

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

Summary of Submission

- The information collection associated with this Final Rule is **new** and is entirely associated with FRA's new Part 270 that will be added to chapter 49 of the CFR.
- FRA published a Notice of Proposed Rulemaking titled System Safety Program in the Federal Register on **September 7, 2012**. See 77 FR 55372.
- FRA is publishing this Final Rule titled System Safety Program in the Federal Register on **August 12, 2016**. See 81 FR 53849.
- The total number of burden **hours requested** for this submission is **9,365 hours**.
- The total number of **responses requested** for this submission is **1,240**.
- Total **program changes** amount to **9,365 hours** and **1,240 responses**.
- 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. 28-53).

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 an SSP. 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. Similar components can also be found in this SSP rule.

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 (APTA System Safety Manual). 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](http://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 System Safety Manual. *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 System Safety Manual was published on May 15, 2006. As mentioned previously, the APTA System Safety Manual 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 the APTA System Safety Manual.

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. Therefore, the requirements of FTA's existing Part 659 would not overlap with any of the requirements in the SSP regulation. 49 CFR 659.3 and 659.5. FRA has always maintained a close working relationship with FTA and the implementation of the Part 659 program and uses many of the same concepts from the Part 659 program in this rule.

The 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 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 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 rule are modeled after APTA's System Safety Manual. The majority of railroads, therefore, will have already implemented those elements. The rule would also implement Section 109 of the RSIA,

which addresses the protection of information in railroad safety risk analyses.

In sum, FRA is issuing this final rule to mandate commuter and intercity passenger railroads to develop and implement a system safety program (SSP) to improve the safety of their operations. An SSP is a structured program with proactive processes and procedures developed and implemented by commuter and intercity passenger railroads to identify and mitigate or eliminate hazards and the resulting risks on each railroad's system. A railroad has a certain amount of flexibility to tailor an SSP to its specific operations. An SSP will be implemented by an SSP plan and submitted to FRA for approval. FRA will audit a railroad's compliance with its SSP.

**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 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 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 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 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 the proposed rule, FRA requested public comment on whether electronic submission of SSP plans to the agency should be permitted and, if so, what type of process FRA should use to accept such submissions.

All of the commenters who responded to this request supported electronic submission. Consequently, section 270.201(e) permits all documents required to be submitted under this Part to be submitted electronically. Thus, 100 percent of responses can be submitted electronically, if railroads and labor organizations so choose. Further, to provide guidance on electronic submission, FRA added Appendix C, Procedures for Submission of System Safety Program Plans and Statements from Directly Affected Employees.

**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 new 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.**

The “universe” of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this final rule. For this final rule there is only one type of small entity that is affected: small railroads.

“Small entity” is defined in 5 U.S.C. 601. Section 601(6) defines “small entity” as having “the same meaning as the terms ‘small business’, ‘small organization’ and ‘small governmental jurisdiction’ ” as defined by section 601. Section 601(3) defines “small business” as having the same meaning as “small business concern” under section 3 of the Small Business Act. Section 601(4) defines “small organization” as “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”



Section 601(5) defines “small governmental jurisdiction” as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”

The U.S. Small Business Administration (SBA) stipulates “size standards” for small entities. It provides that the largest a for-profit railroad business firm may be (and still classify as a “small entity”) is 1,500 employees for “Line-Haul Operating” railroads, and 500 employees for “Short-Line Operating” railroads.<sup>1</sup>

Federal agencies may adopt their own size standards for small entities in consultation with SBA, and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad.<sup>2</sup> FRA used this definition for this rule making in preparation of the proposed rule along with the stipulation on government entities or agencies that serve small communities as stated above.

Commuter and intercity passenger railroads would have to comply with all provisions of Part 270; however, the amount of effort to comply with the rule is commensurate with the size of the entity. Most of the passenger railroads affected by this rulemaking already participate in the American Public Transportation Association (APTA) 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. 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 final rule. Thus, the economic impact of the final rule is generally incremental in nature for documentation of existing information and inclusion of certain elements not already addressed by railroads in their programs.

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 commuter 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

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<sup>1</sup> “Table of Size Standards,” U.S. Small Business Administration, January 31, 1996, 13 CFR Part 121.

<sup>2</sup> See 68 FR 24891, May 9, 2003.

entities: Saratoga & North Creek Railway (SNC) and the Hawkeye Express (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, and based on the definition, they are not considered to be small entities.

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 six (6) bi-level passenger cars used for this small passenger operation which runs on average seven (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 believes that there will be new, startup, passenger railroads, that will be formed during the twenty-year analysis period. FRA is aware of two passenger railroads that intend to commence operations in the near future. 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.

FRA estimates that the total cost for the final rule will be \$4.7 million (undiscounted)—\$2.3 million (discounted at 7 percent), or \$3.4 million (discounted at 3 percent), for the railroad industry over a 20-year period. 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 \$1,590 and \$3,346 annualized (non-discounted) to comply with the regulation, depending on the existing level of compliance and discount rate. This estimate was prepared and presented in the IRFA for the NPRM and adjusted in the final rule for revised cost factors applied in the Regulatory Impact Analysis, e.g., inflating wages and salaries at 1.07 percent per annum.

Since the time that the NPRM IRFA was prepared, both of the two small entities herein have produced preliminary SSP plans. That plan preparation, with the assistance of FRA and others, will have accomplished much of the work effort envisioned for preparing the formal SSP Plans once the Rule is in effect.

Based on this, FRA concludes that the expected burden of this final rule will not have a significant impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. FRA invited all interested parties to submit data and information regarding the potential economic impact that will result from adoption of the proposals in the NPRM and has addressed those comments in determining that, although a substantial number of small railroads will be affected by this final rule, none of these entities will be significantly impacted.

Also, it should be noted that this final rule does not apply to the following:

- (1) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation;
- (2) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation;
- (3) Operation of private cars, including business/office cars and circus trains; or
- (4) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (i.e., plant railroads, as defined in § 270.5).

## **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 this 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 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 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.**

FRA published 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 received 19 written comments in response to the NPRM, including comments from members of the railroad industry, trade organizations, labor organizations, as well as members of the general public. Specifically, comments were received from the following organizations: Alaska Railroad Corporation, American Association for Justice, Amtrak, Association of American Railroads (AAR), American Public Transportation Association (APTA), Maelstrom Society, National Safety Council, New York State Metropolitan Transportation Authority (MTA), Northeast Illinois Regional Commuter Railroad Corporation (Metra), Parsons Brinkerhoff, Inc., and Trinity Railway Express. Interested labor organizations (Labor Organizations) jointly filed a comment. The Labor Organizations included: American Train Dispatchers Association, Brotherhood of Locomotive Engineers and Trainmen, Brotherhood of Maintenance of Way Employees Division, Brotherhood Railway Carmen Division TCU/IAM, Sheet Metal, Air, Rail and Transportation Workers, and Transportation Workers Union of America (TWU).

Generally, all of comments submitted were in favor of SSP. While the comments varied on the structure and breadth of an SSP, there was agreement that a properly implemented SSP would increase safety on the railroad's operations. Overall, comments covered a variety of topics. There was one comment that pertained to the paperwork estimates included in the proposed rule pertaining to consultations under section 270.107. The Labor Organizations expressed concern with the amount of time estimated in the rule's

Paperwork Reduction Act analysis for the railroads to consult with the directly affected employees and the amount of time to prepare a statement under paragraph (b)(2). The Paperwork Reduction Act analysis estimated that each railroad would have four consultation meetings at four (4) hours each for a total of 16 hours and that a statement under paragraph (b)(2) would take 20 minutes to prepare. The Labor Organizations claim that these estimated time periods are too short and would result in an inconsequential amount of time for consultation on the contents of the plan.

FRA notes that the time periods in the Paperwork Reduction Act analysis were only estimates and comments were requested on these estimates. See 77 Fed. Reg. 55401. The Labor Organizations' comments do not provide suggested time periods that they believe are more appropriate. However, in this final rule, FRA has reevaluated the burdens under the Paperwork Reduction Act, and is providing new estimates based on the Labor Organizations' concerns.

There were also comments on the rule's information collection requirements. In response to the consultation process proposed in the NPRM under section 270.102 (now designated as § 270.107), FRA received comments from AAR, APTA, Labor Organizations, Metra, NY MTA, and an individual commenter. The Labor Organizations commented that FRA improperly classified the process under section 103(g) of RSIA as one of consultation. The Labor Organizations believe that section 103(g) requires a process of negotiation or bargaining with the directly affected employees, not one of consultation.

Nothing in the text of section 103(g) requires railroads to negotiate or bargain with directly affected employees; rather, the statute requires the railroads to "consult with, employ good faith and use [their] best efforts to reach agreement with" directly affected employees (including the Labor Organizations) on the contents of the SSP plan. 49 U.S.C. 20156(g)(1) Throughout the RSAC discussions, FRA referred to this process as one of consultation, not one of negotiation or bargaining. The proposed text in the NPRM is consistent with section 103(g), and FRA does not agree with the Labor Organizations' belief that the statute requires a process of negotiation or bargaining. Requiring a process of negotiation and bargaining would be beyond the scope of section 103(g).

APTA believes that the consultation requirements in the final rule should mirror text in section 103(g), and nothing more is needed. Specifically, APTA believes that anything more than the statutory text would be counter-productive, interfere with business relationships, and blur the line between FRA and the National Labor Relations Board's (NLRB) responsibilities.

FRA disagrees. FRA believes that § 270.107 and the accompanying Appendix clarify and provide a workable statutory framework for the railroads. As for the blurring of

FRA's and NLRB's responsibilities, APTA did not provide any examples in which FRA proposed to intrude upon NLRB's responsibilities. It isn't clear, therefore, to which NLRB responsibilities APTA is referring.

APTA also requested that the consultation process be modified so that the process provides a structure for working collaboratively in the development of the SSP and a methodology to handle disputes or reasonable differences in opinion on how to implement the plan.

FRA believes that § 270.107 and Appendix B provide a workable, but flexible framework so that the parties can work collaboratively on the development of an SSP and handle any disputes that arise. APTA does not provide any suggestions regarding what type of modifications should be made, so it is unclear to FRA what in the rule should be modified from the NPRM.

NY MTA commented that the consultation process should not even begin until after the date the protections in § 270.105 become applicable because protection is needed to ensure that railroads and employees are not discouraged from actively identifying hazards.

FRA agrees that the consultation regarding the substance of an SSP plan could not fully begin until after the date the § 270.105 protections become applicable, which is why the meeting required by paragraph (a)(3) is required only to address the consultation process, not the substance of the SSP plan.

An individual commenter requested that the consultation requirements be more detailed. The commenter suggested adding the following requirements: (1) visibly post the SSP requirements under this part before the SSP is created because, according to the commenter, the parties tend to get "dug in" once the consultation begins and everyone has expressed their position; (2) hold biannual or quarterly meetings between parties regarding safety hazards and risks and provide the meeting minutes to FRA; (3) have a system in which perceived unsafe work orders can be challenged; (4) do not allow a fully implemented SSP to be changed in a way that reduces safety without FRA approval; and (5) establish a committee to make recommendations on uniform minimum standards for working on the right-of-way, including intercity rail.

As for the commenter's first and second suggested requirements, FRA seeks to provide the railroads and their directly affected employees the flexibility to tailor the consultation process to their specific operations. Therefore, adopting these requirements would only take away some of this flexibility. The commenter's third suggested requirement is actually a type of mitigation measure a railroad may put in place to address identified hazards and resulting risks. However, FRA is not requiring specific mitigation measures under this rule. Consequently, FRA declines to adopt the suggested mitigation measure.

The commenter's fourth suggested requirement raises an issue that is addressed in § 270.201(c). Finally, regarding commenter's fifth suggested requirement, FRA's RSAC has established working groups and task forces to address safety across a wide range of areas, including right-of-way safety. In fact, the safety of roadway workers along the right-of-way is specifically addressed in FRA's regulations at 49 CFR Part 214. Accordingly, FRA believes it unnecessary to adopt this suggested requirement.

In the NPRM, § 270.102(b)(3) proposed to require that the consultation statement identify any provision that would affect a provision of a collective bargaining agreement between the railroad and a non-profit employee labor organization and then explain how the railroad's SSP plan would affect it. In commenting on the NPRM, AAR believes this proposal is unnecessary and requested that FRA delete it. FRA agrees and has not included this provision in the final rule. Generally, FRA is not involved in the collective bargaining process and does not intend to become involved in the process because of this rule. However, if the labor organizations believe that the railroad's SSP plan violates the collective bargaining agreement, they may include this as part of their statement pursuant to paragraph (c)(1) of this section.

Under paragraph (b)(3) in the final rule, proposed as paragraph (b)(4), the consultation statement must include a service list containing the name and contact information for the international/national president of any non-profit employee labor organization representing directly affected employees and any directly affected employee who significantly participated in the consultation process independently of a non-profit labor organization. This paragraph also requires a railroad (at the same time it submits its proposed SSP plan and consultation statement to FRA) to provide individuals identified in the service list a copy of the SSP plan and consultation statement. This service list will help FRA determine whether the railroad has complied with the § 270.107(a) requirement to consult with its directly affected employees. Requiring the railroad to provide individuals identified in the service list with a copy of its submitted plan and consultation statement also serves to notify those individuals that they have 30 days under § 270.107(c)(2) to submit a statement to FRA if they were not able to come to reach agreement with the railroad on the contents of the SSP plan.

As proposed in the NPRM, this paragraph would have required the consultation statement to include a service list containing the names and contact information for the international/national president and general chairperson of the non-profit employee labor organizations 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. In its comments on the NPRM, AAR requested that the service list be limited to the international/national president of any non-profit employee labor organization representing a class or craft of the railroad's directly affected employees. AAR believes that including the general



chairperson of these labor organizations and any labor organization representative who participated in the consultation process would be overly burdensome and that a railroad's inadvertent failure to serve one of the parties listed could be used against them and lead to FRA not approving the plan. AAR cites certain regulations of the Surface Transportation Board (STB) for which, when notification of labor unions is required, notice is given to the national office of the labor unions of the employee affected. See 49 CFR §§ 1150.32(e) and 1150.42(e). AAR believes that service on the union presidents is sufficient because the unions are capable of notifying the necessary employees.

FRA agrees. To minimize the paperwork burden and the potential for confusion, the service list under paragraph (b)(3) contains only the following: (1) the international/national president of any non-profit employee labor organization representing directly affected employees and (2) any directly affected employee who significantly participated in the consultation process independently of a non-profit employee labor organization. When directly affected employees are represented by a non-profit employee labor organization, limiting service to the president of the labor organization serves to ensure that the employees receive the same version of the SSP plan, thereby minimizing potential confusion.

In commenting on the NPRM, the Labor Organizations requested that, when a railroad submits its SSP plan and consultation statement to FRA, the railroad also "simultaneously" send a copy of these documents to all individuals identified in the service list.

FRA agrees and has adopted this suggestion to ensure the directly affected employees receive the SSP plan and consultation statement at approximately the same time FRA does so that they have sufficient time to submit a statement to FRA pursuant to paragraph (c)(2).

Finally, FRA notes that APTA, in commenting on the NPRM, believes that paragraph (b) applies different standards to the parties (railroads and directly affected employees) and presumes that failure to reach agreement would be based on the railroad's failure to use good faith. APTA recognizes that RSIA allows directly affected employees to file a statement with FRA regarding the areas of disagreement. However, APTA believes that paragraph (b) effectively shifts the burden to the railroads. APTA also claims that paragraph (b) presumes that, if no agreement is reached, the SSP plan is deficient and the railroad failed to act in good faith, instead of considering the possibility that the SSP plan is adequate but the parties simply disagree. APTA, therefore, requests that proposed paragraphs (b)(1) through (3) not be included in the final rule.

FRA has not included proposed paragraph (b)(3) in this final rule. FRA also makes clear that, if there is disagreement between the railroad and certain directly affected employees, including their union representatives, the failure to reach an agreement does not, in itself, lead to a presumption that the railroad acted in bad faith or failed to use best efforts.

Rather, the consultation statement required by paragraph (b) is the railroad's opportunity to explain why it believes there was disagreement. If paragraphs (b)(1) and (2) were not included in the final rule, as requested by APTA, FRA would only have the statement from the directly affected employees as an explanation as to why agreement was not reached. In order to make a balanced and well-informed decision on whether the railroad used good faith and best efforts, FRA believes it necessary to have a statement from both the railroad and the directly affected employees. Further, FRA may approve a plan even if there is disagreement between the parties, as long as FRA can determine that the railroad consulted in good faith and used its best efforts to reach agreement. In this regard, it would be more difficult for FRA to make this determination without the consultation statement required by paragraphs (b)(1) and (2).

There were also comments on the timeline for railroads filing their SSP plans under § 270.201. Section 270.201 (a)(1) requires that each railroad submit one copy of its SSP plan to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer no later than 395 days after the effective date of the final rule. The commenters believe that 395 days after the effective date of the rule is not a sufficient amount of time for a railroad to draft its SSP and conduct the necessary consultation with directly affected employees pursuant to § 270.107. The commenters point out that, since the protections under § 270.105 do not go into effect until 365 days after the publication date of the rule, the requirement that the railroad submit its plan to FRA 395 days after the effective date provides the railroads with only 30 days to conduct consultations regarding the substance of the SSP.

To address these concerns, FRA has extended this submission deadline. The final rule requires a railroad to submit its SSP plan 180 days after the effective date of the protections. Per the RSIA, the protections cannot go into effect until one (1) year after adoption of the final rule. The final rule will be considered to be adopted upon publication in the Federal Register. However, it will not be effective until 60 days after publication. Therefore, 365 days after publication, the railroad will have 180 days to submit its SSP plans to FRA. In other words, the railroad will submit its SSP plan to FRA 545 days after publication or 485 days after the effective date of the rule. FRA believes providing the railroads with additional time to submit their plans will allow for sufficient time to draft the SSP plan and conduct the necessary consultations with the directly affected employees pursuant to § 270.107.

Additionally, APTA raised concerns regarding the requirement that new starts submit their plans not less than 90 days before commencing operations. APTA believes this is not sufficient time if operations commence before the protections under § 270.105 are effective and, therefore, requested FRA consider extending the amount of time a railroad has to submit a plan before commencing operations. Under paragraph (a)(1), a railroad must have its SSP plan in place 90 days before commencing operations, or 545 days after the publication date of the final rule (i.e., 180 days after the date the protections of

§ 270.105 become applicable), whichever is later. This means that, if a new start is commencing operations before the date the protections of § 270.105 become applicable, the railroad will have at least until 180 days after the date the protections of § 270.105 become applicable to submit a plan, given that the later submission date will apply. Accordingly, FRA believes that the rule provides a sufficient amount of time for a new start to develop its SSP plan in consultation with its directly affected employees and submit the plan to FRA for approval.

Finally, there were comments concerning the protections provided under § 270.105. Under § 270.105(a), there are certain circumstances in which information will not be subject to discovery, admitted into evidence, or considered for other purposes in a Federal or State court proceeding for damages involving personal injury, wrongful death, or property damage. This information may not be used in such litigation when it is compiled or collected solely for the purpose of planning, implementing, or evaluating an SSP. Section 270.105(a) applies to information whether or not it is also in the Federal government's possession.

APTA requested that FRA extend the protections to information collected as part of programs that existed before the SSP regulation but were similar to an SSP. APTA pointed out that this information will now be collected under the SSP rule and, therefore, should receive the protections provided by paragraph (a). APTA believes that the exclusions in paragraph (b) will incentivize railroads with existing SSP-like programs to shut down their programs in anticipation of this Part because the information from the SSP-like programs will not be protected even if it were collected as part of the SSP under this part.

While FRA understands APTA's concern, FRA does not have the authority to provide retroactive protection to information that was compiled or collected before the effective date of the protections. The study mandated by RSIA only addresses information compiled and collected pursuant to the RSIA-mandated risk reduction program. Since an SSP is a risk reduction program mandated by the RSIA, the information protections can only be extended to information compiled or collected pursuant to an SSP. This means that any information compiled or collected before the effective date of the protections is not protected because that is not information compiled or collected pursuant to an SSP. Furthermore, since this is information compiled or collected before the effective date of the protections, the fact that after the effective date of the protections the information will be compiled or collected pursuant to the SSP does not mean that the information will then be protected. By virtue of the information being compiled or collected before the SSP rule, it is not information collected "solely" for the SSP that is protected by this rule. To clarify this distinction, FRA has included language in the exception in paragraph (b)(2).

On the other hand, the American Association for Justice (AAJ) and the Labor Organizations expressed concern that railroads may claim that they are immune from any

safety hazard claim or that a State law claim is preempted because FRA has approved a railroad's SSP plan. The Labor Organizations provided the example that, if an employee is injured because of defective ballast in a yard and a State has a regulation that sets forth walkway standards, a railroad may claim that the State law is preempted because FRA had approved the railroad's SSP which included walkway safety. Accordingly, the Labor Organizations suggested the following language to address this concern: "Neither the approval by FRA of a railroad's System Safety Plan nor its compliance by a railroad shall be admitted into evidence in a lawsuit seeking damages for alleged negligence, nor shall a railroad claim that a state law or regulation is preempted, or that a federal law or regulation is precluded, because of such FRA approval or a railroad's compliance."

FRA understands the concerns expressed by the commenters, and has included paragraph (b)(4) to address those concerns. The final rule requires the development of an SSP that must be approved by FRA. Under § 270.103(p), the SSP includes a risk-based hazard management program that establishes the processes used in the risk-based hazard analysis to identify hazards and corresponding risks on the railroad's system and the methods used to identify actions that mitigate or eliminate the hazards and corresponding risks. Section 270.201(a)(2) provides that the railroad shall not include in its SSP the risk-based hazard analysis that is conducted pursuant to § 270.103(q). Section 270.103(q) in turn provides that, once FRA approves a railroad's SSP, the railroad is to apply the risk-based hazard analysis to identify and analyze hazards on the railroad's system, determine the resulting risks, and identify and implement specific actions that will mitigate or eliminate the hazards. Since FRA will not be reviewing or approving the specific mitigation and elimination measures that a railroad may adopt to address the hazards and risks that it identifies, the final rule is not intended to preempt State standards of care regarding the specific risk mitigation and mitigation actions a railroad will implement under its SSP. Accordingly, § 270.201(b)(4) clarifies that FRA approval of a railroad's SSP plan under this final rule does not constitute approval of the specific mitigation and elimination measures that the railroad will implement pursuant to § 270.103(q)(2), and should not be construed as establishing a Federal standard of care regarding those specific actions.

### 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 (ASLRRA);
  - 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.

This 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 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.**

A System Safety Program (SSP) can be successful only if a railroad engages in a robust assessment of the hazards and resulting risks on its system. However, a railroad may be reluctant to reveal such hazards and risks if there is the possibility that such information may be used against it in a court proceeding for damages. Congress directed FRA to



conduct a study to determine if it was in the public interest to withhold certain information, including the railroad's assessment of its safety risks and its statement of mitigation measures, from discovery and admission into evidence in proceedings for damages involving personal injury and wrongful death. See 49 U.S.C. 20119. FRA contracted with an outside organization to conduct this study and the study concluded that it was in the public interest to withhold this type of information from these types of proceedings. See FRA, Study of Existing Legal Protections for Safety-Related Information and Analysis of Considerations for and Against protecting Railroad Safety Risk Reduction Program Information, docket no. FRA-2011-0025-0031, Oct. 21, 2011, available at <http://www.fra.dot.gov/Downloads/FRA-Final-Study-Report.pdf>. Furthermore, Congress authorized FRA, by delegation from the Secretary, to prescribe a rule, subject to notice and comment, to address the results of the study. See 49 U.S.C. 20119(b). The SSP NPRM addressed the study's results and set forth proposed protections of certain information from discovery, admission into evidence, or use for other purposes in a proceeding for damages. 77 FR 55406, Sep. 7, 2012.

Section 109 of the RSIA 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 an SSP and to any railroad safety risk reduction programs required by FRA for Class I railroads and railroads with inadequate safety performance, i.e., the Risk Reduction Program (RRP).

In section 109 of the RSIA (codified at 49 U.S.C. 20118-20119), 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. Formal rules for making FOIA requests to DOT agencies are set forth in 49 CFR Part 7. 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. One of those exemptions, known as Exemption 3, applies to records that are specifically exempted from disclosure by statute, if the statute requires that matters be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld. See 5 U.S.C. 552(b) (3) and 49 CFR 7.13(c)(3).

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. Section 109(c) also gives FRA the discretion to prohibit the

public disclosure of risk analyses or risk mitigation analyses obtained under other FRA regulations if FRA determines that the prohibition of public disclosure is necessary to promote public safety.

FRA believes that Section 109 of the RSIA qualifies as an Exemption 3 statute under FOIA.<sup>3</sup> FRA, therefore, believes that SSP records in its possession are exempted from mandatory disclosure under FOIA, unless one of two exceptions provided by the RSIA would apply. See 49 U.S.C. 20118(a)-(b). 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. As noted previously, 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, 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). 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](http://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

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<sup>3</sup> In 2009, Congress amended 5 U.S.C. 552(b)(3) to require Exemption 3 statutes to specifically cite to section 552(b)(3). See OPEN FOIA Act of 2009, Pub. L. No. 111-83, 123 Stat. 2142, 2184 (Oct. 28, 2009). Because this requirement applies only to statutes enacted after October 29, 2009, however, it does not apply to section 109 of the RSIA, which was enacted in October of 2008.

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 (Study), FRA, docket no. FRA-2011-0025-0031, Oct. 21, 2011. 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 rule protects 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 final rulemaking.*

**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 or eliminate 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 system safety program 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 below. Consequently, there is no additional burden associated with this requirement.*

### **System Safety Program Plan (§ 270.103)**

(a) General. (1) Each railroad subject to this Part shall adopt and fully implement a system safety program (SSP) 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 in its SSP plan a policy statement that endorses the railroad's system safety program. This policy statement shall:

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

(2) Describe the safety philosophy and safety culture of the railroad; and

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

(c) 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.

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

(2) Each railroad shall identify the persons that enter into a contractual relationship with the railroad to either perform significant safety-related services on the railroad's behalf or to utilize significant safety-related services provided by the railroad for purposes related to railroad operations.

(3) Each railroad shall describe the relationships and responsibilities between the railroad and: host railroads, contract operators, shared track/corridor operators, and persons utilizing or providing significant safety-related services as identified by the railroad pursuant to paragraph (d)(2) of this section.

(e) Railroad management and organizational structure. Each railroad shall set forth a statement in its SSP plan that describes the management and organizational structure of the railroad. This statement shall include a –

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

(2) A description of the railroad's management responsibilities within the system safety program;

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

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

(5) A description of the roles and responsibilities in the railroad's system safety program for each host railroad, contract operator, shared track/corridor operator, and any persons utilizing or providing significant safety-related services as identified by the railroad pursuant to paragraph (d)(2) of this section. As part of this description, the railroad shall describe how each host railroad, contractor operator, shared track/corridor operator, and any persons utilizing or providing significant safety-related services as identified by the railroad pursuant to paragraph (d)(2) of this section supports and participates in the railroad's system safety program, as appropriate.

(f) System safety program implementation process. Each railroad shall set forth a statement in its SSP plan that describes the process the railroad will use to implement its

system safety program. As part of the railroad's implementation process, the railroad must describe:

(i) Roles and responsibilities of each position that has significant responsibility for implementing the system safety program, including those held by employees and other persons utilizing or providing significant safety-related services as identified by the railroad pursuant to paragraph (d)(2) of this section; and

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

(2) A railroad's system safety program shall be fully implemented within 36 months of FRA's approval of the SSP plan pursuant to Subpart C.

(g) Maintenance, repair, and inspection program. (1) Each railroad shall identify and describe in its SSP plan the processes and procedures 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, passenger train/station platform interface (gaps), and traction power distribution systems.

(2) Each description of the processes and procedures 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.

(3) If a railroad has a manual or manuals that comply with all applicable federal regulations and that describe the processes and procedures that satisfy this section, the railroad may reference those manuals in its SSP plan. FRA approval of an SSP plan that contains or references such manuals is not approval of the manuals themselves; each manual must independently comply with applicable regulations and is subject to a civil penalty if not in compliance with applicable regulations.

(4) The identification and description required by this section of the processes and procedures used for maintenance, repair, and inspection of infrastructure and equipment directly affecting railroad safety is not intended to address and should not include procedures to address employee working conditions that arise in the course of conducting such maintenance, repair, and inspection of infrastructure and equipment directly affecting railroad safety as set forth in the plan. FRA does not intend to approve any specific portion of an SSP plan that relates to employee working conditions.

(h) Rules compliance and procedures review. Each railroad shall set forth a statement describing the processes and procedures 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 must identify:

(1) The railroad's operating and safety rules and maintenance 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 railroad safety laws and 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.

(i) System safety program employee/contractor training. (1) Each employee who is responsible for implementing and supporting the system safety program, and any persons utilizing or providing significant safety-related services will be trained on the railroad's system safety program.

(2) Each railroad shall establish and describe in its SSP plan the railroad's system safety program training plan. A system safety program training plan shall set forth the procedures by which employees that are responsible for implementing and supporting the system safety program, and any persons utilizing or providing 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 program, and have the requisite knowledge and skills to fulfill their responsibilities under the program.

(3) For each position identified pursuant to paragraph (f)(1)(i) of this section, the training plan shall describe the frequency and content of the system safety program training that the position receives.

(4) If a position is not identified under paragraph (f)(1)(i) of this section as having significant responsibility to implement the system safety program but the position is safety-related or has a significant impact on safety, personnel in those positions shall receive training in basic system safety concepts and the system safety implications of their position.

(5) Training under this Subpart may include, but is not limited to, classroom, interactive computer-based, or correspondence training.

(6) The railroad must keep a record of all training conducted under this Part and update that record as necessary. The system safety program training plan shall set forth the process used to maintain and update the necessary training records required by this Part.

(7) 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.

(j) 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.

(k) 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 must include a description of the following:

(1) The 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 (d) of this section;

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

(3) Any fitness-for-duty programs, or medical monitoring programs; and

(4) The standards for the control of alcohol and drug use contained in Part 219 of this Chapter.

(l) Public safety outreach program. Each railroad shall establish and set forth a statement in its SSP plan that describes its public safety outreach program to provide safety information to railroad passengers and the general public. Each railroad's safety outreach program shall provide a means for railroad passengers and the general public to report any observed hazards.

(m) 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/incidents, investigate and report those accidents/incidents, and develop, implement, and track any corrective actions found necessary to address an investigation's finding(s).



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

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

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

(1) The risk-based hazard management program must establish:

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

(ii) The processes or procedures used in the risk-based hazard analysis to analyze identified hazards and support the risk-based hazard management program;

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

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

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

(vi) The process to make decisions that affect the safety of the rail system relative to the risk-based hazard management program;

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

(viii) The methods used to maintain records of identified hazards and risks and the mitigation or elimination of the identified hazards and risks throughout the life of the rail system.

(2) The railroad's description of the risk-based hazard management program must include the following:

(i) The position title of the individual(s) responsible for administering the risk-based hazard management program;

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

(iii) The position title of the participants and structure of any hazard management teams or safety committees that a railroad may establish to support the risk-based hazard management program.

(q) Risk-based hazard analysis. (1) Once FRA approves a railroad's SSP plan pursuant to § 270.201(b), the railroad shall apply the risk-based hazard analysis methodology identified in paragraph (p)(1)(i) through (iii) 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 shall be analyzed include the following: operating rules and practices, infrastructure, equipment, employee levels and schedules, management structure, employee training, 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 the railroad shall implement specific actions using the methods described in paragraph (p)(1)(iv) of this section that will mitigate or eliminate the hazards and resulting risks identified by paragraph (q)(1) of this section.

(3) A railroad shall also conduct a risk-based hazard analysis pursuant to paragraphs (q) (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.

(r) Technology analysis and implementation plan. (1) A railroad shall develop and periodically update as necessary, a technology analysis and implementation plan as described by this paragraph. The railroad must include a technology analysis and implementation plan in its SSP plan.

(2) A railroad's technology analysis and implementation plan shall describe the process the railroad will use to: (i) Identify and analyze current, new, or novel technologies that will mitigate or eliminate the hazards and resulting risks identified by the risk-based hazard analysis pursuant to paragraph (q)(1) of this section; and (ii) Analyze the safety impact, feasibility, and cost and benefits of implementing the technologies identified by the processes under paragraph (r)(2)(i) of this section that will mitigate or eliminate hazards and the resulting risks.

(3) Once FRA approves a railroad's SSP plan pursuant to § 270.201(b), including the technology analysis and implementation plan, the railroad shall apply:

(i) The processes identified in paragraph (r)(2)(i) of this section to identify and analyze technologies that will mitigate or eliminate the hazards and resulting risks identified by the risk-based hazard analysis pursuant to paragraph (q)(1) of this section. 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; and

(ii) The processes described in paragraph (r)(2)(ii) of this section to the technologies identified by the analysis under paragraph (r)(3)(i) of this section.

(4) If a railroad decides to implement any of the technologies identified under paragraph (r)(3) of this section, in the technology analysis and implementation plan in the SSP, the railroad shall:

(i) Describe how it will develop, adopt, implement, maintain, and use the identified technologies; and

(ii) Set forth a prioritized implementation schedule for the development, adoption, implementation and maintenance of those technologies over a 10-year period.

(5) Except as required by subpart I of part 236 of this chapter, if a railroad decides to implement a positive train control system as part of its technology analysis and implementation plan, the railroad shall set forth and comply with a schedule for implementation of the positive train control system consistent with the deadlines in the Positive Train Control Enforcement and Implementation Act of 2015, Pub. L. 114-73, 129 Stat. 576-82 (Oct. 29, 2015), and 49 CFR 236.1005(b)(7).

(6) The railroad shall not include in its SSP plan the analysis conducted pursuant to paragraph (r)(3). The railroad shall make the results of any analysis conducted pursuant to paragraph (r)(3) available upon request to representatives of FRA and States participating under Part 212 of this Chapter.

(s) 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 must establish a configuration management program and describe the program in its SSP plan. The configuration management program shall --

- (i) Identify 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 before the initiation of operations or major projects to extend, rehabilitate, or modify an existing system or replace vehicles and equipment.

(t) 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 (b)(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 plans

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  
minute  
s

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 § 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).

### **Consultation Requirements (§ 270.107)**

(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, including any non-profit labor organization representing a class or craft of directly affected employees, on the contents of the SSP plan.

(2) A railroad that consults with such a non-profit employee labor organization as required by paragraph (a)(1) of this section is considered to have consulted with the directly affected employees represented by that organization. If a railroad contracts out significant portions of its operations, the contractor and the contractor's employees performing the railroad's operations shall be considered directly affected employees for purposes of this Part.

FRA estimates that approximately 30 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 40 hours to complete each good faith consultation. 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 consultations  
Annual Burden: 1,200 hours

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

(3) A railroad shall have a preliminary meeting with its directly affected employees to discuss how the consultation process will proceed. A railroad is not required to discuss the substance of an SSP plan during the preliminary meeting. A railroad must:

(i) Hold the preliminary meeting no later than **[INSERT 240 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and **(New requirement)**

*The burden for preliminary meetings is included above in the estimate for consultations. Consequently, there is no additional burden associated with that part of the requirement.*

(ii) Notify the directly affected employees of the preliminary meeting no less than 60 days before it is held. **(New requirement)**

FRA estimates that approximately 30 notifications by railroads of the directly affected employees of the preliminary meeting no less than 60 days before it is held will take place under the above requirement. It is estimated that it will take approximately eight (8) hours to complete each notification. Total annual burden for this requirement is 240 hours.

Respondent Universe: 30 railroads

Burden time per response: 8 hours

Frequency of Response: One-time  
40



Annual number of Responses: 30 notifications  
Annual Burden: 240 hours

**Calculation:** 30 notifications x 8 hrs. = 240 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 could not reach agreement with its directly affected employees on the contents of its SSP plan, identification of any known areas of disagreement and an explanation why it believes agreement was not reached; and

(3) A service list containing the name and contact information for the international/national president of any non-profit employee labor organization representing a class or craft of the railroad's directly affected employees. The service list must also contain the name and contact information for 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 pursuant to § 270.201, it must also simultaneously 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. FRA estimates that 28 of these 30 consultation statements will be completed by railroads that will consult with labor unions. It is estimated that each of the 28 good faith consultation statements will take approximately 80 hours to complete and the other two consultation statements will take approximately two (2) hours to complete. Total annual burden for this requirement is 2,244 hours.

Respondent Universe: 30 railroads

Burden time per response: 80 hours

+ 2  
hours

Frequency of Response: One-time

Annual number of Responses: 30 consultation statements  
Annual Burden: 2,244 hours

**Calculation:** 28 consultation statements x 80 hrs. + 2 consultation statements x  
2 hrs. = 2,244 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, the 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 30 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. 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 above. Consequently, there is no additional burden associated with this requirement.*

Total annual burden for this entire requirement is 3,685 hours (1,200 + 240 + 2,244 + 1).

### **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, Mail Stop 25, 1200 New Jersey Avenue SE, Washington, DC 20590, not later than **[INSERT DATE 545 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** or not less than 90 days before 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(q). 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 following: (i) 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. By signing, this chief official is certifying that the contents of the SSP plan are accurate and that the railroad will implement the contents of the program as approved by FRA; (ii) The contact information for the primary person responsible for managing the system safety program, and (iii) The

contact information for the senior representatives of any host railroad, contract operator, shared track/corridor operator or persons utilizing or providing significant safety-related services.

(4) As required by § 270.107(b), each railroad must submit with its SSP 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 § 270.107(c).

*The burden for the above requirement is included under that of § 270.107(b) and § 270.107(c) above. Consequently, there is no additional burden associated with this requirement.*

(b) Approval. (1) Within 90 days of receipt of an SSP plan, FRA will review the 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 § 270.107(c).

(2) FRA will notify each person identified by the railroad in § 270.201(a)(3) in writing whether the proposed plan has been approved by FRA, and, if not approved, the specific points in which the SSP plan is deficient. FRA will also provide this notification to each individual identified in the service list accompanying the consultation statement required under § 270.107(b).

(3) If FRA does not approve an SSP plan, 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 90 days following receipt of FRA's written notice that the proposed SSP plan was not approved.

(4) Approval of a railroad's SSP plan under this Part does not constitute approval of the specific actions the railroad will implement under its SSP plan pursuant to § 270.103(q)(2) and shall not be construed as establishing a federal standard regarding those specific actions.

FRA estimates that approximately four (4) written system safety program plans (SSPPs) will be found deficient, will be disapproved by the agency, and will 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 plans

Annual Burden: 160 hours

**Calculation:** 4 amended SSPPs x 40 hrs. = 160 hours

(c) Review of Amendments. (1)(i) A railroad 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 must 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 the railroad used pursuant to § 270.107(d) to consult with directly affected employees on the amendment(s).

(ii) If an amendment 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, the railroad must submit the amended SSP plan with a cover letter outlining the changes made to the original approved SSP plan by the proposed amendment(s) and why the amendment is safety-critical to FRA as near as possible to 60 days before the proposed effective date of the amendment(s).

(iii) If the proposed amendment is limited to adding or changing a name, title, address, or telephone number of a person, FRA approval is not required under the process in paragraph (c)(1)(i) and (ii) of this section, although the railroad shall still file the proposed amendment with FRA's Associate Administrator for Railroad Safety/Chief Safety Officer. These proposed amendments may be implemented by the railroad upon filing with FRA. All other proposed amendments must comply with the formal approval process in paragraph (c) of this section.

(2)(i) Except as provided in paragraph (c)(1)(iii) of this section, FRA will review the 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 each 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(s) whether the proposed amendment(s) has been approved or not, the railroad may implement the proposed amendment(s) pending FRA's decision.

(iii) If a proposed SSP plan amendment is not approved by FRA, no later than 60 days following the receipt of FRA's written notice, the railroad shall provide FRA either a corrected copy of the amendment that addresses all deficiencies noted by FRA or written notice that the railroad is retracting the amendment.

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 plan  
Annual Burden: 40 hours  
**Calculation:** 1 further amended/corrected SSPPs x 40 hrs.  
= 40 hours

*FRA estimates that zero (0) amended SSP plan amendments will be retracted by railroads under the above requirement. Consequently, there is no additional burden associated with this requirement.*

(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 plans

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 headquarters, 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 37 copies (30 SSP plans + 7 amendments) of written system safety program plans/amended system safety program plans 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 six (6) hours.

Respondent Universe:

30 railroads

Burden time per response:

10  
minute

47

Frequency of Response: On occasion

Annual number of Responses: 37 copies of written SSPPs

Annual Burden: 6 hours

**Calculation:** 37 written SSPP copies x 10 min. = 6 hours

**Internal System Safety Program Assessment (§ 270.303)**

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

- (1) The system safety program is fully implemented;
- (2) The railroad is in compliance with the implemented elements of the approved system safety program; and
- (3) The railroad has achieved the goals set forth in § 270.103(c).

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 annual assessments/reports



Annual Burden:

1,200 hours

**Calculation:**

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

(b) As part of its SSP plan, the railroad must 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; and
- (5) Manage revisions and updates to the SSP plan based on the internal system safety program assessments.

*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 must:

- (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 to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer, Mail Stop 25, 1200 New Jersey Avenue SE, Washington, DC 20590;; 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) and that of that of § 270.103 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 an improvement plan to address the audit findings that require corrective action. At a minimum, the improvement plan shall 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 its 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 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 § 270.107(a) 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 § 270.107 good faith and best efforts obligations. This determination will be based upon the consultation statement submitted by the railroad pursuant to § 270.107(b) and any statements submitted by employees pursuant to § 270.107(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 § 270.107.

*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 90 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 90 days a SSP plan meeting the consultation requirements of § 270.107, 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 should 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.

- By **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** (i.e. within 60 days of the effective date of the final rule), a railroad may 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) The railroad is required to meet with its directly affected employees within 180 days of the effective date of the final rule to address the consultation process;

(3) 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

FRA estimates that approximately two (2) meetings between railroads and directly affected employees within 180 days of the final rule effective date will take place under the above requirement. It is estimated that each meeting will take approximately eight (8) hours to complete each meeting. 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 meetings

Annual Burden: 16 hours

**Calculation:** 2 meetings x 8 hrs. = 16 hours

(4) 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 initial meeting to discuss the consultation process (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 § 270.107(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 § 270.107(c) above. Consequently, there is no additional burden associated with this requirement.*



Total annual burden for this entire requirement is 33 hours (1 + 16 + 16).

**Appendix C to Part 270—Procedures for Submission of SSP Plans and Statements from Directly Affected Employees**

As provided for in § 270.101, a system safety program shall be fully implemented and supported by a written SSP plan. Each railroad must submit its SSP plan to FRA for approval as provided for in § 270.201.

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

As provided for in § 270.107(c), if a railroad and its directly affected employees cannot come to agreement on the proposed contents of the railroad's SSP plan, the directly affected employees have 30 days following the railroad's submission of its proposed SSP plan to submit a statement to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer explaining the directly affected employees' views on the plan on which agreement was not reached.

*The burden for the above requirement is included under that of § 270.107 above. Consequently, there is no additional burden associated with this requirement.*

The railroad's and directly affected employees' submissions shall be sent to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer, Mail Stop 25, 1200 New Jersey Avenue SE, Washington, DC 20590. When a railroad submits its SSP plan and consultation statement to FRA pursuant to § 270.201, it must also simultaneously send a copy of these documents to all individuals identified in the service list pursuant to § 270.107(b)(3).

*The burden for the above requirement is included under that of § 270.107 above. Consequently, there is no additional burden associated with this requirement.*

Each railroad and directly affected employee is authorized to file by electronic means any submissions required under this Part. Before any person submitting anything electronically, the person shall provide the FRA Associate Administrator for Railroad Safety/Chief Safety Officer with the following information in writing:

- (1) The name of the railroad or directly affected employee(s);
- (2) The names of two individuals, including job titles, who will be the railroad's or directly affected employees' 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 or directly affected employees' 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 or directly affected employees' points of contact; and

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

A request for electronic submission or FRA review of written materials shall be addressed to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer, Mail Stop 25, 1200 New Jersey Avenue SE, Washington, DC 20590. Upon receipt of a request for electronic submission that contains the information listed above, FRA will then contact the requestor with instructions for electronically submitting its program or statement.

FRA estimates that it will receive approximately 20 written requests for electronic submissions under the above requirement. It is estimated that each written request will take approximately 30 minutes to complete. Total annual burden for this requirement is one 10 hours.

Respondent Universe:

30 railroads

Burden time per response:

30  
minute  
s

Frequency of Response:

On occasion

Annual number of Responses:

20 written requests (for electronic submissions)

Annual Burden:

10 hours

**Calculation:**

20 written requests x 30 min. = 10 hours

Total annual burden for this entire information collection is 9,365 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 rule. (**Note: No costs** are assessed regarding agency preparation/conduct of external audits as they begin in year 4.)

1 Full-time 1 GS-13-5 @\$100,904 = \$101,914

1 Full-time 1 GS-14-5 @\$119,238 = \$120,429

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**\$ 222,343      TOTAL**

**15. Explanation of program changes and adjustments.**

This is a **new** collection of information. By definition, the entire burden of **9,365 hours** and **1,240 responses** is a **program change**.

There are no additional costs to respondents regarding this final rule other than the burden hours specified in the answer to question number 12 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.

### Meeting Department of Transportation (DOT) Strategic Goals

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.