

## § 269.15

the fiscal year in which the petition was received, adjusted for inflation, and for any subsequent years at such level, adjusted for inflation;

(3) Condition the operating and subsidy rights upon the winning bidder continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award;

(4) Condition the operating and subsidy rights upon the winning bidder's compliance with the minimum standards established under section 207 of the Act and such additional performance standards as FRA may establish; and

(5) Subject the winning bidder to the grant conditions established by 49 U.S.C. 24405.

(c) *Staffing Plan Publication.* The winning bidder shall make their staffing plan required by § 269.9(b)(4) of this part available to the public after the bid award.

## § 269.15 Access to facilities; employees.

(a) *Access to facilities.* If the award under § 269.13 of this part is made to a railroad other than Amtrak, Amtrak must provide access to its reservation system, stations, and facilities directly related to operations to the winning bidder awarded a contract under this part, in accordance with section 217 of the Act, necessary to carry out the purposes of this part.

(b) *Employees.* The employees of any person used by a railroad in the operation of a route under this part shall be considered an employee of that railroad and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under section 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees who provide food and beverage service.

(c) *Hiring preference.* The winning bidder shall provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the winning bidder.

## 49 CFR Ch. II (10–1–16 Edition)

## § 269.17 Cessation of service.

If a railroad awarded a route under this part ceases to operate the service or fails to fulfill its obligations under the contract required under § 269.13 of this part, the Administrator, in collaboration with the Surface Transportation Board, shall take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. The entity providing service shall either be Amtrak or a railroad eligible for this pilot program under § 269.7 of this part.

## PART 270—SYSTEM SAFETY PROGRAM

### Subpart A—General

Sec.

270.1 Purpose and scope.

270.3 Application.

270.5 Definitions.

270.7 Penalties and responsibility for compliance.

### Subpart B—System Safety Program Requirements

270.101 System safety program; general.

270.103 System safety program plan.

270.105 Discovery and admission as evidence of certain information.

270.107 Consultation requirements.

### Subpart C—Review, Approval, and Retention of System Safety Program Plans

270.201 Filing and approval.

270.203 Retention of system safety program plan.

### Subpart D—System Safety Program Internal Assessments and External Auditing

270.301 General.

270.303 Internal system safety program assessment.

270.305 External safety audit.

APPENDIX A TO PART 270—SCHEDULE OF CIVIL PENALTIES

APPENDIX B TO PART 270—FEDERAL RAILROAD ADMINISTRATION GUIDANCE ON THE SYSTEM SAFETY PROGRAM CONSULTATION PROCESS

## Federal Railroad Administration, DOT

## § 270.5

APPENDIX C TO PART 270—PROCEDURES FOR SUBMISSION OF SSP PLANS AND STATEMENTS FROM DIRECTLY AFFECTED EMPLOYEES

AUTHORITY: 49 U.S.C. 20103, 20106–20107, 20118–20119, 20156, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

SOURCE: 81 FR 53896, Aug. 12, 2016, unless otherwise noted.

EFFECTIVE DATE NOTE: At 81 FR 53896, Aug. 12, 2016, part 270 was added, effective Oct. 11, 2016

### Subpart A—General

#### § 270.1 Purpose and scope.

(a) The purpose of this part is to improve railroad safety through structured, proactive processes and procedures developed and implemented by railroads. This part requires certain railroads to establish a system safety program that systematically evaluates railroad safety hazards and the resulting risks on their systems and manages those risks to reduce the number and rates of railroad accidents, incidents, injuries, and fatalities.

(b) This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of railroad system safety programs. This part does not restrict railroads from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

(c) This part prescribes the protection of information generated solely for the purpose of planning, implementing, or evaluating a system safety program under this part.

#### § 270.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all—

(1) Railroads that operate intercity or commuter passenger train service on the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger train service in a metropolitan or suburban area (as described by 49 U.S.C. 20102(2)), including public authorities operating passenger train service.

(b) This part does not apply to:

(1) Rapid transit operations in an urban area that are not connected to

the general railroad system of transportation;

(2) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation;

(3) Operation of private cars, including business/office cars and circus trains; or

(4) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.*, plant railroads, as defined in § 270.5).

#### § 270.5 Definitions.

As used in this part—

*Administrator* means the Federal Railroad Administrator or his or her delegate.

*Configuration management* means a process that ensures that the configurations of all property, equipment, and system design elements are accurately documented.

*FRA* means the Federal Railroad Administration.

*Fully implemented* means that all elements of a system safety program as described in the SSP plan are established and applied to the safety management of the railroad.

*Hazard* means any real or potential condition (as identified in the railroad's risk-based hazard analysis) that can cause injury, illness, or death; damage to or loss of a system, equipment, or property; or damage to the environment.

*Passenger* means a person, excluding an on-duty employee, who is on board, boarding, or alighting from a rail vehicle for the purpose of travel.

*Person* means an entity of any type covered under 1 U.S.C. 1, including, but not limited to, the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor or subcontractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor.

*Plant railroad* means a plant or installation that owns or leases a locomotive, uses that locomotive to switch

## § 270.7

## 49 CFR Ch. II (10–1–16 Edition)

cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, is not considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

*Positive train control system* means a system designed to prevent train-to-train collisions, overspeed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position, as described in subpart I of part 236 of this chapter.

*Rail vehicle* means railroad rolling stock, including, but not limited to, passenger and maintenance vehicles.

*Railroad* means—

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including—

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation; and

(2) A person or organization that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

*Risk* means the combination of the probability (or frequency of occurrence) and the consequence (or severity) of a hazard.

*Risk-based hazard management* means the processes (including documentation) used to identify and analyze hazards, assess and rank corresponding risks, and eliminate or mitigate the resulting risks.

*Safety culture* means the shared values, actions and behaviors that demonstrate commitment to safety over competing goals and demands.

*SSP plan* means system safety program plan.

*System safety* means the application of management, economic, and engineering principles and techniques to optimize all aspects of safety, within the constraints of operational effectiveness, time, and cost, throughout all phases of a system life cycle.

*System safety program* means a comprehensive process for the application of management and engineering principles and techniques to optimize all aspects of safety.

*System safety program plan* means a document developed by the railroad that implements and supports the railroad's system safety program.

*Tourist, scenic, historic, or excursion operations* means railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose. Train movements of new passenger equipment for demonstration purposes are not tourist, scenic, historic, or excursion operations.

### § 270.7 Penalties and responsibility for compliance.

(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 \$839 and not more than \$27,455 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 \$109,819 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)). Appendix A to this part 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.

### Subpart B—System Safety Program Requirements

#### § 270.101 System safety program; general.

(a) 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 SSP plan described in § 270.103.

(b) A railroad's system safety program shall be designed so that it promotes and supports a positive safety culture at the railroad.

#### § 270.103 System safety program plan.

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

(2) Each railroad subject to this part shall communicate with each railroad

that hosts passenger train service for that railroad and coordinate the portions of the SSP plan applicable to the railroad hosting the passenger train service.

(b) *System safety program policy statement.* Each railroad shall set forth 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 shall 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 providing or utilizing 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 the following:

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

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

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

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

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

(f) *System safety program implementation process.* (1) 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 shall 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 (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 of this part.

(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 a 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 a SSP plan that relates exclusively 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 shall 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, computer-based, or correspondence training.

(6) The railroad shall 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 in part 238 of this chapter and the passenger train emergency preparedness requirements in part 239 of this chapter.

(k) *Workplace safety.* Each railroad shall set forth a statement in its SSP plan that describes the programs established by the railroad that protect the safety of the railroad's employees and contractors. The statement shall include a description of:

(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 that 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 any medical monitoring programs; and

(4) The standards for the control of alcohol and drug use 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/incident 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 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) used 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 shall establish a risk-based hazard management program as part of the railroad's system safety program. The risk-based hazard management program shall be fully described in the SSP plan.

(1) The risk-based hazard management program shall 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;

(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 shall include:

(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 paragraphs (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: 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 shall include this 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 costs 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 described 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 in paragraph (r)(3) of this section, in the technology analysis and implementation plan in the SSP plan, 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, Public Law 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) of this section. The railroad shall make the results of any analysis conducted pursuant to paragraph (r)(3) of this section 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 the processes and procedures used by the railroad to manage significant operational changes, system extensions, system modifications, or other significant changes that will have a direct impact on railroad safety.

(2) *Configuration management.* Each railroad shall establish a configuration management program 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;



§ 270.105

(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 that describes 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.

**§ 270.105 Discovery and admission as evidence of certain information.**

(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); and

(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.

(b) *Non-protected information.* This section does not affect the discovery, admissibility, or consideration for other purposes in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage of information compiled or collected for a purpose other than that specifically identified in paragraph (a) of this section. Such information shall continue to be discoverable, admissible, or considered for other purposes in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage if it was discoverable, admissible, or considered for other purposes in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage on or before August 14, 2017. Specifically, the types of information not affected by this section include:

(1) Information compiled or collected on or before August 14, 2017;

(2) Information compiled or collected on or before August 14, 2017, and that continues to be compiled or collected, even if used to plan, implement, or evaluate a railroad's system safety program; or

(3) Information that is compiled or collected after August 14, 2017, and is compiled or collected for a purpose other than that identified in paragraph (a) of this section.

(c) *Information protected by other law or regulation.* Nothing in this section shall affect or abridge in any way any other protection of information provided by another provision of law or regulation. Any such provision of law or regulation applies independently of the protections provided by this section.

(d) *Preemption.* To the extent that State discovery rules and sunshine

laws would require disclosure of information protected by this section in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage, those rules and laws are preempted.

**§ 270.107 Consultation requirements.**

(a) *General duty.* (1) Each railroad required to establish a system safety program under this part shall in good faith consult with, and use its best efforts to reach agreement with, all of its directly affected employees, including any non-profit labor organization representing a class or craft of directly affected employees, on the contents of the SSP plan.

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

(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 April 10, 2017; and

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

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

(b) *Railroad consultation statements.* A railroad required to submit a SSP plan under §270.201 must also submit, together with the 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 of why it believes agreement was not reached; and

(3) 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. 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.

(c) *Statements from directly affected employees.* (1) If a railroad and its directly affected employees cannot reach agreement on the proposed contents of a SSP plan, the directly affected employees may file a statement with the FRA Associate Administrator for Railroad Safety and Chief Safety Officer explaining their views on the plan on which agreement was not reached with the FRA Associate Administrator for Railroad Safety and Chief Safety Officer at Mail Stop 25, 1200 New Jersey Ave SE., Washington, DC 20590. The FRA Associate Administrator for Railroad Safety and 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 date of the railroad's submission of a proposed SSP plan to submit the statement described in paragraph (c)(1) of this section.

(d) *Consultation requirements for system safety program plan amendments.* A railroad's 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).

### Subpart C—Review, Approval, and Retention of System Safety Program Plans

#### § 270.201 Filing and approval.

(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, Mail Stop 25, 1200 New Jersey Avenue SE., Washington, DC 20590, no later than February 8, 2018 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:

(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 plan. Directly affected employees may also file a statement in accordance with § 270.107(c).

(b) *Approval.* (1) Within 90 days of receipt of a 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 a 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.

(c) *Review of amendments.* (1)(i) A railroad shall submit any amendment(s) to the SSP plan to FRA not less than 60 days before the proposed effective date of the amendment(s). The railroad shall file the amended SSP plan with a cover letter outlining the changes made to the original approved 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 its 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 before the proposed effective date of the amendment, the railroad shall 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 paragraphs (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 and 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 amended plan has been approved by FRA, and if not approved, the specific points in which each proposed amendment 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 amended plan has been approved or not, the railroad may implement the 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.

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

(e) *Electronic submission.* All documents required to be submitted to FRA under this part may be submitted electronically. Appendix C to this part provides instructions on electronic submission of documents.

**§ 270.203 Retention of system safety program plan.**

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.

**Subpart D—System Safety Program Internal Assessments and External Auditing**

**§ 270.301 General.**

The system safety program and its implementation shall be assessed internally by the railroad and audited externally by FRA or FRA's designee.

**§ 270.303 Internal system safety program assessment.**

(a) Following FRA's initial approval of the railroad's SSP plan pursuant to § 270.201, the railroad shall 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).

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

(1) Conduct internal system safety program assessments;

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

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

(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.

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

(i) Submit to FRA a copy of the railroad's internal assessment report that

**§ 270.305**

**49 CFR Ch. II (10–1–16 Edition)**

includes a system safety program assessment and the status of internal assessment findings and improvement plans to the FRA Associate Administrator for Railroad Safety and 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.

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

**§ 270.305 External safety audit.**

(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.

(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.

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

**APPENDIX A TO PART 270—SCHEDULE OF CIVIL PENALTIES**

**PENALTY SCHEDULE <sup>1</sup>**

	Violation	Willful violation
<b>Subpart B—System Safety Program Requirements</b>		
270.101—System safety program; general:		
(a) Failure to establish a system safety program .....	\$15,000	\$30,000
(a) Failure to include a risk-based hazard management program in the railroad's system safety program .....	10,000	20,000
270.103—System safety program plan:		
(a)(1) Failure to include and comply with any required element or any sub-element in the SSP plan .....	7,500	15,000
(a)(2) Failure to communicate and coordinate with host railroad on the SSP plan .....	7,500	15,000
270.107—Consultation Requirements:		
(a)(1) Failure to consult with directly affected employees .....	10,000	20,000
Failure to consult in good faith and/or use best efforts .....	10,000	20,000
(a)(3) Failure to hold preliminary meeting .....	7,500	15,000
Failure to hold preliminary meeting within April 10, 2017 .....	5,000	10,000
Failure to notify directly affected employees no less than 60 days before meeting is held .....	7,500	15,000
(b) Failure to submit consultation statement with plan submission .....	7,500	15,000
Failure to include all required elements in consultation statement .....	5,000	10,000
(d) Failure to submit consultation statement with submission of plan amendment .....	5,000	10,000
<b>Subpart C—Review, Approval, and Retention of SSP Plans</b>		
270.201—Filing and approval:		
(a)(1) Failure to file an initial SSP plan .....	10,000	20,000
Failure to file a SSP plan within 90 days of commencing operations .....	10,000	20,000
(a)(3) Failure to include all required information in submission .....	5,000	10,000
(b)(3) Failure to correct identified deficiencies and amend SSP plan .....	7,500	15,000
Failure to submit amended SSP plan .....	7,500	15,000
Failure to submit amended SSP plan within 90 days .....	5,000	10,000

PENALTY SCHEDULE <sup>1</sup>—Continued

	Violation	Willful violation
(c)(1)(i) Failure to submit amendment to SSP plan .....	7,500	15,000
Failure to submit amendment to SSP plan within 60 days .....	5,000	10,000
(c)(2)(iii) Failure to submit corrected amendment or notify FRA of retraction .....	7,500	15,000
Failure to submit corrected amendment within 60 days .....	5,000	10,000
270.203—Retention of SSP plan:		
Failure to retain a copy of the SSP plan at the system/division headquarters .....	10,000	20,000
Failure to make records available to representatives of FRA and States participating under part 212 of this chapter .....	7,500	15,000
<b>Subpart D—System Safety Program Internal Assessments and External Auditing</b>		
270.303—Internal program assessment:		
(a) Failure to conduct an annual internal assessment .....	10,000	20,000
Failure to include all required elements in the internal assessment .....	7,500	15,000
(b) Failure to include a statement in the SSP plan describing the required elements ..	5,000	10,000
(c)(1)(i) Failure to submit to FRA the internal assessment report .....	7,500	15,000
Failure for the internal assessment report to contain all required elements and sub-elements .....	5,000	10,000
(c)(1)(ii) Failure to develop and outline improvement plans .....	7,500	15,000
Failure to comply with improvement plans .....	7,500	15,000
(c)(2) Failure of chief official responsible for safety to certify the results of the internal assessment .....	5,000	10,000
270.305—External safety audit:		
(b)(1) Failure to submit improvement plans .....	7,500	15,000
Failure to submit improvement plans within 60 days .....	5,000	10,000
Failure to include all required elements in the improvement plans .....	5,000	10,000
(b)(2) Failure to amend and submit to FRA the improvement plan .....	7,500	15,000
Failure to submit amended improvement plan within 30 days .....	5,000	10,000
(b)(3) Failure to provide a report regarding the status of the implementation of the improvements set forth in the improvement plan .....	7,500	15,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$109,819 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

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. See §270.107(a). This appendix discusses the meaning of the terms “good faith” and “best efforts,” and provides non-mandatory guidance on how a railroad may comply with the requirement to consult with directly affected employees on the contents of its SSP plan. Guidance is provided for employees who are represented by a non-profit employee labor organization and employees who are not represented by any such organization.

THE MEANING OF “GOOD FAITH” AND “BEST EFFORTS”

“Good faith” and “best efforts” are not interchangeable terms representing a vague standard for the §270.107 consultation process. Rather, each term has a specific and distinct meaning. When consulting with directly affected employees, therefore, a railroad must independently meet the standards for both the good faith and best efforts obli-

gations. A railroad that does not meet the standard for one or the other will not be in compliance with the consultation requirements of §270.107.

The good faith obligation requires a railroad to consult with employees in a manner that is honest, fair, and reasonable, and to genuinely pursue agreement on the contents of a SSP plan. If a railroad consults with its employees merely in a perfunctory manner, without genuinely pursuing agreement, it will not have met the good faith requirement. For example, a lack of good faith may be found if a railroad’s directly affected employees express concerns with certain parts of the railroad’s SSP plan, and the railroad neither addresses those concerns in further consultation nor attempts to address those concerns by making changes to the SSP plan.

On the other hand, “best efforts” establishes a higher standard than that imposed by the good faith obligation, and describes the diligent attempts that a railroad must pursue to reach agreement with its employees on the contents of its system safety program. While the good faith obligation is concerned with the railroad’s state of mind during the consultation process, the best efforts obligation is concerned with the specific efforts made by the railroad in an attempt to

reach agreement. This would include considerations such as whether a railroad had held sufficient meetings with its employees to address or make an attempt to address any concerns raised by the employees, or whether the railroad had made an effort to respond to feedback provided by employees during the consultation process. For example, a railroad would not meet the best efforts obligation if it did not initiate the consultation process in a timely manner, and thereby failed to provide employees sufficient time to engage in the consultation process. A railroad may, however, wish to hold off substantive consultations regarding the contents of its SSP until one year after the publication date of the rule to ensure that certain information generated as part of the process is protected from discovery and admissibility into evidence under §270.105 of the rule. Generally, best efforts are measured by the measures that a reasonable person in the same circumstances and of the same nature as the acting party would take. Therefore, the standard imposed by the best efforts obligation may vary with different railroads, depending on a railroad's size, resources, and number of employees.

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. 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. Pursuant to §270.201(b)(3), if FRA does not approve the SSP plan, the railroad will have 90 days, following receipt of FRA's written notice that the plan was not approved, to correct any deficiency 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).

**GUIDANCE ON HOW A RAILROAD MAY CONSULT WITH DIRECTLY AFFECTED EMPLOYEES**

Because the standard imposed by the best efforts obligation will vary depending upon

the railroad, there may be countless ways for various railroads to comply with the consultation requirements of §270.107. Therefore, FRA believes it is important to maintain a flexible approach to the §270.107 consultation requirements, to give a railroad and its directly affected employees the freedom to consult in a manner best suited to their specific circumstances.

FRA is nevertheless providing guidance in this appendix as to how a railroad may proceed when consulting (utilizing good faith and best efforts) with employees in an attempt to reach agreement on the contents of a SSP plan. FRA believes this guidance may be useful as a starting point for railroads that are uncertain about how to comply with the §270.107 consultation requirements. This guidance distinguishes between employees who are represented by a non-profit employee labor organization and employees who are not, as the processes a railroad may use to consult with represented and non-represented employees could differ significantly.

This guidance does not establish prescriptive requirements with which a railroad must comply, but merely outlines a consultation process a railroad may choose to follow. A railroad's consultation statement could indicate that the railroad followed the guidance in this appendix as evidence that it utilized good faith and best efforts to reach agreement with its employees on the contents of a SSP plan.

*Employees Represented by a Non-Profit Employee Labor Organization*

As provided in §270.107(a)(2), a railroad consulting with the representatives of a non-profit employee labor organization on the contents of a SSP plan will be considered to have consulted with the directly affected employees represented by that organization.

A railroad may utilize the following process as a roadmap for using good faith and best efforts when consulting with represented employees in an attempt to reach agreement on the contents of a SSP plan.

- Pursuant to §270.107(a)(3)(i), a railroad must meet with representatives from a non-profit employee labor organization (representing a class or craft of the railroad's directly affected employees) no later than April 10, 2017, to begin the process of consulting on the contents of the railroad's SSP plan. A railroad must provide notice at least 60 days before the scheduled meeting.
- During the time between the initial meeting and the applicability date of §270.105 the parties may meet to discuss administrative details of the consultation process as necessary.
- Within 60 days after the applicability date of §270.105 a railroad should have a

meeting with the directed affected employees to discuss substantive issues with the SSP.

- Pursuant to §270.201(a)(1), a railroad would file its SSP plan with FRA no later than February 8, 2018, or not less than 90 days before commencing operations, whichever is later.

- As provided by §270.107(c), if agreement on the contents of a SSP plan could not be reached, a labor organization (representing a class or craft of the railroad's directly affected employees) may file a statement with the FRA Associate Administrator for Railroad Safety and Chief Safety Officer explaining its views on the plan on which agreement was not reached.

*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 December 12, 2016 (*i.e.*, within 60 days of the effective date of the final rule), a railroad may notify non-represented employees that—

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

- (2) The railroad is required to meet with its directly affected employees within 180 days of the effective date of the final rule to address the consultation process;

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

- (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 Railroad Safety and 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 email or an announcement on the railroad's Web site;

- (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 a SSP plan cannot be reached, then a non-represented employee may file a statement with the FRA Associate Administrator for Railroad Safety and Chief Safety Officer explaining his or her views on the plan on which agreement was not reached.

APPENDIX C TO PART 270—PROCEDURES FOR SUBMISSION OF SSP PLANS AND STATEMENTS FROM DIRECTLY AFFECTED EMPLOYEES

This appendix establishes procedures for the submission of a railroad's SSP plan and statements by directly affected employees consistent with the requirements of this part.

SUBMISSION BY A RAILROAD AND 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.

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 and Chief Safety Officer explaining the directly affected employees' views on the plan on which agreement was not reached.



The railroad's and directly affected employees' submissions shall be sent to the FRA Associate Administrator for Railroad Safety and 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).

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 and 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 and 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. A railroad that electronically submits an initial SSP plan or new portions or revisions to an approved program required by this part shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email. FRA may electronically store any materials required by this part regardless of whether the railroad that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically. A railroad that opts not to submit the materials required by this part electronically, but provides one or more email addresses in its submission, shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email or mail.

## PART 272—CRITICAL INCIDENT STRESS PLANS

### Subpart A—General

- Sec.
- 272.1 Purpose.
  - 272.3 Application.
  - 272.5 General duty.
  - 272.7 Coverage of a critical incident stress plan.
  - 272.9 Definitions.
  - 272.11 Penalties.

### Subpart B—Plan Components and Approval Process

- 272.101 Content of a critical incident stress plan.
- 272.103 Submission of critical incident stress plan for approval by the Federal Railroad Administration.
- 272.105 Requirement to file critical incident stress plan electronically.

#### APPENDIX A TO PART 272—SCHEDULE OF CIVIL PENALTIES

AUTHORITY: 49 U.S.C. 20103, 20107, 20109, note; 28 U.S.C. 2461, note; 49 CFR 1.89; and sec. 410, Div. A, Pub. L. 110–432, 122 Stat. 4888.

SOURCE: 79 FR 16233, Mar. 25, 2014, unless otherwise noted.

### Subpart A—General

#### §272.1 Purpose.

(a) The purpose of this part is to promote the safety of railroad operations and the health and safety of railroad employees, especially those who are directly involved in a critical incident by requiring that the employing railroad offers and provides appropriate support services, including appropriate relief, to the directly-involved employees following that critical incident.

(b) Nothing in this part constrains a railroad from implementing a critical incident stress plan that contains additional provisions beyond those specified in this part (including provisions covering additional incidents or persons), provided that such additional provisions are not inconsistent with this part.

#### §272.3 Application.

This part applies to each

- (a) Class I railroad, including the National Railroad Passenger Corporation;
- (b) Intercity passenger railroad; or
- (c) Commuter railroad.