwise working on track owned by or operated over by a different railroad will be afforded the protections of the plan.

Under section 272.103(b), covered railroads are required to serve – either by hard copy or electronically – a copy of the railroad’s critical incident stress plan on the national/international president of any non-profit employee labor organization representing a class or craft of the railroad’s employees subject to this Part. Labor organizations will review this information to verify that each covered railroad does indeed have a critical incident stress plan and, more importantly, that employees are afforded necessary and timely relief after they experience a critical incident. Under this section, covered railroads are also required to submit an affirming statement with their critical incident stress plan submissions to FRA that includes a list of the names and addresses of the persons served. FRA will review these affirming statements to confirm that relevant railroad labor unions receive copies of each covered railroad’s critical incident stress plan and to ensure that railroad are complying with all aspects of the proposed regulation.

Under section 272.103(c), not later than 90 days after the date of a critical incident stress plan filing with FRA, labor organizations representing a class or craft of the railroad's employees may file comment with FRA on the railroad's critical incident stress plan or a material modification to the railroad's critical incident stress plan. FRA will review these comments to determine their merit and to ensure that no aspects of a railroad's critical incident stress plan or material modification to the critical incident stress plan will adversely affect or harm railroad employees.

Under section 272.103(d), a critical incident stress plan is considered approved by the agency after the agency notifies the railroad in writing that the critical incident stress plan is approved, or 120 days after FRA has received the railroad's critical incident stress plan, whichever occurs first. Under section 272.103(e), railroads must submit modification of their initially FRA approved critical incident stress plans to the agency within 30 days of making the material modification. FRA will review these modified plans to ensure that they comply with all the requirements of the regulation, particularly that railroads offer timely relief -- and counseling, guidance, and other appropriate support services -- to rail employees after they are involved in a critical incident.

Finally, under section 272.105, railroads are allowed -- and indeed encouraged -- to file their critical incident stress plans and any modifications to these plans electronically with FRA, provided they meet the requirements of this section. FRA will review such electronic submissions to ensure that all necessary information is provided. Specifically, FRA staff will review submitted plans to see that they contain the following: (1) The name of the railroad; (2) The names of two individuals, including job titles, who will be the railroad's points of contact and will be the only individuals allowed access to FRA's secure document submission site; (3) The mailing addresses for the railroad's points of contact; (4) The railroad's system or main headquarters address located in the United States; (5) The email addresses for the railroad's points of contact; and (6) The daytime telephone numbers for the railroad's points of contact. FRA believes electronic submissions will enable the agency to review documents more efficiently and provide approvals/disapprovals in a more timely manner. It is anticipated that FRA will be able to approve or disapprove all or part of a critical incident stress plan and generate automated notifications by email to a railroad's points of contact. Thus, FRA wants each point of contact to understand that by providing any email addresses, the railroad is consenting to receive approval and disapproval notices from FRA by email. Railroads that allow notice from FRA by email would gain the benefit of receiving such notices quickly and efficiently.

3. Extent of automated information collection.

FRA has strongly endorsed and highly encouraged the use of the latest information technology, wherever feasible, to reduce burden on the railroad industry for many years. Section 272.105 of the proposed rule provides the option for each railroad to which this part applies to file any plan submission electronically. FRA intends to create a secure document submission site and will need basic information from each railroad before setting up the user's account. The points of contact information in proposed paragraph (b) are necessary in order to provide secure access.

Proposed paragraphs (c), (e), and (f) of this section are intended to allow FRA to make the greatest use of an electronic database. It is anticipated that FRA may be able to approve or disapprove all or part of a critical incident stress plan and generate automated notifications by email to a railroad's points of contact. Thus, FRA wants each point of contact to understand that by providing any email addresses, the railroad is consenting to receive approval and disapproval notices from FRA by email. Railroads that allow notice from FRA by email would gain the benefit of receiving such notices quickly and efficiently.

Proposed paragraph (d) is necessary to provide FRA's mailing address for those railroads that need to submit something in writing to FRA. For those railroads requesting electronic submission, the list of information specified in proposed paragraph (b) is required. Otherwise, those railroads that choose to submit printed materials to FRA must deliver them directly to the specified address. Some railroads may choose to deliver a CD, DVD, or other electronic storage format to FRA rather than requesting access to upload the documents directly to the secure electronic database; although this will be an acceptable method of submission, FRA would encourage each railroad to utilize the electronic submission capabilities of the system. Of course, if FRA does not have the capability to read the type of electronic storage format sent, FRA can reject the submission.

Finally, FRA is considering whether to mandate electronic submission. FRA is strongly leaning toward finalizing this option because the agency will be devoting significant resources to develop the electronic submission process. It will be more costly for the agency to develop the electronic submission process and have to upload written submissions into the electronic database itself. FRA expects that there are few, if any, railroads that do not have Internet access and an e-mail address, or that cannot otherwise meet the minimum requirements for electronic submission. FRA is requesting comments on whether mandatory electronic submission is objectionable to any railroad. FRA believes that close to 100 of responses will be electronically transmitted.

4. Efforts to identify duplication.

To our knowledge, the information collection requirements are unique and are not duplicated anywhere because they are associated with this specific and new agency rulemaking.

Similar data are unavailable from any other source.

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

“Small entity” is defined in 5 U.S.C. 601. Section 601(3) defines a “small entity” 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 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 the 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 49 CFR part 209, Appendix C. 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 of “small entity” for this rulemaking.

FRA finds that there are seven (7) Class I and 28 intercity passenger and commuter railroads, including Amtrak and the Alaska Railroad, affected by this proposed rule. Amtrak, the Alaska Railroad, and the 7 Class I railroads are not considered to be small entities. All of the affected commuter railroads are part of larger public transportation agencies that receive Federal funds and serve major jurisdictions with populations greater than 50,000; based on the definition, therefore, they are not considered small entities. As FRA believes that no small entities will be affected by this proposed rule, there would also be no cost impacts on small businesses. Railroads operated entirely by contract

operators, such that the contractor organization itself meets the definition of a commuter railroad, Class I, or intercity passenger railroad, would be subject to this rule. In these circumstances, FRA assumes that the contract operator would utilize the critical incident stress plan developed by the reporting railroad. FRA will hold the reporting railroads responsible for defects or deficiency, not the contracted operators. Therefore, FRA does not expect that the proposed rule will directly impact any contractors that are considered to be small entities.

6. Impact of less frequent collection of information.

If the information were not collected or collected less frequently, railroad safety throughout the United States would be significantly jeopardized. Specifically, if railroads did not have critical incident stress plans, there might be more rail accidents/incidents with increased fatalities, injuries, and property damage because railroad employees who were involved in a critical incident and who are possibly suffering from acute stress disorder (ASD) or post-traumatic stress disorder (PTSD) were not relieved of their duties in a timely fashion or did not receive the counseling, guidance, and other support services they need to perform their jobs in a safe and effective manner.

Railroad employee exposure, particularly locomotive engineers and train conductors, to traumatic rail events -- and potentially traumatic events -- is well documented. Incursion events such as vehicular accidents at highway-rail grade crossings and pedestrian incursions onto the railroad right-of-way (frequently suicides) often involve fatalities, and the injuries sustained may be gruesome. Locomotive engineers and conductors, because of their proximity to the accident scene, must often tend to the injured and secure the scene, compounding the extent and the duration of exposure. In particular, locomotive engineers may be alone in the cab when an on-the-track accident occurs. Crews are required to report the incident, secure the train, leave the train and examine the victims; they may provide first aid if victims are alive, and wait, sometimes for long periods, for assistance or instructions.

Without the proposed collection of information, FRA would have no way of knowing whether railroads had essential and comprehensive critical incident stress plans to provide timely critical relief services to rail employees who experienced a critical incident. Without the proposed rule's requirement that critical incident stress plans be disseminated to rail labor organizations, train crew members, signal workers, roadway workers (including maintenance of way and maintenance of structure employees) who experienced a critical incident would not know what counseling, guidance, and other support services are available to them from their employers to effectively counteract the ASD or PTSD that might be potentially suffering from or are suffering from. This could cause them to stay on the job ("presenteeism") while suffering severe symptoms and possibly lead to increased numbers of rail collisions, derailments, and other accidents/incidents with injuries to themselves and the traveling public caused by their

inability to perform their duties safely and effectively.

In short, this collection of information promotes and enhances national rail safety by promoting a better and healthier working environment for critical railroad employees in safety-sensitive positions, and thus serves as a vital component of FRA's multi-faceted rail safety program. It is essential in assisting FRA to fulfill its primary agency mission and objective as well as DOT's primary mission of transportation safety.

7. **Special circumstances.**

All information collection requirements contained in this proposed rule are in compliance with this section.

8. **Compliance with 5 CFR 1320.8.**

FRA is publishing a Notice of Proposed Rulemaking (NPRM) titled Critical Incident Stress Plans in the **Federal Register** on June 28, 2013, soliciting public comments on the proposed rule and its accompanying information collection requirements. See 78 FR 38878. FRA will respond to comments received in response to this NPRM in the final rule and associated information collection submission.

Background

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to the Administrator of FRA on rulemakings and other safety program issues. 61 FR 9740 (Mar. 11, 1996). RSAC's charter under the Federal Advisory Committee Act (Public Law 92-463) was most recently renewed in 2012. 77 FR 28421 (May 14, 2012).

RSAC includes representation from all of FRA's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. An alphabetical list of RSAC members includes the following:

Association of American Railroads (AAR);
American Association of Private Railroad Car Owners (AAPRCO);
American Association of State Highway and Transportation Officials (AASHTO);
American Chemistry Council (ACC);
American Petroleum Institute (API);
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
Association of Railway Museums (ARM);
Association of State Rail Safety Managers (ASRSM);

Brotherhood of Locomotive Engineers and Trainmen (BLET);
 Brotherhood of Maintenance of Way Employees Division (BMWED);
 Brotherhood of Railroad Signalmen (BRS);
 The Chlorine Institute, Incorporated;
 Federal Transit Administration (FTA);*
 The Fertilizer Institute;
 High Speed Ground Transportation Association;
 Institute of Makers of Explosives;
 International Association of Machinists and Aerospace Workers;
 International Brotherhood of Electrical Workers (IBEW);
 Labor Council for Latin American Advancement;*
 League of Railway Industry Women;*
 National Association of Railroad Passengers;
 National Association of Railway Business Women;*
 National Conference of Firemen & Oilers;
 National Railroad Passenger Corporation (Amtrak);
 National Railroad Construction and Maintenance Association (NRCMA);
 National Transportation Safety Board (NTSB);*
 Railway Passenger Car Alliance;
 Railway Supply Institute;
 Safe Travel America;
 Secretaria de Comunicaciones y Transporte;*
 Sheet Metal Workers International Association;
 Tourist Railway Association Inc.;
 Transport Canada;*
 Transport Workers Union of America;
 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 the task is 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. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration.

If a working group comes to a unanimous consensus on recommendations for action, the proposal 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 members play an active

role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, 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 rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with 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. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA will proceed to resolve the issue through traditional rulemaking proceedings.

The Critical Incident Task Force (Task Force) was formed as part of the Medical Standards Working Group, and its task statement (Task No. 09-02) was accepted by RSAC on September 10, 2009. On July 2, 2010, FRA solicited bids for a grant to assess the current knowledge of post-traumatic stress interventions and to advance evidence-based recommendations for controlling the risks associated with traumatic exposures in the railroad setting. On March 11, 2011, FRA awarded the grant to the National Fallen Firefighters Foundation. On May 20, 2011, the Task Force was reformulated into an independent working group, the Critical Incident Working Group (CIWG). Task No. 09-02 (amended to reflect the new independent working group) specifies that the purpose of the CIWG is to provide advice regarding the development of implementing regulations for Critical Incident Stress Plans as required by the RSIA. The Task further assigns the CIWG to do the following: (1) define what a "critical incident" is that requires a response; (2) review available data, literature, and standards of practice concerning critical incident programs to determine appropriate action when a railroad employee is involved in, or directly witnesses, a critical incident; (3) review any evaluation studies available for existing railroad critical incident programs; (4) describe program elements appropriate for the rail environment, including those requirements set forth in the RSIA; (5) provide an example of a suitable plan (template); and (6) assist in the preparation of an NPRM.

The CIWG met on June 24, 2011; September 8-9, 2011; October 11-12, 2011; and December 13, 2011. At the conclusion of the December 2011 meeting, an informal task force was formed to consider the substantive agreements made by the CIWG and to draft regulatory language around those agreements for the CIWG's consideration and vote. The small task force presented the language to the full CIWG for an electronic vote on August 6, 2012. The CIWG reached a consensus on all but one item⁸ and forwarded a proposal to the full RSAC on August 21, 2012. RSAC voted to approve the CIWG's recommended text on September 27, 2012, and that recommended text provided the basis for this NPRM. While the CIWG did discuss a general template flow chart of a suitable

⁸ Consensus was not reached on the issue of whether a railroad should be required to provide labor organizations' general chairpersons (in addition to the international/national president of the labor organization) with a copy of a railroad's critical incident stress plan.

critical incident stress plan, as recommended by the Grantee's Final Report, a specific model plan that could be adopted and adapted by railroads was not developed by the CIWG. Instead, the CIWG focused its efforts on the definition of critical incident and the program elements essential for the proposed regulatory text.

In addition to FRA staff, the members of the CIWG include the following:

Association of American Railroads (AAR), including members from BNSF Railway Company (BNSF), Canadian National Railway (CN), Canadian Pacific Railway (CP), CSX Transportation, Inc. (CSX), The Kansas City Southern Railway Company (KCS), Norfolk Southern Railway Company (NS), Northeast Illinois Regional Commuter Railroad Corporation (Metra), and Union Pacific Railroad Company (UP); American Public Transportation Association (APTA), including members from Greater Cleveland Regional Transit Authority; Long Island Rail Road (LIRR); MTA - Metro-North Railroad; and Southern California Regional Rail Authority (SCRRA); ASLRRRA (representing short line and regional railroads); American Train Dispatchers Association (ATDA); Brotherhood of Locomotive Engineers and Trainmen (BLET); Brotherhood of Maintenance of Way Employees Division (BMWED); Brotherhood of Railroad Carmen (BRC)/ Transportation Communications International Union (TCIU); Brotherhood of Railroad Signalmen (BRS); National Railroad Construction and Maintenance Association (NRCMA); National Railroad Passenger Corporation (Amtrak); and United Transportation Union (UTU).

Staff from DOT's John A. Volpe National Transportation Systems Center attended all of the meetings of the CIWG and contributed to the technical discussions. FRA has greatly benefited from the open, informed exchange of information during the meetings. In developing this NPRM, FRA relied heavily upon the work of the CIWG.

9. Payments or gifts to respondents.

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

10. Assurance of confidentiality.

There is no information of a private or confidential nature requested to be submitted in this proposed rule. Thus, FRA offers no assurances of confidentiality.

11. Justification for any questions of a sensitive nature.

There are no questions or information of a sensitive nature, or data that would normally be considered private matters contained in this rule.

12. Estimate of burden hours for information collected.

Note: Respondent universe consists of approximately 7 Class I railroads and 30 commuter and intercity railroads. One of the commuters is operated and reported by Amtrak. Two of the railroads would not be included as FRA defines a commuter railroad to mean a railroad, as described by 49 U.S.C. 20102(2), including public authorities operating passenger train service, that provides regularly-scheduled passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979. Therefore, there are approximately 27 commuter and intercity passenger railroads that will be impacted by requirements of this proposed rule. Including the Class I railroads, a total of 34 railroads will be affected by the proposed rule.

Employees covered by this proposed rule include railroad employees subject to the Hours of Service Laws at 49 U.S.C. 21103 (i.e., train employees not subject to Subpart F of 49 CFR Part 228 regarding the hours of service of train employees engaged in commuter or intercity rail transportation); railroad employees subject to the Hours of Service Laws at 49 U.S.C. 21104 (signal employees); railroad employees subject to the Hours of Service Laws at 49 U.S.C. 21105 (dispatching service employees); railroad employees who are subject to the Hours of Service regulations at Subpart F 49 CFR Part 228 (regarding the hours of service of train employees engaged in commuter or intercity rail transportation); railroad employees who inspect, install, repair, or maintain right-of-way or structures, and railroad employees who inspect, install, repair, or maintain locomotives, passenger cars, or freight cars. Thus, a total of approximately 170,000 employees will be affected by this proposed rule.

§ 272.5 General duty.

A railroad subject to this Part shall adopt a written critical incident stress plan approved by the Federal Railroad Administration under § 272.103 and shall comply with that plan. Should a railroad subject to this Part make a material modification to the approved plan, the railroad shall adopt the modified plan approved by the Federal Railroad Administration under § 272.103 and shall comply with that plan, as revised.

The burden for this requirement is included under that of § 272.103 below. Consequently, there is no additional burden associated with this requirement.

§ 272.7 Coverage of a critical incident stress plan.

The critical incident stress plan of a railroad subject to this Part shall state that it covers, and shall cover, the following individuals employed by the railroad if they are directly involved (as defined in § 272.109) in a critical incident:

- (a) Railroad employees who are subject to the hours of service laws at—
 - (1) 49 U.S.C. 21103 (that is, train employees not subject to subpart F of Part 228 of this Chapter regarding the hours of service of train employees engaged in commuter or intercity rail passenger transportation);
 - (2) 49 U.S.C. 21104 (signal employees); or
 - (3) 49 U.S.C. 21105 (dispatching service employees);
- (b) Railroad employees who are subject to the hours of service regulations at Subpart F of Part 228 of this chapter (regarding the hours of service of train employees engaged in commuter or intercity rail passenger transportation);
- (c) Railroad employees who inspect, install, repair, or maintain the right of way or structures; and
- (d) Railroad employees who inspect, repair, or maintain locomotives, passenger cars, or freight cars.

The burden for this requirement is included under that of § 272.103 below. Consequently, there is no additional burden associated with this requirement.

§ 272.101 Content of a critical incident stress plan.

Each critical incident stress plan under this Part shall include, at a minimum, provisions for --

- (a) Informing each directly-involved employee as soon as practicable of the stress relief options that he or she may request;
- (b) Offering timely relief from the balance of the duty tour for each directly-involved employee, after the employee has performed any actions necessary for the safety of persons and contemporaneous documentation of the incident;
- (c) Offering timely transportation to each directly-involved employee's home terminal, if necessary;
- (d) Offering counseling, guidance, and other appropriate support services to each directly-involved employee;

(e) Permitting relief from the duty tour(s) subsequent to the critical incident, for an amount of time to be determined by each railroad, if requested by a directly-involved employee as may be necessary and reasonable;

(f) Permitting each directly-involved employee such additional leave from normal duty as may be necessary and reasonable to receive preventive services or treatment related to the incident or both; and

(g) Addressing how the railroad's employees operating or otherwise working on track owned by or operated over by a different railroad will be afforded the protections of the plan.

The burden for this requirement is included under that of § 272.103 below. Consequently, there is no additional burden associated with this requirement

§ 272.103 Submission of critical incident stress plan for approval by the Federal Railroad Administration.

(a) Each railroad subject to this Part shall submit to the Federal Railroad Administration, Office of Railroad Safety, 1200 New Jersey Avenue, SE, Washington, DC 20590, for approval, the railroad's critical incident stress plan no later than 12 months after the effective date of the final rule.

FRA believes that each affected Class I railroad, intercity passenger railroad, and commuter railroad already provides their employees with assistance and intervention following traumatic events. Most of these programs have been in existence for a number of years, usually as part of a railroad's "Employee Assistance Program" (EAP). These railroads then already have critical incident stress plans. Consequently, there is no additional burden associated with this requirement.

Additionally, FRA estimates that all 34 railroads will need to update/modify their critical incident stress plans to meet this proposed rule's requirements. It is estimated that it will take approximately 16 hours to update/modify each critical incident stress plan. Total annual burden for this requirement is 544 hours.

Respondent Universe:	34 railroads
Burden time per response:	16 hours
Frequency of Response:	On occasion
Annual number of Responses:	34 modified critical incident stress plans
Annual Burden:	544 hours

Calculation: 34 modified critical incident stress plans x 16 hrs. =
544 hours

(b) Each railroad subject to this Part shall --

(1) Simultaneously with its filing with FRA, serve, either by hard copy or electronically, a copy of the submission filed pursuant to paragraph (a) of this section or a material modification filed pursuant to paragraph (e) of this section on the international/national president of any non-profit employee labor organization representing a class or craft of the railroad's employees subject to this Part; and

There are approximately five (5) labor organizations and 34 affected railroads. As a result, FRA estimates that approximately 170 critical incident stress plan copies will be served on the president of international/national labor organizations by covered railroads under the above requirement. It is estimated that it will take approximately five (5) minutes to send/serve each critical incident stress plan copy on each international/national labor organization president. Total annual burden for this requirement is 14 hours.

Respondent Universe:	34 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	170 critical incident stress plan copies
Annual Burden:	14 hours

Calculation: 170 critical incident stress plans copies x 5 min. = 14 hours

(2) Include in its submission filed pursuant to paragraph (a) of this section or a material modification filed pursuant to paragraph (e) of this section a statement affirming that the railroad has complied with the requirements of paragraph (b)(1) of this section, together with a list of the names and addresses of the persons served.

The burden for the above requirement is already included in the burden for paragraph (a) above. Consequently, there is no additional burden associated with this requirement.

(c) Not later than 90 days after the date of filing a submission pursuant to paragraph (a) of this section or a material modification pursuant to paragraph (e) of this section, a labor organization representing a class or craft of the railroad's employees subject to this Part may file a comment on the submission or material modification.

(1) Each comment shall be submitted to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590; and

FRA estimates that approximately 65 comments will be filed by labor organizations regarding railroad critical incident stress plans or material modifications to critical incident stress plans under the above requirement. It is estimated that it will take approximately three (3) hours to complete each comment and file it with FRA. Total annual burden for this requirement is 195 hours.

Respondent Universe:	34 railroads
Burden time per response:	3 hours
Frequency of Response:	On occasion
Annual number of Responses:	65 comments
Annual Burden:	195 hours

Calculation: 65 comments x 3 hrs. = 195 hours

(2) The commenter shall certify that a copy of the comment was served on the railroad.

FRA estimates that approximately 65 certifications will be completed by commenters under the above requirement. It is estimated that it will take approximately 15 minutes to complete each certification. Total annual burden for this requirement is 16 hours.

Respondent Universe:	34 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	65 certifications
Annual Burden:	16 hours

Calculation: 65 certifications x 15 min. = 16 hours

(d) A critical incident stress plan is considered approved for purposes of this Part if and when FRA notifies the railroad in writing that the critical incident stress plan is approved, or 120 days after FRA has received the railroad's critical incident stress plan, whichever occurs first.

(e) After FRA's initial approval of a railroad's critical incident stress plan, if the railroad makes a material modification of the critical incident stress plan, the railroad shall submit to FRA for approval a copy of the critical incident stress plan as it has been revised to reflect the material modification within 30 days of making the material modification.

The burden for the above requirement is already included in the burden for paragraph (a) above. Consequently, there is no additional burden associated with this requirement.

(f) Upon FRA approval of a railroad’s critical incident stress plan and any material modification of the critical incident stress plan, the railroad must make a copy of the railroad’s plan and the material modification available to the railroad’s employees identified in § 272.7.

FRA estimates that approximately 170,000 approved critical incident stress plan copies/materially modified critical incident stress plan copies will be made available to railroad employees under the above requirement. It is estimated that it will take approximately five (5) minutes to provide railroad employees with a copy of the approved critical incident stress plan or materially modified critical incident stress plan. Total annual burden for this requirement is 14,167 hours.

Respondent Universe:	170,000 railroad employees
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	170,000 critical incident stress plan/modified plan copies
Annual Burden:	14,167 hours

Calculation: 170,000 critical incident stress plans/modified plan copies x 5 min. = 14,167 hours

(g) Each railroad subject to this part must make a copy of the railroad’s plan available for inspection and reproduction by the Federal Railroad Administration.

FRA estimates that its inspectors will request the 34 railroads affected by this proposed rule to provide a copy of their critical incident stress plans approximately four times per year. Thus, a total of 136 copies of the railroad’s plan will be made for FRA inspectors under the above requirement. It is estimated that it will take approximately five (5) minutes to make the necessary copy. Total annual burden for this requirement is 11 hours.

Respondent Universe:	34 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	136 critical incident stress plan/modified plan copies

Annual Burden:

11 hours

Calculation: 136 critical incident stress plans/modified plan copies x 5 min. = 11 hours

Total annual burden for this requirement is 14,947 hours (544 + 14 + 195 + 16 + 14,167 + 11).

§ 272.105 Option to file critical incident stress plan electronically.

(a) Each railroad to which this Part applies is authorized to file by electronic means any critical incident stress plan submissions required under this part in accordance with the requirements of this section.

FRA believes that all of the affected railroads have Internet access and an e-mail address and would be able to meet the minimum requirements for electronic submission. Consequently, there is no additional burden associated with this requirement.

(b) Prior to the railroad submitting its first critical incident stress plan submission electronically, the railroad shall provide the Associate Administrator with the following information in writing:

(1) The name of the railroad;

(2) The names of two individuals, including job titles, who will be the railroad's points of contact and will be the only individuals allowed access to FRA's secure document submission site;

(3) The mailing addresses for the railroad's points of contact;

(4) The railroad's system or main headquarters address located in the United States;

(5) The email addresses for the railroad's points of contact; and

(6) The daytime telephone numbers for the railroad's points of contact.

(c) A railroad that electronically submits an initial critical incident stress plan, informational filing, or new portions or revisions to an approved critical incident stress plan required by this Part shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email.

(d) A request for electronic submission or FRA review of written materials shall be addressed to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

FRA estimates that it will receive approximately 34 requests for electronic submission/review of written materials under the above requirement. It is estimated that each request for electronic submission will take approximately 60 minutes to complete. Total annual burden for this requirement is 34 hours.

Respondent Universe:	34 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	34 requests for electronic submission /review of written materials
Annual Burden:	34 hours

Calculation: 34 requests for electronic submission /review of written materials x 60 min. = 34 hours

Total annual burden for this entire requirement is 34 hours.

Total annual burden under this entire information collection is 14,981 hours.

13. Estimate of total annual costs to respondents.

Besides the burden hours listed in the answer to question number 12 above, there would be some additional costs to respondents (as noted in the regulatory impact analysis accompanying this proposed rule). Although not a proposed rule requirement, FRA believes that additional training would be provided by railroads encouraging supervisors that respond to critical incidents to inform their employees of all their options. Such training would also help supervisors to understand some of psychological attention the employees may require.

FRA estimates that there is one supervisor for every 150 employees. Since there is an estimated 170,000 employees covered by this proposed rule, approximately 1,130 supervisors would be trained. The cost to train each railroad employee supervisor is estimated to \$285.05 [\$100 (hotel room) + \$61.68 (wage rate) x 3 hours = \$285.05]. Therefore, the cost to train all 1,130 supervisors during the first year would be **\$322,107**. FRA believes that training will be conducted in classes of 10; consequently, there would be 113 training classes. FRA estimates that it will cost \$2,522 per presentation, including all the time and lodging required for an EAP specialist. In total, for all 113 training classes, the estimated additional cost would be **\$284,986** in the first year.

FIRST YEAR TRAINING COSTS = \$322,107

FIRST YEAR PRESENTATION COSTS = \$284,986

TOTAL FIRST YEAR COST = \$607,093

SUBSEQUENT YEARS

TRAINING COSTS

\$42,236 -- 42 New Supervisors trained per year (**replacement supervisors**; assumes 3.7% retirement rate per year). In determining the number of training classes, FRA believes that each Class I railroad would have a training session each year. FRA also believes that five (5) other training sessions would take place each year amongst the commuter and intercity passenger railroads. Overall, each year FRA believes that 12 training classes would take place. FRA expects the number of participants in each class would be significantly smaller than the initial year (as the majority of supervisors have been already trained). Thus, 42 supervisors trained x \$285.05 = \$11,972 + [\$2,522 (presentation costs) x 12 = \$42,236.

\$3,092 – 2 New Supervisors for Start-up Railroad (2 trained supervisors x \$285.05 = \$570 + \$2,522 (presentation costs) = \$3,092

\$17,425 – Follow-up or Periodic Training (once every 3 years) for 1,130 supervisors x \$61.68 (wage rate) x 15 minutes = \$17,425

SUSEQUENT YEARS TOTAL COST = \$62,753

AVERAGE YEARLY COST (over 3 years) = \$244,200

14. Estimate of Cost to Federal Government.

Listed below are the costs associated with the information collection requirements:

\$47,916 Initial Review of plans (1 GS-14/10 staff member review of 34 railroad plans @ 12 hours each = 408 hours x \$117.44 per hour salary and benefits).

\$18,790 Additional review and respond to railroads (1 GS-14 staff member; total of 160 hours x \$117.44 = \$18,790.40

\$1,727 Review of 1 New Start-up Railroad Plan (1 GS-14/10 staff member

x13 hours review time x \$117.44 = \$1,526.72 + \$200 (incidentals) =
\$1,726.72

\$2,000 Miscellaneous Costs

\$70,433 TOTAL COST

15. Explanation of program changes and adjustments.

This is a new collection of information solely associated with FRA's new Part 272 proposed rule. The total burden requested for this submission amounts to **14,981 hours**. By definition, the entire requested burden is a **program change**.

As noted in the answer to question 13 above, additional costs to respondents amount to **\$607,093** in the first year and **\$62,753** in subsequent years. Consequently, over the next three years, the average cost to respondents comes to \$244,200 per year.

16. Publication of results of data collection.

There are no plans for publication of this submission.

The information to be collected will be used by specialists of the Office of Safety, as well as field personnel, to enforce the regulation. The information collected may be incorporated into the FRA database, where relevant and appropriate.

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 a Notice in the Federal Register.

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports DOT's main strategic goal, transportation safety. If railroads did not have critical incident stress plans, there might be more rail accidents/incidents with increased fatalities, injuries, and property damage because railroad employees who were involved in a critical incident and who are possibly suffering from acute stress disorder (ASD) or post-traumatic stress disorder (PTSD) were not relieved of their duties in a timely fashion or did not receive the counseling, guidance, and other support services they need to perform their jobs in a safe and effective manner.

Railroad employee exposure, particularly locomotive engineers and conductors, to traumatic rail events -- and potentially traumatic events -- is well documented. Incursion events such as vehicular accidents at highway-rail grade crossings and pedestrian incursions onto the railroad right-of-way (frequently suicides) often involve fatalities and the injuries sustained may be gruesome. Locomotive engineers and conductors, because of their proximity to the accident scene, must often tend to the injured and secure the scene, compounding the extent and the duration of exposure. In particular, locomotive engineers may be alone in the cab when an on-the-track accident occurs. Crews are required to report the incident, secure the train, leave the train and examine the victims; they may provide first aid if victims are alive, and wait, sometimes for long periods, for assistance or instructions.

The proposed collection of information will allow FRA to ascertain whether railroads have essential and comprehensive critical incident stress plans to provide timely critical relief services to rail employees who experienced a critical incident or traumatic accident. The proposed rule's requirement that critical incident stress plans be disseminated to rail labor organizations will ensure that train crew members, signal workers, roadway workers (including maintenance of way and maintenance of structure employees) who experienced a critical incident will be aware of the counseling, guidance, and other support services available to them from their employers to effectively counteract the ASD or PTSD that might be potentially suffering from or are suffering from. This will reduce the likelihood of their staying on the job while suffering severe ASD or PTSD symptoms and thus reduce the likelihood of increased numbers of rail collisions, derailments, and other accidents/incidents (with more injuries to themselves and the public) caused by the inability to perform their duties safely and effectively.

In short, this collection of information promotes and enhances national rail safety by promoting a better and healthier working environment for critical railroad employees, and

thus serves as a vital component in FRA's multi-faceted rail safety program. It is essential in further assisting FRA to fulfill its primary agency mission and objective as well as Department's primary mission of transportation safety.

In this information collection and indeed all its information collection activities, it is worth noting that FRA seeks to do its very best to fulfill DOT Strategic Goals and to be an integral part of One DOT.