

FEDERAL RAILROAD ADMINISTRATION
System Safety Program Plan (49 CFR 270)
SUPPORTING JUSTIFICATION
RIN 2130-AC31; OMB No. 2130-0599

Summary of Submission

- The information collection request associated with this proposed rule is a revision to the current approval and is entirely associated with FRA's Part 270 added to chapter 49 of the CFR in August 2016.
- FRA is publishing a Notice of Proposed Rulemaking titled System Safety Program and Risk Reduction Program in the Federal Register on **June 12, 2019**. See 84 FR 27215.
- The total number of burden **hours requested** for this submission is **9,880 hours**.
- The total number of **responses requested** for this submission is **1,310**.
- The total number of burden **hours previously approved** for this submission is **9,365 hours**.
- The total number of **previously approved** for this submission is **1,240**.
- The **change** in burden from the last approved submission amounts to an increase of **515 hours**, and an increase of **70 responses**.
- **Program changes** amount to **three (3) hours** and **54 responses**.
- **Adjustments** amount to **512 hours** and **16 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. 23-53).

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

On August 12, 2016, FRA published a final rule requiring each commuter and intercity passenger railroad to develop and implement a System Safety Plan (SSP). See 81 FR 53850 (Aug. 12, 2016). This final rule was required by section 103 of the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110-432, Div. A, 122 Stat. 4883 (Oct. 16,

2008)), codified at 49 U.S.C. 20156). The Secretary of Transportation delegated the authority to conduct this rulemaking and implement the rule to the Federal Railroad Administrator. *See* 49 CFR 1.89(b).

On October 3, 2016, FRA received four petitions for reconsideration (Petitions) of the final rule: (1) certain labor organizations (Labor Organizations)¹ filed a joint petition (Labor Petition); (2) certain State and local transportation departments and authorities² filed a joint petition (Joint Petition); (3) North Carolina Department of Transportation (NCDOT) filed a separate petition; and (4) Vermont Agency of Transportation (VAOT) filed a separate petition. The Joint, NCDOT, and VAOT petitions are hereinafter referred to as the “State Petitions.”

Massachusetts Department of Transportation filed a comment in support of the Joint Petition on November 15, 2016. Three other individual comments were filed, but relate to the rule generally, not the petitions.

On February 10, 2017, FRA stayed the SSP final rule’s requirements until March 21, 2017, consistent with the new Administration’s guidance issued January 20, 2017, intended to provide the Administration an adequate opportunity to review new and pending regulations. *See* 82 FR 10443 (Feb. 13, 2017). FRA’s review also included the Petitions. To provide additional time for that review, FRA extended the stay until May 22, 2017; June 5, 2017; December 4, 2017; December 4, 2018; and then September 4, 2019. *See* 83 FR 63106 (Dec. 7, 2018). FRA proposes to further extend the stay to allow FRA time to review any comments on this NPRM and issue a final rule in this proceeding. FRA specifically requests public comment on a possible stay extension.

On October 30, 2017, FRA met with the Passenger Safety Working Group and the System Safety Task Group of the Railroad Safety Advisory Committee (RSAC) to discuss the Petitions and comment received in response to the Petitions.³ *See* FRA-2011-

¹ The Labor Organizations in the Labor Petition are the: American Train Dispatchers Association (ADTA); Brotherhood of Locomotive Engineers and Trainmen (BLET); Brotherhood of Maintenance of Way Employees Division (BMWED); Brotherhood of Railroad Signalmen (BRS); Brotherhood Railway Carmen Division; and Transport Workers Union of America.

² The State and local transportation departments and authorities in the Joint Petition are the: Capitol Corridor Joint Powers Authority (CCJPA); Indiana Department of Transportation (INDOT); Northern New England Passenger Rail Authority (NNEPRA); and San Joaquin Joint Powers Authority (SJJA).

³ Attendees at the October 30, 2017, meeting included representatives from the following organizations: ADS System Safety Consulting, LLC; American Association of State Highway and Transportation Officials; American Public Transportation Association; American Short Line and Regional Railroad Association; ATDA; Association of American Railroads (AAR); BLET; BMWED; BRS; CCJPA; The Fertilizer Institute; Gannett Fleming Transit and Rail Systems; International Brotherhood of Electrical Workers; Metropolitan Transportation Authority; National Railroad Passenger Corporation (Amtrak); National Transportation Safety Board; NCDOT; NNEPRA; San Joaquin Regional Rail Commission/Altamont Corridor Express; Sheet Metal, Air, Rail, and Transportation Workers; and United States Department of Transportation—Transportation Safety Institute.

0060-0046. This meeting allowed FRA to receive input from industry and the public and to discuss potential paths forward to respond to the Petitions. During the meeting, FRA made an introductory presentation and invited discussion on the issues raised by the Labor Petition. FRA also presented for discussion draft rule text that would respond to the State Petitions by amending the SSP final rule to include a delegation provision that would allow a railroad that contracts all activities related to its passenger service to another person to designate that person as responsible for compliance with the SSP final rule. FRA uploaded this proposed draft rule text to the docket for this rulemaking. *See* FRA-2011-0060-0045. The draft rule text specified that any such designation did not relieve a railroad of legal responsibility for compliance with the SSP final rule. In response to the draft rule text, the State Petitioners indicated they would need an extended caucus to discuss. On March 16, 2018, the Executive Committee of the States for Passenger Rail Coalition (SPRC)⁴ provided and FRA uploaded to the rulemaking docket proposed revisions to the draft rule text. *See* FRA-2011-0060-0050. FRA has reviewed and considered these suggested revisions in formulating the proposals in this NPRM.

In response to the petitions for reconsideration of the final rule, FRA proposes to amend its regulations requiring commuter and intercity passenger railroads to develop and implement a system safety program (SSP) to improve the safety of their operations. The proposed amendments would include clarifying that, while all persons providing intercity passenger rail (IPR) service or commuter rail passenger transportation share responsibility for ensuring compliance with the SSP final rule, the rule does not restrict a person's ability to provide for an appropriate designation of responsibility. FRA proposes extending the stay of the SSP final rule's requirements to allow FRA time to review and address any comments on this NPRM. FRA also proposes to amend the SSP rule to adjust the rule's compliance dates to account for FRA's prior stay of the rule's effect and to apply the rule's information protections to the Confidential Close Call Reporting System (C³RS) program included in a railroad's SSP. FRA is expressly providing notice of possible conforming amendments to a Risk Reduction Program (RRP) final rule that would ensure that the RRP and SSP rules have essentially identical consultation and information protection provisions.

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

This is a revision to the current collection of information associated with FRA's new Part 270. The information collected under this propose 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

⁴ SPRC's website indicates it is an "alliance of State and Regional Transportation Officials," and each State Petitioner appears to be an SPRC member. *See* <https://www.s4prc.org/state-programs> (last accessed Sept. 20, 2018).

accidents, incidents, and associated injuries, fatalities, and property damage. SSPs are intended then to promote a positive safety culture.

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) 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 of why it believes agreement was not reached; and (3) a service list containing the name and contact information for either each international/national president and general chairperson of any non-profit employee labor organization representing a class or craft of the railroad's directly affected employees, or each non-profit employee labor organization primary point of contact the railroad and the non-profit employee labor organization agree on at the beginning of the consultation process.

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 § 270.107(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(c). 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.

Section 270.201(e) of this proposed rule 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.

FRA is not aware of any relevant Federal rules and associated information collections that may duplicate, overlap, or conflict with the proposed rule. The proposed rule and associated information collection support comprehensive safety for railroad operations throughout the country.

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 proposed rule. In this instance, there is only one type of small entity that is affected: small railroads.

Small entity” is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “linehaul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 1,500 employees, or a “commuter rail system” with annual receipts of less than \$15.0 million dollars. See “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A. Additionally, 5 U.S.C. 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies may adopt their own size standards for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891 (May 9, 2003), codified at appendix C to 49 CFR part 209. The \$20-million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1-1. FRA is using this definition for this rulemaking.

For purposes of this analysis, this proposed rule will apply to 30 commuter or other short-haul passenger railroads and two intercity passenger railroads, Amtrak and the ARC. Neither is considered a small entity. Amtrak serves populations well in excess of 50,000, and the ARC is owned by the State of Alaska, which has a population well in excess of 50,000.

Based on the definition of “small entity,” only one commuter or other short-haul railroad is considered a small entity: the Hawkeye Express (operated by the Iowa Northern Railway Company). Although the proposed regulation may impact a substantial number of small entities, by virtue of its impact on the only identified small identity, it would merely provide additional clarifying information without introducing any additional burden. The proposed regulation would, therefore, not have a significant impact on a substantial number of small entities.

A substantial number of small entities may be impacted by this regulation; however, any impact would be minimal and positive.

FRA requests comments as to the impact that the rule would have on both small passenger railroads as well as all passenger railroads in general

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 is publishing a Notice of Proposed Rulemaking (NPRM) titled System Safety Program and Risk Reduction Program in the Federal Register on June 12, 2012, soliciting comment from the public, interested parties, and the regulated community on the proposed rule and associated information collection. See 84 FR 27215.

As noted in the answer to question number 1 of this document, FRA received a number of petitions for reconsideration of the August 2016 final rule. One of these petitions was from Labor. Under § 270.107, a railroad must consult in good faith and use its best efforts to reach agreement with its directly affected employees on the contents of its SSP plan. The Labor Petition requested several amendments to this section regarding the consultation process. In response, FRA is proposing several amendments that would grant in part or deny in part the Labor Petition.

The Labor Petition requested that FRA make two amendments to § 270.107 related to the points of contact for the consultation process. Paragraph (a)(3) specifies a railroad must hold a preliminary meeting with its directly affected employees to discuss how the consultation will proceed. The Labor Petition requested FRA amend this paragraph to

add that the primary point of contact shall be the “general chairperson” of any non-profit employee labor organization representing directly affected employees. Paragraph (b)(3) specifies a railroad’s consultation statement⁵ must include a service list containing the name and contact information for each international/national president of any non-profit employee labor organization representing a class or craft of the railroad’s directly affected employees.⁶ When a railroad submits its SSP plan and consultation statement to FRA under § 270.201, it must simultaneously send a copy of these documents to all individuals identified in the service list. The Labor Petition requested FRA amend paragraph (b)(3) to add that the service list must also contain the name and contact information for the general chairperson of any non-profit employee labor organization representing directly affected employees.

In support of those requested amendments, the Labor Petition asserts a general chairperson is the appropriate contact for consultation purposes because he or she is the duly accredited representative of the craft or class of employees represented by the non-profit employee labor organization. *See* Labor Pet. at 3-4. According to the Labor Petition, there are already well-known and well-established procedures and points of contact between labor organizations and railroads, and the SSP consultation is a property-specific matter that a railroad must address directly with a general chairperson. *Id.*

The SSP NPRM proposed a requirement similar to the Labor Petition requests. *See* 77 FR 55383 and 55403 (Nov. 26, 2012). In response, AAR commented, opposing the proposed language and requesting the service list be limited to the international/national president of the labor organization. AAR asserted it would be burdensome to serve the general chairperson for each non-profit employee labor organization on the railroad and that a railroad’s inadvertent failure to serve a general chairperson could be considered not using “best efforts” in the consultation process and lead to FRA not approving the railroad’s plan. AAR also pointed to the Surface Transportation Board’s regulations, which require giving notice to the national office of the labor unions of the employees affected when notification of labor unions is required. In response to AAR’s concerns, FRA decided not to require notification of a general chairperson in the final rule. *See* 81 FR 53886 (Aug. 12, 2016).

Upon reconsideration, FRA believes it is consistent with the intent of the consultation requirements to add the general chairperson of a non-profit employee labor organization as the point of contact for directly affected employees represented by that non-profit employee labor organization. Adding the general chairpersons for the non-profit

⁵ Under § 270.107(b)(1) and (2), a railroad must submit a consultation statement to FRA (along with its SSP plan) describing the railroad’s process for consulting with its directly affected employees. If the railroad was unable to reach consensus with its employees on the contents of its SSP plan, the consultation statement must identify any known areas of disagreement and explain why agreement was not reached.

⁶ The service list must also contain the name and contact information for any directly affected employee who significantly participated in the consultation process independent of a non-profit employee labor organization.

employee labor organizations on a railroad property will ensure the directly affected employees receive SSP information effectively and efficiently because these chairpersons often are the labor representatives that work directly with the represented employees at the railroad. FRA is, therefore, proposing amendments to § 270.107 that would clarify a general chairperson is the railroad's primary contact for the consultation process with the directly affected employees represented by a non-profit employee labor organization and must be included in the consultation statement service list. These proposed amendments would grant this part of the Labor Petition.

To alleviate AAR's concern that FRA could consider a railroad's inadvertent failure to serve a general chairperson as not using "best efforts" in the consultation process, FRA also proposes including an alternative point of contact. Under FRA's proposal, a non-profit employee labor organization's point of contact could be a person the railroad and non-profit employee labor organization agree on at the beginning of the consultation process. FRA would consider serving any agreed-upon points of contact "best efforts" as it applies to proper notification of non-profit employee labor organizations. Unless agreed otherwise, however, the primary point of contact would remain a general chairperson.

Under § 270.107(c)(1), if a railroad and its directly affected employees do not reach agreement on the contents of the railroad's SSP plan, directly affected employees may file a statement with FRA explaining their views on the portions of the plan on which agreement was not reached. Under § 270.107(c)(2), directly affected employees have 30 days following the date the railroad submits its SSP plan and consultation statement to FRA to file their own statement.

The Labor Petition requests FRA amend § 270.107(c)(2) to provide directly affected employees 60 days to file a statement rather than 30 days. *See* Labor Pet. at 4.

While the NPRM proposed to provide directly affected employees 60 days to file such a statement, FRA explained in the final rule why it believes the 30 days provided is sufficient. *See* 81 FR 53886 (Aug. 12, 2016). Section 270.107(b)(3) ensures a railroad simultaneously provides FRA and directly affected employees its SSP plan and consultation statement, as the Labor Organizations requested in their comments on the NPRM. *Id.* Moreover, under § 270.201(b), FRA will review an SSP plan within 90 days of receipt. If the directly affected employees had up to 60 days to submit a statement, FRA could be left with only 30 days to consider the directly affected employees' views when reviewing the SSP plan. Thirty days is not enough time to ensure FRA sufficiently addresses the directly affected employees' views.

The Labor Petition does not provide any additional justification to extend this deadline. Therefore, FRA is not proposing to extend the deadline, for the reasons explained above and in the final rule. *See* 81 FR 53886. FRA's position would deny this part of the Labor Petition.

State Petitions

FRA also received petitions from the States. The State Petitions set forth multiple arguments for their requested changes to the final rule. To summarize, FRA divides these arguments into four categories: (1) the SSP final rule places a substantial burden on States, which FRA did not consider; (2) FRA exceeded its statutory authority in requiring States to comply with the SSP final rule; (3) the SSP final rule exceeded the scope of the NPRM when clarifying that, if a railroad contracts out significant portions of its operations, employees of a contractor are considered directly affected employees; and (4) FRA must amend the SSP final rule to reconcile it with FRA guidance.

I. Substantial Burden Arguments

The State Petitions assert FRA did not properly consider the costs and burdens the final rule would impose on States that provide IPR service. Specifically, the State Petitions argue:

- The Regulatory Impact Analysis (RIA)⁷ for the SSP final rule referenced only two intercity passenger railroads, Amtrak and the Alaska Railroad Corporation (ARC), indicating the final rule did not appropriately consider States that provide IPR service as railroads and, therefore, did not consider costs for other States that provide IPR service; and
- The SSP final rule imposes substantial burdens on State providers of IPR service without improving safety.

II. Statutory Authority Arguments

The State Petitions claim Congress did not intend the final rule to apply to States that “sponsor,” but do not operate, IPR service, and FRA exceeded its statutory authority in doing so. State Petitioners argue requiring “State sponsors” of IPR service to develop and implement an SSP exceeds FRA’s authority under the RSIA, and is inconsistent with Congress’ intent in enacting section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) (Pub. L. No. 110-432, Div. B (Oct. 16, 2008)). See Joint Pet. at 9.⁸

⁷ See FRA-2011-0060-0029.

⁸ Section 209 of PRIIA requires that the Amtrak Board of Directors, in consultation with the Secretary of Transportation, the governors of each relevant State, and the Mayor of the District of Columbia, or entities representing those officials, develop and implement a single, nationwide standardized methodology for establishing and allocating the operating and capital costs of providing IPR service among the States and Amtrak for the trains operated on designated high-speed rail corridors (outside the Northeast Corridor), short-distance corridors, or routes of not more than 750 miles, and services operated at the request of a State, a regional or local authority, or another person.

The Joint Petition argues Congress did not separately define “rail carrier” for purposes of the SSP mandate in the RSIA and that States “sponsoring” IPR service do not fall under the general statutory definition in 49 U.S.C. 20102(3) of a “railroad carrier” as a “person providing railroad transportation.” *Id.* The Joint Petition asserts FRA impermissibly expanded the definition of “rail carrier,” and that there is no evidence Congress intended States to directly assume responsibility for the safety of such routes’ operations. *See id.* at 10.

Separately, VAOT contends State ownership of railroad property or financial support for Amtrak services does not make it a “railroad carrier” as defined by statute, and, therefore, the SSP mandate in the RSIA does not apply to it. *See* VAOT Pet. at 8-10. VAOT further argues it does not have authority to implement an SSP. *Id.* at 9.

III. Scope of NPRM

The Joint Petition argues the SSP final rule’s extension of the consultation requirement to contractors and contractors’ employees was not proposed in the NPRM, was not a logical outgrowth of the proposal, imposes burdens on current operating agreements, and substantially alters the nature of the independent contractor relationship. *See* Joint Pet. at 16-21.

IV. Guidance Argument

Finally, the Joint and NCDOT Petitions assert FRA must amend the final rule to reconcile it with the *Guidance on Safety Oversight and Enforcement Principles for State-Sponsored Intercity Passenger Rail Operations (Guidance)*, which FRA informally provided to the States on August 11, 2016. *See* Joint Pet. at 12-16 and NCDOT at 6 and 16.

FRA generally disagrees with the arguments supporting the State Petitions.

A. Substantial Burdens

FRA disagrees with the States and believes that it properly considered the costs and burdens of the final rule on States that provide IPR service.

Regarding the States' argument that the RIA's mention of only Amtrak and ARC IPR service indicates FRA did not appropriately consider costs for State sponsors of IPR service, FRA believes the States mischaracterize the following passage: FRA determined there will be only two passenger railroads affected by the SSP rule as small entities. In applying the guidelines of the Regulatory Flexibility Act (RFA), FRA includes most Class III railroads impacted by a rule as a small business. In further defining the types of entities qualifying as small businesses, RFA guidelines state that if the entity is a part of/or agent of governments of cities, counties, towns, townships, villages, or special districts serving a population of more than 50,000 they would not be classified as a small business. Essentially all railroads subject to this rule, except the two FRA classified as small businesses (Saratoga & North Creek Railway (SNC) and the Hawkeye Express, operated by the Iowa Northern Railway Company (IANR)), are either a governmental-related transportation agency serving population areas of 50,000 or more and or an intercity service provider (National Railroad Passenger Corporation (Amtrak) and Alaska Railroad)).^[...]

FRA-2011-0020-0028 (emphasis added). This passage does not define the scope of the RIA's cost analysis, but describes FRA's process of identifying which passenger railroads affected by the SSP rules are small entities under the RFA. The States' argument therefore inappropriately applies FRA's limited RFA discussion to the RIA's broader cost analysis, without otherwise providing evidence that the cost analysis improperly calculated costs.

Further, although FRA's analysis describes Amtrak and ARC as IPR railroads, it does not state that Amtrak and ARC are the only IPR railroads. In fact, the final rule's RFA analysis expressly noted the vast majority of State providers of IPR service would fall under Amtrak's SSP. See 81 FR 53892, n. 14. This is because most States contract with Amtrak to provide IPR service, which was true at the time of final rule publication and remains true today.

Regardless, the States' assertion that FRA did not consider the costs for State sponsors of IPR service is incorrect. Because most States contract with Amtrak to provide IPR service, as noted above, the typical IPR service is an Amtrak-scheduled service using equipment Amtrak operates and maintains. In fact, for all State-sponsored IPR service FRA is aware of, Amtrak is the contractor operator. The RIA therefore attributed the costs of implementing the SSP rule for current IPR service to Amtrak (consistent with FRA's past rulemaking practice),⁹ on the assumption that Amtrak would implement SSPs

⁹ See Passenger Equipment Safety Standards, final rule, 64 FR 25560, 25654 (May 12, 1999) ("The [regulatory] evaluation . . . takes into consideration that individual States will contract with Amtrak for the provision of rail service on their behalf. In this regard, for example, a State may utilize Amtrak's inspection forces trained under the rule, and thus not have to train inspection forces on its own.").

on behalf of State sponsors of IPR service as part of Amtrak's integrated national system. *See* 81 FR 53892, n. 14. Further, FRA believes the RIA captured any costs for future State-sponsored IPR service using operators other than Amtrak by estimating there would be one new startup IPR service or commuter railroad in Years 2 and 3 of the analysis and one new startup every other year thereafter. *See* 81 FR 53852. For these reasons, FRA believes the RIA properly accounted for the costs associated with State-sponsored IPR service, even though those costs were attributed to Amtrak rather than specific State sponsors.

Moreover, the plain intent of the regulatory language clearly indicated the rule would apply to States providing IPR service. Both the proposed and final SSP rule contain the same applicability section and definition for "railroad." *See* 77 FR 55402-03 (Sept. 7, 2012) and 81 FR 53896-97 (Aug. 12, 2016). Specifically, in both the proposed and final rule, § 270.5 defines "railroad" as "[a] person or organization that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person," and § 270.3(a)(1) unambiguously states the rule applies to "[r]ailroads that operate intercity or commuter passenger train service on the general railroad system of transportation" These provisions indicate FRA intended the rule to apply to providers of IPR service, including "State sponsors" of IPR service. Further, at no point in the rulemaking process did FRA indicate it intended to exempt States providing IPR service from the rule.

Second, the RIA carefully analyzed the potential costs and burdens of the SSP final rule. *See generally* FRA-2011-0060-0029. Ultimately, the RIA concluded the SSP final rule's costs were justified by the safety benefits, and nothing in the State Petitions indicates the RIA improperly estimated costs or benefits. *Id.* at 3.

Further, while the State Petitions allege substantial and undetermined burdens, these burdens were either considered by FRA in the RIA or are not mandated by the SSP final rule. The Joint Petition claims the final rule would impose the following burdens: (1) State providers do not employ qualified railroad personnel with the detailed technical knowledge to develop, implement, and oversee compliance with an SSP and would have to hire such individuals; (2) State providers would face considerable challenges in augmenting existing human resources before the responsibilities imposed by the final rule could be fulfilled; (3) implementing the final rule will likely require State providers to renegotiate their existing operating agreements with Amtrak and other contractors to ensure the exchanges of information the rule requires and to implement required consultation procedures; (4) State providers may have to discontinue IPR service due to the costs imposed by the final rule, and if they discontinue service, FRA may require States to repay grants/loans; and (5) the final rule's definition of "railroad" potentially opens the door to attempts to make States that provide IPR service responsible for other

statutory obligations, including railway labor and retirement requirements. *See* Joint Pet. at 4-9.¹⁰

The first two burdens the States allege relate to burdens the rule does not mandate, as the rule does not require States to hire additional technical or human resources personnel. Further, this NPRM proposes amendments that would clarify that the rule does not restrict the ability to designate another entity to fulfill the States' responsibilities under the rule. FRA discusses delegation of SSP responsibility more fully below when discussing the revisions proposed in this NPRM in response to the State Petitions.

Further, the States' claim that they may have to discontinue IPR service due to the rule's costs is unsubstantiated. FRA notes that States providing IPR service have always had to comply with FRA safety regulations to ensure the safety of their passengers, and the States have done so successfully. For example, the application of the rule is essentially the same as FRA's Passenger Train Emergency Preparedness and Passenger Equipment Safety Standards rules,¹¹ both issued almost two decades ago and implicating the same concerns the States now raise. Because States have been complying with their responsibilities under these and other statutorily-based rules, their assertion that the SSP rule somehow will prevent their ability to provide IPR service is not persuasive.¹²

Regarding the States' claim that implementing the final rule will incur costs associated with renegotiating contracts, FRA notes that the rule itself does not require contract renegotiation. Rather, to the extent any such costs would be incurred, they would result from the States' own decisions on how to provide IPR service, and not a requirement of the rule.

Finally, FRA disagrees with the States that being subject to the SSP rule will open them up to application of other statutes. To the extent another agency might argue that labor, tax, or other statutes apply to the States based on the application of this rule, the challenge would be to that agency's statute, not the SSP rule. Further, FRA was mandated by the RSIA to issue an SSP rule that specifically applies to providers of IPR service.¹³ There is no basis for disregarding a statutory mandate because another agency might use it to apply an unrelated statute. This rule would also not apply any additional hook for applying other laws to States providing IPR than is already present through

¹⁰ NCDOT's and VAOT's petitions assert similar arguments regarding the rule's costs and burdens and FRA's alleged failure to consider them.

¹¹ *See* 63 FR 24630 (May 4, 1998) and 64 FR 25560 (May 12, 1999).

¹² The vast majority of states that provide IPR service comply with FRA's Passenger Train Emergency Preparedness regulations by having Amtrak prepare and implement the required emergency preparedness plans on their behalf. FRA does not require the States to duplicate the efforts of the entities that prepare and implement SSP plans on their behalf.

¹³ *See* 49 U.S.C. 20156(a)(1)(A).

States' compliance with FRA's Passenger Train Emergency Preparedness and Passenger Equipment Safety Standards rules.

B. Statutory Authority

FRA disagrees with the State Petitions that applying the SSP final rule to “State sponsors” of IPR service goes beyond FRA’s statutory authority. First, by the plain language of the RSIA mandate, the law applies to “each railroad carrier that is a Class I railroad, a railroad carrier that has inadequate safety performance (as determined by the Secretary), or a railroad carrier that provides intercity rail passenger or commuter rail passenger transportation . . .” 49 U.S.C. 20156(a)(1). A “railroad carrier” is also statutorily defined as “a person providing railroad transportation.” 49 U.S.C. 20102(3). FRA believes “State sponsors” of IPR service meet the definition of a person providing railroad transportation. Although there is no official definition for the term “State sponsors,” FRA generally understands that “State sponsors” provide financial support for IPR service, contract for that service, and, in some cases, provide safety oversight. *See* Joint Pet. at 2, fn. 2; and NCDOT Pet. at 13.¹⁴ FRA believes each of these activities for IPR service that States “sponsor” constitutes providing railroad transportation. Congress did not exclude “State sponsors” in the definition of a person providing railroad transportation, and nothing in the RSIA legislative history indicates Congress intended to exempt States that “sponsor” or otherwise provide IPR service from the SSP rule. There is therefore no statutory basis for deviating from either the plain language of the RSIA or the definition of “railroad carrier,” both of which encompass States that “sponsor” or otherwise provide IPR service.

Second, passenger rail operations have always been subject to FRA’s safety jurisdiction. *See* 49 CFR part 209, app. A. FRA has exercised jurisdiction over all passenger operations for decades under the Federal Railroad Safety Act of 1970, and the 1982, 1988, and 2008 amendments to that act. *See* Federal Railroad Safety Act of 1970 (Pub. L. No. 91-458, 84 Stat. 971, enacted Oct. 16, 1970); Federal Railroad Safety Authorization Act of 1982 (Pub. L. No. 97-468, 96 Stat. 2579, enacted Jan. 14, 1983); Rail Safety Improvement Act of 1988 (Pub. L. No. 100-342, 102 Stat. 624, enacted June 22, 1988); and Rail Safety Improvement Act of 2008 (Pub. L. 110-432, 122 Stat. 4883, Div. A, enacted Oct. 16, 2008). FRA has previously explained in a rulemaking proceeding that public authorities may act in a private capacity to provide rail service and that, in doing so, public authorities have the same powers and obligations for purposes of rail safety as similarly-situated private actors. *See* 75 FR 1180, 1211-12 (Jan. 8, 2010).

The SSP final rule neither expands FRA’s jurisdiction nor requires States to incur additional costs to contract for such services. Historically, this has not been an issue because FRA has typically looked to Amtrak with respect to enforcement and application

¹⁴ *See supra* footnote 8.

of Federal rail safety requirements for IPR service. However, Congress' enactment of PRIIA section 209 has led to several important changes to the nature of the relationship between Amtrak and State departments of transportation (or other public authorities) that provide funding for, and oversight of, IPR service. Beginning in fiscal year 2014, section 209 of PRIIA required all applicable States to provide funding to Amtrak for passenger rail services along certain corridors using a consistent nationwide methodology.¹⁵ As a result, some States have become more active in funding, managing, organizing, performing, or contracting their passenger rail services. With respect to some operations, this has increased the State's role in making substantive operational and safety-related decisions, including selecting contractors to perform such services. However, the fact that States choose to contract out certain services based on section 209 of PRIIA does not absolve the States from safety responsibility or remove them from FRA safety jurisdiction.

As noted above, FRA has a long history of applying its safety regulations to State providers of passenger rail service. *See generally* 49 CFR parts 213, 238 and 239. It is not uncommon for multiple entities to be involved in providing passenger rail service, with each entity having varying safety responsibilities.¹⁶ However, as explained in the NPRM and final rule, and earlier notably in the Passenger Equipment Safety Standards rulemaking,¹⁷ each entity involved in providing passenger rail service – including “State sponsors” – is responsible for complying with Federal rail safety requirements.¹⁸ *See also* 77 FR 55380-82 (Sept. 7, 2012) and 81 FR 53861, 53864 (Aug. 12, 2016). Overall, FRA believes compliance with the SSP final rule does not differ from compliance with FRA's other regulations that may apply to IPR service providers, e.g., 49 CFR parts 213, 238 and 239.

C. Scope of NPRM

FRA also believes that clarifying the consultation process requirements in the final rule falls within the scope of the NPRM. Section 270.107(a)(2) clarifies that if a railroad contracts out significant portions of its operations, the contractor and the contractor's employees performing the railroad's operations will be considered directly affected employees for the purposes of the SSP final rule. This language is consistent with the

¹⁵ *See supra* footnote 11.

¹⁶ For example, an entity, such as a State agency or authority, may organize and finance the rail service; a primary contractor may oversee the day-to-day operation of the rail service; one subcontractor may operate the trains along the route; another subcontractor may maintain the train equipment; and another entity may own the track.

¹⁷ Passenger Equipment Safety Standards, final rule; response to petitions for reconsideration, 65 FR 41284, 41291 (July 3, 2000) (addressing responsibility for compliance of the sponsoring governmental authority and other entities that may be involved in a single passenger train service).

¹⁸ The SSP final rule addressed a specific scenario involving a passenger railroad contracting out portions of its operations and explained that the passenger railroad would be required to comply with the final rule. *See* 81 FR 53857.

NPRM, and the final rule simply further explained the requirements proposed in the NPRM. The rule text and preamble of the NPRM made it clear that entities providing railroad transportation, such as States that provide IPR service, would be treated as railroads and are required to comply with the rule. The NPRM also proposed that railroads would be required to consult with directly affected employees on the contents of the SSP plan, a requirement directly from the RSIA. See 77 FR 55403 and 49 U.S.C. 20156(g). Therefore, the NPRM put States on notice that: (1) they will be treated like railroads under the SSP rule for providing railroad transportation, even if they contract out operations; and (2) railroads will be required to consult with directly affected employees. Consistent with the NPRM, the final rule went on to clarify who will be considered directly affected employees for railroads that contract out significant portions of their operations. Section 270.107(a)(2) did not add any new requirements, and States were given sufficient notice that FRA intended to apply the consultation requirements to them.

D. Guidance

Finally, the *Guidance* document FRA informally provided to the States is not an extension or an explanation of the SSP final rule. Rather, the *Guidance* addressed how FRA regulations generally apply to States that provide IPR service, merely used the SSP final rule as an example, and is unrelated to the SSP rulemaking.

FRA's Response

Although FRA generally disagrees with the State Petitions for the reasons discussed above, FRA nevertheless proposes to amend the final rule in response to the petitions. The proposed amendments would clarify that while all persons providing IPR or commuter rail passenger transportation share responsibility for ensuring compliance with the SSP final rule, the rule does not restrict a person's ability to provide for an appropriate designation of responsibility. The proposed amendments would also explain that any such designation must be included in the SSP plan, although a person may also notify FRA of a designation by submitting a notice of such designation before submitting the SSP plan. Further, the proposed amendments would establish requirements for describing the designation in an SSP plan. The section-by-section analysis discusses these proposed amendments in detail below. FRA believes the proposed amendments would clarify the States' ability to have another entity fulfill the States' responsibilities under the SSP final rule. If another entity performs SSP functions on a State's behalf, FRA would not expect a State to duplicate that work and effort.

The proposed amendments also specify that a person designating responsibility would remain responsible for ensuring compliance with the SSP final rule. As explained in the SSP final rule, it would be inconsistent with FRA's statutory jurisdiction over passenger rail service to allow a party to completely assign or otherwise contract away its entire

responsibility for compliance under the law. *See* 81 FR 53861 (Aug. 12, 2016). A State providing IPR service can have other parties fulfill safety responsibilities on its behalf, but it cannot entirely disclaim responsibility.¹⁹ Allowing a State provider of IPR service to completely divest itself of responsibility for ensuring the passenger operation's compliance with Federal rail safety requirements is not consistent with FRA's exercise of its rail safety jurisdiction because FRA has consistently indicated that responsibility for compliance does not rest solely with whichever service providers the States contract with.²⁰ However, if a State provider of IPR service appropriately designates another person as responsible for compliance with the SSP rule, FRA would consider the designated entity as the person with primary responsibility for SSP compliance. FRA's policy would therefore be to primarily look to the designated entity when reviewing and approving a submitted SSP plan, auditing the implementation of that plan, and deciding whether to take action to enforce the SSP rule requirements.

FRA is also proposing other revisions to the SSP final rule, which are fully detailed in the proposed rule itself.

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.

The final rule protects certain information a railroad compiles or collects after August 14, 2017, solely for SSP purposes from discovery, admission into evidence, or use for any other purpose in a Federal or State court proceeding for damages involving personal injury, wrongful death, or property damage. *See* 49 CFR 270.105(a). The final rule also specified certain categories of information that are not protected, including information a railroad compiled or collected on or before August 14, 2017, and that the railroad continues to compile and collect, even if the railroad uses that information to plan, implement, or evaluate its SSP. *See* 49 CFR 270.105(b)(2). The NPRM and final rule contain significant discussion of the protections and exceptions. *See* 77 FR 55373, 55378-79, 55390-92, and 55406 (Sept. 7, 2012); 81 FR 53851, 53855-56, 53858-60, 53878-82, and 53900 (Aug. 12, 2016).

¹⁹ *See e.g.*, 49 CFR 213.5(d) (FRA may hold the owner of track responsible for compliance with FRA's Track Safety Standards even if the track owner has assigned track maintenance responsibility to another entity).

²⁰ For example, the duty for compliance with passenger equipment standards in part 238 lies with railroads, including those that "operate intercity or commuter passenger train service," 49 CFR 238.3(a), and that duty remains with the railroad even though contractors must also comply. *See* 49 CFR 238.9(c). Railroads subject to the passenger train emergency preparedness regulation in part 239, including intercity and commuter passenger railroads, also have a non-delegable duty to comply with the standards in that part. *See* 49 CFR 239.3(a), 239.9.

FRA is proposing to amend the SSP final rule’s information protections to specify that they apply to a C³RS program included as part of a railroad’s SSP, even if the railroad joined C³RS on or before August 14, 2017. C³RS is a partnership currently between FRA and the National Aeronautics and Space Administration (NASA), in conjunction with participating railroads and labor organizations, that allows participating railroads and their employees to voluntarily and confidentially report close calls.²¹ Employees of participating railroads can submit C³RS reports to NASA, which protects the identity of both the reporting employee and the railroad by generalizing or removing all identifying information.

C³RS embodies many of the concepts and principles found in an SSP, including: proactive identification of hazards and risks; analysis of those hazards and risks; and implementation of appropriate action to eliminate or mitigate the hazards and risks. See 77 FR 55376 (Sept. 7, 2012) and 81 FR 53854 (Aug. 12, 2016). For example, railroads participating in C³RS establish peer review teams (PRT) that receive de-identified close call reports. After evaluating a close call report or reports, a PRT may develop and recommend corrective actions responding to the hazards and risks identified by the report.

While FRA does not require any railroad to implement a C³RS program, FRA encourages railroads to include a C³RS program as part of their SSPs. See 81 FR 53854 (Aug. 12, 2016). For a railroad that establishes a C³RS program as part of its SSP after August 14, 2017, the final rule already protects the railroad’s C³RS information.²² For clarity and to preserve continued participation by railroads that established C³RS programs on or before August 14, 2017, FRA is specifically proposing to add paragraph (a)(3) to § 270.105 to provide that for Federal or State court proceedings initiated after 365 days from publication of the final rule,²³ the information protected includes C³RS information a railroad includes in its SSP, even if the railroad compiled or collected the C³RS information on or before August 14, 2017. FRA is also proposing to add a definition for C³RS in § 270.5.

FRA’s proposed amendment would ensure the protections apply equally to every railroad that includes C³RS information (including PRT analyses) as part of its SSP, regardless of when the railroad joined C³RS. Because C³RS is a Federal safety program designed to increase the safety of railroad operations, and by its design it generates risk and hazard identification information, FRA believes it is important to provide clarity ensuring that

²¹ See generally <https://c3rs.arc.nasa.gov/information/summary.html>.

²² The C³RS information protected would include not only the reports submitted by employees, but also a PRT’s identification and analysis of any hazards and risks associated with those reports.

²³ FRA’s authority for issuing a rule protecting SSP information is found in 49 U.S.C. 20119(b). The proposed protections for C³RS information would apply only to court proceedings initiated 365 days after publication of a final rule because sec. 20119(b) provides that “[a]ny such rule prescribed pursuant to this subsection shall not become effective until 1 year after its adoption.”

early C³RS adopters receive the same SSP information protections as railroads that waited to join C³RS until after August 14, 2017. Further, FRA believes this clarity will promote safety because early C³RS adopters will be more willing to perform robust analyses of C³RS reports if they are confident that the SSP information protections will apply to those analyses. The proposal also avoids a situation where early C³RS adopters may even decide to drop out of the program because they fear they will not receive the same SSP information protections as newer participants. FRA believes the proposed amendment is also consistent with the spirit of the RSIA, which provides that FRA “may conduct behavior-based safety and other research, including pilot programs, before promulgating regulations under this section and thereafter.” 49 U.S.C. 20156(a)(2) (emphasis added).

As a practical matter, FRA’s proposed approach is also appropriate because the C³RS de-identification process could make it difficult to determine the applicability of the current SSP information protections, which generally apply based on when a railroad began to compile or collect certain information. For example, C³RS reports are de-identified to protect the reporter’s confidentiality, and this de-identification process involves removing references to the reporting employee and the involved railroad and generalizing or eliminating dates and times.²⁴ Protecting C³RS information included in an SSP, regardless of when a railroad joined the program, would avoid creating a situation where a participating railroad could not establish applicability of the SSP information protections because, due to the de-identification process that is essential to the program, the date the information was compiled or collected was unknown.

Further, FRA notes that C³RS does not provide railroads a mechanism for gathering unlimited safety information. A railroad would not, therefore, be able to expand the scope of C³RS unilaterally to strategically gain information protections for a larger universe of safety information. For example, C³RS information a railroad can compile or collect is limited by the nature of the program, which only provides for voluntary reporting of close call events by railroad employees. Implementing memoranda of understanding among FRA, railroads, and labor organizations also limit the scope of close call events that can be reported to the program. For example, events involving a train accident or injury are generally ineligible to be reported as close calls.²⁵

FRA requests public comment on this proposal and any potential alternatives. FRA is specifically requesting comment on a potential alternative under which FRA would only protect C³RS information a railroad compiles or collects as part of an SSP after 365 days following publication of a final rule, even if the railroad established the C³RS program on or before that date. Like with the proposal discussed above, this alternative would reflect

²⁴ See <https://c3rs.arc.nasa.gov/information/confidentiality.html>.

²⁵ See e.g., Confidential Close Call Reporting System Implementing Memorandum of Understanding (C³RS/IMOU) for Amtrak, Article 6.1 (Criteria for Close Call Report Acceptance), May 11, 2010, available at <https://www.fra.dot.gov/eLib/details/L16140>.

that C³RS embodies many of the concepts and principles in SSP and would provide C³RS-participating railroads similar information protection, regardless of when the railroads joined the program. The notable difference under this potential alternative is that C³RS information a railroad compiled or collected on or before 365 days following publication of a final rule would not receive protection. FRA also notes that this alternative may be difficult to administer because the process of de-identifying C³RS information could make it difficult to determine when a railroad compiled or collected the information.

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 32 commuter and intercity passenger railroads will be affected by this final rulemaking.

Per OMB's request, FRA is including the annual dollar cost equivalent of the requested burden hours below. FRA derives this estimate from the 2017 AAR publication Railroad Facts (p. 57), and uses the average annual wages for each employee group as follows: For Executives, Officials, and Staff Assistants, this cost amounts to \$110 per hour. For Professional/Administrative staff, this cost amounts to \$73 per hour. For Maintenance of Way and Structure employees, this cost amounts to \$66 per hour. For Maintenance of Equipment and Stores employees, this cost amounts to \$59 per hour. For Transportation other than Train and Engine employees, this cost amounts to \$72 per hour. For Transportation Train and Engine employees, this cost amounts to \$74 per hour. All cost estimates include 75% overhead.

Penalties and responsibility for compliance (§ 270.7)

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$870 and not more than \$28,474 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violation has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$113,894 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)). FRA's website

at www.fra.dot.gov contains a schedule of civil penalty amounts used in connection with this part.

(b) Although the requirements of this part are stated in terms of the duty of a railroad, when any person, including a contractor or subcontractor to a railroad, performs any function covered by this part, that person (whether or not a railroad) shall perform that function in accordance with this part.

(c)(1) All persons providing intercity rail passenger or commuter rail passenger transportation share responsibility for ensuring compliance with this part. Nothing in this paragraph, however, shall restrict the ability to provide for an appropriate designation of responsibility for compliance with this part among those persons through a joint operating agreement or other binding contract. A designator, however, shall not be relieved of responsibility for compliance with this part. **(New Requirement)**

(2)(i) Any person subject to this part may designate another person as responsible for compliance with this part by including a designation of responsibility in the SSP plan. This designation must be included in the SSP plan's statement describing the railroad's management and organizational structure and include the information specified by § 270.103(e)(6).

The burden for designations of responsibility for compliance is included in the railroad's SSP Plan's statement under § 270.103(e)(6). Consequently, there is no additional burden associated with this requirement.

(ii) A person subject to this part may notify FRA of a designation of responsibility before submitting an SSP plan by first submitting a designation of responsibility notice to the Associate Administrator for Railroad Safety and Chief Safety Officer. The notice must include all information required under § 270.103(e)(6), and this information must also be included in the SSP plan.

The burden for designations of responsibility for compliance is included in the railroad's SSP Plan's statement under § 270.103(e)(6). Consequently, there is no additional burden associated with this requirement.

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;

(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; and

(6) If a person subject to this part designates another person as responsible for compliance with this part under § 270.7(c)(2), the following information must be included in the designator's SSP plan and any notice of designation submitted under § 270.7(c)(2): **(New/Additional Requirements)**

(i) The name and contact information of the designator;

(ii) The name and contact information of the designated entity and a statement signed by an authorized representative of the designated entity acknowledging responsibility for compliance with this part;

(iii) A statement affirming that a copy of the designation has been provided to the primary point of contact for each non-profit labor organization representing directly affected employees for consultation purposes under § 270.107(a)(2); and

(iv) A description of how directly affected employees not represented by a non-profit labor organization were notified of the designation for consultation purposes under § 270.107(a).

(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 32 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 1,280 hours.

Respondent Universe:

32 railroads

Burden time per response:

40
hours

Frequency of Response:

One-time

Annual number of Responses:	32 plans	
Annual Burden:		1,280 hours
Annual Cost:		\$140,800 (\$110 x 1,280 hrs.)

Calculation: 32 SSPPs x 40 hrs. = 1,280 hours

Under new 270.103(e)(6)(iii) above, FRA estimates that approximately 27 copies of designations will be sent to non-profit labor organizations primary points of contact. It is estimated that it will take approximately two (2) minutes to send each copy. Total annual burden for this requirement is one (1) hour. **(New Requirement)**

Respondent Universe:	32 railroads
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Burden time per response:	2 minutes
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Frequency of Response:	On occasion
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Annual number of Responses:	27 designation copies
Annual Burden:	1 hour
Annual Cost:	\$73 (\$73x 1 hr.)

Calculation: 27 designation copies x 2 min. = 1 hour

Also, under new 270.103(e)(6)(iv) above, FRA estimates that approximately 27 designation notifications will be sent directly to employees not represented by non-profit labor organizations. It is estimated that it will take approximately five (5) minutes to send each notification. Total annual burden for this requirement is two (2) hours. **(New Requirement)**

Respondent Universe:	32 railroads
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Burden time per response:

5
minute
s

Frequency of Response:

On occasion

Annual number of Responses: 27 designation notifications
Annual Burden: 2 hours
Annual Cost: \$146 (\$73 x 2 hrs.)

Calculation: 27 designation notifications x 5 min. = 2
hours

Additionally, FRA estimates that approximately 450 railroad employees 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:

32 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
Annual Cost: \$66,795 (\$73 x 915)

hrs.)

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: 32 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
Annual Cost: \$14,600 (\$73 x 200 hrs.)

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 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: 32 railroads

Burden time per response:

10
hours

Frequency of Response: On occasion

Annual number of Responses: 10 mitigation methods descriptions

Annual Burden: 100 hours

Annual Cost: \$7,300 (\$73 x 100
hrs.)

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 32 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 1,280 hours.

Respondent Universe: 32 railroads

Burden time per response: 40
hours

Frequency of Response: On occasion

Annual number of Responses: 32 technology analysis results

Annual Burden: 1,280 hours

Annual Cost: \$93,440 (\$73 x 1,280
hrs.)

Calculation: 32 technology analysis results x 40 hrs. = 1,280 hours

Total annual burden for this entire requirement is 3,778 hours (1,280 + 1 + 2 + 915 + 200 + 100 + 1,280).

Discovery and Admission as Evidence of Certain Information (§ 270.105)

(a) Protected information. Any information compiled or collected after August 14, 2017, solely for the purpose of planning, implementing, or evaluating a system safety program under this part shall not be subject to discovery, admitted into evidence, or considered for other purposes in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage. For purposes of this section—

(1) “Information” includes plans, reports, documents, surveys, schedules, lists, or data, and specifically includes a railroad’s analysis of its safety risks under § 270.103(q)(1) and a railroad’s statement of mitigation measures under § 270.103(q)(2);

(2) “Solely” means that a railroad originally compiled or collected the information for the exclusive purpose of planning, implementing, or evaluating a system safety program under this part. Information compiled or collected for any other purpose is not protected, even if the railroad also uses that information for a system safety program. “Solely” also means that a railroad continues to use that information only for its system safety program. If a railroad subsequently uses for any other purpose information that was initially compiled or collected for a system safety program, this section does not protect that information to the extent that it is used for the non-system safety program purpose. The use of that information within the railroad's system safety program, however, remains protected. This section does not protect information that is required to be compiled or collected pursuant to any other provision of law or regulation; and

(3) A railroad may include a Confidential Close Call Reporting System (C³RS) program in a system safety program established under this part. The information protected by this paragraph includes C³RS information a railroad compiles or collects solely for system safety program purposes after August 14, 2017, even if the C³RS program was established on or before August 14, 2017.

The burden for this requirement is already included under that of System Safety Programs under § 271.103 above. Consequently, there is no additional burden associated with this requirement.

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. For directly affected employees represented by a non-profit labor organization, the railroad's primary point of contact shall be either the general chairperson of that non-profit labor organization or a non-profit labor organization primary point of contact the railroad and the non-profit labor organization agree on at the beginning of the consultation process. 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 32 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 1,280 hours.

Respondent Universe: 32 railroads

Burden time per response: 40 hours

Frequency of Response: One-time

Annual number of Responses:	32 consultations
Annual Burden:	1,280 hours
Annual Cost:	\$93,440 (\$73 x 1,280 hrs.)

Calculation: 32 consultations x 40 hrs. = 1,280 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 a SSP plan during this preliminary meeting. A railroad must:

(i) Hold the preliminary meeting no later than **[INSERT 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] (Revised Requirement)** and

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

FRA estimates that approximately 32 notifications by railroads of the preliminary meeting no less than 60 days before it is held will be made to the directly affected employees 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 256 hours.

Respondent Universe: 32 railroads

Burden time per response: 8 hours

Frequency of Response: One-time

Annual number of Responses:	32 notifications
Annual Burden:	256 hours
Annual Cost:	\$18,688 (\$73 x 256 hrs.)

Calculation: 32 notifications x 8 hrs. = 256 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 either each international/national president and general chairperson of any non-profit employee labor organization representing a class or craft of the railroad's directly affected employees, or

each non-profit labor organization primary point of contact the railroad and the non-profit labor organizations agree on at the beginning of the consultation process. 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. **(Revised Requirement)** FRA estimates that approximately 32 consultation statements will be completed by railroads that meet the provisions of the above requirement. FRA estimates that 30 of these 32 consultation statements will be completed by railroads that will consult with labor unions. It is estimated that each of the 30 good faith consultation statements will take approximately 80 hours to complete and the other two (2) consultation statements will take approximately two (2) hours to complete. Total annual burden for this requirement is 2,404 hours.

Respondent Universe:

32 railroads

Burden time per response:

80
hours
+ 2
hours

Frequency of Response:

One-time

Annual number of Responses:	32 consultation statements
Annual Burden:	2,404 hours
Annual Cost:	\$175,492 (\$73 x 2,404 hrs.)

Calculation: 30 consultation statements x 80 hrs. + 2 consultation statements x 2 hrs. = 2,404 hours

Additionally, FRA estimates that approximately 32 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: 32 railroads

Burden time per response: 1 minute

Frequency of Response: One-time

Annual number of Responses: 32 copies of consultation statements/SSP plans

Annual Burden: 1 hour

Annual Cost: \$73 (\$73 x 1 hr.)

Calculation: 32 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 3,941 hours (1,280 + 256 + 2,404 + 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 and Chief Safety Officer, 1200 New Jersey Avenue SE, Washington, DC 20590, no later than **[DATE 365 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE 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:

32 railroads

Burden time per response:

40
hours

Frequency of Response:

One-time

Annual number of Responses:

4 amended plans

Annual Burden:

160 hours

Annual Cost:

\$11,680 (\$73 x 160

hrs.)

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: 32 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
Annual Cost: \$2,920 (\$73 x 40 hrs.)

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: 32 railroads

Burden time per response: 40 hours

Frequency of Response:	On occasion
Annual number of Responses:	2 amended plans
Annual Burden:	80 hours
Annual Cost:	\$5,840 (\$73 x 80 hrs.)

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:	32 railroads
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Burden time per response:	10 minute s
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Frequency of Response:	On occasion
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Annual number of Responses:	37 copies of written SSPPs
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Annual Burden:	6 hours
Annual Cost:	\$438 (\$73 x 6 hrs.)

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 32 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 1,280 hours.

Respondent Universe:	32 railroads
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Burden time per response:	40 hours
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Frequency of Response:	Annually
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Annual number of Responses:	32 SSPP annual assessments/reports
Annual Burden:	1,280 hours
Annual Cost:	\$93,440 (\$73 x 1,280 hrs.)

Calculation: 32 SSPP annual assessments/reports x 40

hrs. = 1,280 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 32 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 256 hours.

Respondent Universe: 32 railroads

Burden time per response: 8 hours

Frequency of Response: On occasion

Annual number of Responses: 32 certifications
Annual Burden: 256 hours
Annual Cost: \$28,160 (\$110 x 256 hrs.)

Calculation: 32 certifications x 8 hrs. = 256 hours

Total annual burden for this entire requirement is 1,536 hours (1,280 + 256).

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: 32 railroads

Burden time per response: 40 hours

Frequency of Response: Annually

Annual number of Responses: 6 improvement plans
Annual Burden: 240 hours
Annual Cost: \$26,400 (\$110 x 240 hrs.)

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: 32 railroads

Burden time per response: 24 hours

Frequency of Response:	On occasion
Annual number of Responses:	2 amended improvement plans
Annual Burden:	48 hours
Annual Cost:	\$3,504 (\$73 x 48 hrs.)

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:	32 railroads
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Burden time per response:	4 hours
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Frequency of Response:	On occasion
Annual number of Responses:	2 status reports
Annual Burden:	8 hours
Annual Cost:	\$584 (\$73 x 8 hrs.)

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 to complete additional information document. Total annual burden for this requirement is one (1) hour.

Respondent Universe: 32 railroads

Burden time per response: 30 minutes

Frequency of Response: One-time

Annual number of Responses: 2 additional information documents
Annual Burden: 1 hour
Annual Cost: \$73 (\$73 x 1 hr.)

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 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, 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 by **[INSERT 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** 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

Annual Cost:

\$1,168 (\$73 x 16 hrs.)

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

Annual Cost: \$1,168 (\$73 x 16 hrs.)

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:

32 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
Annual Cost:	\$730 (\$73 x 10 hrs.)
<u>Calculation:</u>	20 written requests x 30 min. = 10 hours

Total annual requested burden for this entire information collection is **9,880 hours**, and **1,310 responses**. The dollar equivalent cost for the requested burden hours amounts to **\$768,952**.

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

\$ 222,343 TOTAL

15. Explanation of program changes and adjustments.

This information collection request is a revision to the last approved submission. FRA is requesting a total burden of **9,880 hours** and **1,310 responses**. The burden then for this submission has increased by **515 hours** and by **70 responses**. The change in burden is due both to program changes and adjustments, which are delineated in the tables below.

TABLE FOR PROGRAM CHANGES

CFR Section	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	FRA Burden Hours (This Submission)	Difference (plus/minus)
270.103(e)(6)(iii) – Copies of railroad designations to non-profit labor organization	0 copies 0 minutes	27 copies 2 minutes	0 hours	1 hour	+ 1 hour + 27 responses
270.103(e)(6)(iv) – Copies of railroad designations to employees not represented by non-profit labor organization	0 copies 0 minutes	27 copies 5 minutes	0 hours	2 hours	+ 2 hours + 27 responses

Program changes listed above increased the burden by *three (3) hours* and *54 responses*.

TABLE FOR ADJUSTMENTS

CFR Section	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	FRA Burden Hours (This Submission)	Difference (plus/minus)
270.103 – System Safety Program Plan (SSPP) – RR Comprehensive written SSPP meeting all of this section’s requirements	30 plans 40 hours	32 plans 40 hours	1,200 hours	1,280 hours	+ 80 hours + 2 responses
270.103(r)(6) – RR Furnishing results of technology analysis and implementation plan upon request to FRA and participating part 212 States	30 technology analysis results 40 hours	32 technology analysis results 40 hours	1,200 hours	1,280 hours	+ 80 hours + 2 responses
270.107(a)(2) – RR Consultation with its directly affected employees on SSPP	30 consults 40 hours	32 consults 40 hours	1,200 hours	1,280 hours	+ 80 hours + 2 responses

270.107(a)(3)(ii) – RR Notification to directly affected employees of preliminary meeting at least 60 days before being held	30 notices 8 hours	32 notices 8 hours	240 hours	256 hours	+ 16 hours + 2 responses
270.107(b) (1)(2)– RR consultation statements that includes service list with name & contact information for labor organization chairpersons & non-union employees who participated in process	28 statements 80 hours + 2 statements 2 hours	30 statements 80 hours + 2 statements 2 hours	2,244 hours	2,404 hours	+ 160 hours + 2 responses
270.107(b)(3) - Copies of consultation statements by RR to service list individuals	30 copies 1 minute	32 copies 1 minute	1 hour	1 hour	0 hours + 2 responses
270.303(a)(1,2,3) - Annual internal SSPP assessments/reports conducted by RRs	30 assessments/ reports 40 hours	32 assessments/ reports 40 hours	1,200 hours	1,280 hours	+ 80 hours + 2 responses
270.303(c)(2) - Certification of results of RR internal assessment by chief safety official	30 certification statements 8 hours	32 certification statements 8 hours	240 hours	256 hours	+ 16 hours + 2 responses

Adjustments listed above increased the burden by *512 hours* and 16 responses.

The current OMB agency inventory exhibits a total burden of *9,365 hours and 1,240 responses*, while the present submission reflects a total burden of *9,880 hours and 1,310 responses*. Hence, there is a total increase in burden of **515 hours** and **70 responses**.

There is no change in costs to respondents from the last approved submission.

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.