

**1FEDERAL RAILROAD ADMINISTRATION**  
**System Safety Program Plan**  
**(Title 49 Code of Federal Regulations Part 270)**  
**SUPPORTING JUSTIFICATION**  
**RIN 2130-AC73; OMB Control No. 2130-0599**

Summary of Submission

- This submission is a revision to the last approved submission pertaining to Part 270 that was approved by the Office of Management and Budget (OMB) on January 3, 2020, which expires on **January 31, 2023**.
- The Federal Railroad Administration (FRA) is publishing a Final Rule revising Part 240 titled System Safety Program and Risk Reduction Program (SSP) in the *Federal Register* (FR) on **March 4, 2020**. (See 85 FR 12826.) FRA has responded to comments received concerning this rule.
- The total number of burden hours **previously approved** by OMB for this collection is **2,084 hours** and the total number of responses **previously approved** is **738**.
- The total number of burden **hours requested** is **2,279 hours** and the total number of responses **requested** is **776**.
- The total burden for this collection has increased by 195 hours and by 38 responses.
- **\*\*The answer to question number 12 itemizes the hourly burden associated with each information collection requirement associated with this rule. (See pages 18–20.)**
- **\*\*The answer to question number 15 itemizes all adjustments associated with this rule. (See pages 21–24.)**

**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<sup>1</sup> to develop and implement an 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 Administrator of the Federal Railroad Administration. See 49 CFR 1.89(b).

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<sup>1</sup> Throughout this document, FRA uses the term “railroad,” as it is defined in 49 CFR 270.5.

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

Massachusetts Department of Transportation (MassDOT) filed a comment in support of the Joint Petition on November 15, 2016. Three other individual comments were filed, but related 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).

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 comments received in response to the Petitions. *See* FRA-2011-0060-0046. 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, Inc. (SPRC) provided, and FRA uploaded to the rulemaking docket, proposed revisions to the draft rule text. *See* FRA-2011-0060-0050.

FRA issued a Notice of Proposed Rulemaking (NPRM) on June 11, 2019, responding to the Petitions and proposing certain amendments to the SSP final rule. *See* 84 FR 27215. FRA further extended the stay to allow FRA time to review comments received on the NPRM and to issue this final rule. *See* 84 FR 45683 (Aug. 30, 2019). In addition to the

comments received on the NPRM, FRA also reviewed and considered SPRC's March 16, 2018 suggested revisions in formulating the NPRM and this final rule.

Accordingly, this rule revises part 270 in response to the Petitions, as well as the comments received on the June 2019 NPRM, which are discussed under question 8. FRA also adjusts the rule's compliance dates to account for FRA's stay of the rule's effect and amends the rule to specify that its information protections apply to C<sup>3</sup>RS programs included in a passenger rail operation's SSP. This rule also amends part 271 to ensure that the RRP and SSP rules have essentially identical consultation and information protection provisions.

In this final rule, FRA is amending its regulations requiring commuter and intercity passenger rail (IPR) operations to develop and implement a system safety program (SSP) to improve the safety of their operations. The rule clarifies that each passenger rail operation has responsibility for ensuring compliance with the SSP final rule. FRA also adjusts the SSP rule's compliance dates to account for FRA's prior stay of the rule's effect and amends the rule to apply its information protections to the Confidential Close Call Reporting System (C<sup>3</sup>RS) program included in a passenger rail operation's SSP. FRA is making conforming amendments to the Risk Reduction Program (RRP) final rule to ensure that the RRP and SSP rules have essentially identical consultation and information protection provisions.<sup>2</sup>

### Background

The rule requires commuter and intercity passenger railroads to develop and implement an SSP. An SSP is a structured program with proactive processes and procedures, developed and implemented by passenger railroads. These processes and procedures will identify and then mitigate or eliminate hazards and the resulting risks on a railroad's system. An SSP encourages a railroad and its employees to work together to proactively identify hazards and to jointly determine what, if any, action to take to mitigate or eliminate the resulting risks. The rule provides each railroad with a certain amount of flexibility to tailor an SSP to its specific operations.

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<sup>2</sup> The SSP rule implements the RSIA mandate for railroad safety risk reduction programs for passenger railroads. On February 18, 2020, FRA published a separate RRP final rule addressing the mandate for certain freight railroads. *See* 85 FR 9262. Throughout both the SSP and RRP rulemaking proceedings, FRA has consistently stated both an SSP and RRP final rule would contain consultation and information protection provisions that were essentially identical. *See* 81 FR 53855 (Aug. 12, 2016); 80 FR 10955 (Feb. 27, 2015); 85 FR 9262 (Feb. 18, 2020). The NPRM in this proceeding stated that FRA may use this final rule to make conforming changes to the consultation and information protection provisions of an RRP final rule. As discussed further in the section-by-section analysis, FRA is therefore amending the RRP rule (49 CFR part 271) as needed to make its consultation and information protection provisions consistent with the corresponding SSP provisions (as amended by this final rule).

An SSP is implemented by a written SSP Plan. The SSP regulation sets forth various elements that a railroad's SSP Plan is required to contain to properly implement an SSP. The main components of an SSP are the risk-based hazard management program and risk-based hazard analysis. A properly implemented risk-based hazard management program and risk-based hazard analysis will identify the hazards and resulting risks on a railroad's system, require railroads to develop methods to mitigate or eliminate these hazards and risks—if practicable—and set forth a plan to implement these methods. As part of its risk-based hazard analysis, a railroad will consider various technologies that may mitigate or eliminate the identified hazards and risks.

A railroad has a certain amount of flexibility to tailor an SSP to its specific operations. An SSP will be implemented by an SSP Plan and submitted to FRA for approval. FRA will audit a railroad's compliance with its SSP.

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

This is a revision to a current collection of information entirely associated with FRA's Part 270 rule. FRA will use the new information collected under this final rule to ensure that railroads comply with all part 270 requirements that will be used by FRA to ensure that commuter and intercity passenger railroads establish and implement 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, thereby decreasing the resulting risk on its system and reducing the number of railroad accidents, incidents, 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 an SSP Plan. Under the rule, each railroad is required to consult with employees who are directly affected on its SSP Plan. As part of that consultation, a railroad must utilize good faith and best efforts to reach an agreement with its directly affected employees on the contents of its plan. Consultation statements must contain a detailed description of the process a railroad utilized to consult with directly affected employees and should contain information such as (but not limited to) the following: (1) how many meetings the railroad held with its directly affected employees; (2) what materials the railroad provided its directly affected employees regarding the draft SSP Plan; and (3) how input from directly affected employees was received and handled during the consultation process. If the railroad is unable to reach agreement with its directly affected employees on the contents of its SSP Plan, the consultation statement must identify any areas of non-agreement and provide an explanation for why it believes an agreement was not reached.

The consultation statement must also identify if the SSP Plan would affect a collective bargaining agreement between a railroad and a non-profit employee labor organization and explain how the railroad's SSP would affect it. Moreover, a consultation statement

must include a service list containing the names and contact information for the international/national president and general chairperson of any non-profit employee labor organization representing directly affected employees, any labor representative who participated in the consultation process, and any directly affected employee who significantly participated in the consultation process independently of a non-profit labor organization. FRA will review required railroad consultation statements to confirm that a railroad has consulted with its 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 49 CFR § 270.102(c)(2)) to submit a statement to FRA if they are not able to reach an 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 a railroad's SSP Plan.

FRA will review and evaluate each SSP Plan to ensure that it meets all the requirements set forth in this rule (under 49 CFR § 270.103, *System safety program plan*), including the record of training of employees, and to ensure that each SSP Plan promotes and supports a positive safety culture. Each SSP Plan must have a policy statement that endorses a railroad's SSP. The policy statement should define, as clearly as possible, a railroad's authority for the establishment and implementation of an 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's management responsibilities would be described within the SSP to identify the personnel within the railroad's management who are responsible for various aspects of the SSP. Last, the statement 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 of 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 a railroad's system, develop methods to mitigate or eliminate these hazards and risks—if practical—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. 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 these

risks in a systematic and comprehensive way wherever 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. 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 to ensure that their SSPs and implementations of 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: (1) the extent to which the SSP is fully implemented; (2) the extent of the railroad's compliance with the implemented elements of the approved SSP Plan; and (3) the extent to which the railroad has achieved the goals set forth as in 49 CFR § 270.103(d), *Railroad system description*. 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, *External safety audit*, 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 in which the railroad does not comply with its SSP, any areas that need to be addressed by the SSP but are not, and 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 helping 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. Extent of automated information collection.**

Over the years, FRA has strongly supported and highly encouraged the use of advanced automated technology, particularly electronic recordkeeping, to reduce the burden on railroads and other entities that submit or retain information required by the agency. 49 CFR Section 270.201(e), *Electronic submission*, 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 to Part 270, *Procedures for Submission of SSP 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 this rule. This final 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 final rule. "Small entity" is defined in 5 U.S.C. 601. Section 601(6) defines "small entity" as having "the same meaning as the terms 'small business,' 'small organization,' and 'small governmental jurisdiction,'" as defined by section 601. Section 601(3) defines a "small business" as having the same meaning as a "small business concern" under Section 3 of the Small Business Act. Section 601(4) defines "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Section 601(5) defines "small governmental jurisdiction" as "governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand."

The U.S. Small Business Administration (SBA) stipulates "size standards" for small entities. It provides that the largest a for-profit railroad business firm may be (and remain

classified as a “small entity”) is 1,500 employees for “Line-Haul Operating” railroads and 500 employees for “Short-Line Operating” railroads.<sup>3</sup>

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad.<sup>4</sup> FRA used this definition for this rulemaking in preparation of this rule along with the stipulation on government entities or agencies that serve small communities as stated above.

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

There are two intercity passenger railroads, the National Railroad Passenger Corporation (Amtrak) and Alaska Railroad, of which neither can be considered a small entity. Amtrak is a Class I railroad and Alaska Railroad is a Class II railroad. Alaska Railroad is owned by the State of Alaska, which has a population well above 50,000.

There are 33 commuter or other short-haul passenger railroad operations in the United States. Most of these commuter railroads are part of larger transit organizations that receive Federal funds and serve major metropolitan areas with populations greater than 50,000. However, two of these railroads do not fall in this category and are considered small entities: Saratoga and North Creek Railway and the Hawkeye Express (operated by the Iowa Northern Railway Company). All other passenger railroad operations in the United States are part of larger governmental entities, whose service jurisdictions exceed 50,000 in population. Based on the definition, they are not considered to be small entities.

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

It should also be noted that the rule does not apply to the following:

- (1) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

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<sup>3</sup> “Table of Size Standards,” U.S. Small Business Administration, January 31, 1996, Title 13 CFR Part 121.

<sup>4</sup> See 68 FR 24891, May 9, 2003.



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

**6. Impact of less frequent collection of information.**

If this collection of information were not conducted, or if it were conducted less frequently, rail safety in the United States might be considerably hampered. Specifically, without this collection of information, FRA could not be assured that commuter and intercity passenger railroads have established and implemented an 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 they would likely increase the risk that they present to both railroad employees and the general public. Greater numbers of rail accidents and incidents and corresponding increases in injuries, fatalities, and property damage would likely 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 an 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 best, most comprehensive SSP Plan. Without the required consultation statement, FRA would not know how many meetings the railroad held with its directly affected employees, what materials the railroad provided to its directly affected employees regarding the draft SSP Plan, or 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 an 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 in which areas they are fully implementing their SSPs and in compliance with 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's 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 in which it is not complying with its SSP, areas that need to be addressed by the SSP but are not, or 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 unexposed and unaddressed risks, and more rail accidents/incidents will likely ensue.

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

7. **Special circumstances.**

All reporting and recordkeeping requirements are within these guidelines.

8. **Compliance with Title 5 Code of Federal Regulations § 1320.8.**

As noted in the summary section, FRA is publishing a Notice of final rule in the **Federal Register** on March 4, 2020, titled System Safety Program and Risk Reduction Program. See 85 FR 12826. FRA has responded to comments received concerning this rule.

FRA issued a Notice of Proposed Rulemaking (NPRM) on June 11, 2019, responding to the Petitions and proposing certain amendments to the SSP final rule. See 84 FR 27215. FRA further extended the stay to allow FRA time to review comments received on the NPRM and to issue this final rule. See 84 FR 45683 (Aug. 30, 2019). In addition to the comments received on the NPRM, FRA also reviewed and considered the States for

Passenger Rail Coalition (SPRC) March 16, 2018 suggested revisions in formulating the NPRM and this final rule.

Accordingly, this rule revises part 270 in response to the Petitions, as well as the comments received on the June 2019 NPRM, which are discussed below. FRA also adjusts the rule's compliance dates to account for FRA's stay of the rule's effect and amends the rule to specify that its information protections apply to C<sup>3</sup>RS programs included in a passenger rail operation's SSP.

The NPRM solicited written comments from the public under the Administrative Procedure Act (5 U.S.C. 553). By the close of the comment period on August 12, 2019, FRA received fourteen comments, including comments from AAR; Amtrak; APTA; CCJPA jointly with INDOT, Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency, and SJJPA (CCJPA Joint Comment); Connecticut Department of Transportation (CTDOT); Massachusetts Bay Transportation Authority (MBTA); MassDOT; NCDOT; NNEPRA jointly with the State of Maine Department of Transportation (MEDOT); SPRC; VTrans; and Washington State Department of Transportation (WSDOT). FRA also received two general comments from members of the public. FRA grouped these comments into two categories: (A) States' Concerns and (B) Other Topics (Consultation Comments, Information Protections, Submission Time, and RRP Rule).

#### **A. States' Concerns**

The CCJPA Joint Comment and SPRC's submission contained essentially identical comments (hereinafter, State Comments). See FRA-2011-0060-0031 and FRA-2009-0038-0106. These State Comments reiterated many arguments the States have raised with FRA previously on this topic. Generally, MassDOT, NCDOT, NNEPRA/MEDOT, VTrans, and WSDOT concurred with the State Comments. These individual State comments included context for the particular rail services provided (for example, NNEPRA/MEDOT explained its "Downeaster" service) and emphasized the apparent lack of control and operational role of the State in the IPR service.

Specifically, the State Comments argued that: (1) FRA would exceed its statutory authority to impose SSP requirements on States; (2) the SSP rule would impose substantial burdens on States without improving safety; and (3) States should not be required to consult with their IPR operators' employees. Therefore, the State Comments requested that FRA modify the SSP rule to exclude a State that provides financial support for, but does not operate, IPR service; to exclude a State that owns a railroad or railroad equipment, but does not operate a railroad or railroad equipment; and to remove from the definition in § 270.5, "Railroad," the words "whether directly or by contracting out operation of the railroad to another person." See SPRC at 15; CCJPA at 17; VTrans at 6. The State Comments also contended that FRA's proposed delegation provision in

§ 270.7(c) was insufficient relief because the State would retain the burden of compliance.

1. *FRA's Statutory Authority*

The State Comments alleged FRA lacks statutory authority to require States that provide funding for IPR service to comply with the SSP rule requirements. *See* SPRC at 3; CCJPA at 5. Further, the State Comments argued that neither the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) (Pub. L. No. 110-432, Div. B (Oct. 16, 2008)) nor the RSIA reflected a Congressional “intent to include States as IPR providers with responsibility for anything more than service funding.” *See* SPRC at 3, 4; CCJPA at 3; VTrans at 11. Instead, the State Comments suggested any safety responsibility belongs only to the IPR operator. *See* SPRC at 3; CCJPA at 3. Moreover, the State Comments urged FRA to “remove from State financial sponsors the responsibility for compliance with FRA’s safety regulations unless a State elects to assume that responsibility on its own.” SPRC at 5; CCJPA at 5.

Specifically, the State Comments contended that a “State” cannot be a “railroad carrier” under 49 U.S.C. 20102(3). *See* SPRC at 5; CCJPA at 6. The State Comments explained that the definition of “person” in 1 U.S.C. 1, includes “corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals,” but does not specifically include the word “State.” *See* SPRC at 5-6; CCJPA at 6. Thus, the State Comments argued, a “State” cannot be a “person,” and by extension, a “State” cannot be a “person providing railroad transportation” under the definition of “railroad carrier” in 49 U.S.C. 20102(3). *See* SPRC at 5-6; CCJPA at 5-6. To support its argument, the State Comments indicated that Congress in PRIIA did not include “States” in the definition of “Persons” generally, and when Congress wanted to include “States” as “persons,” it explicitly said so, citing to 49 U.S.C. 1139(g)(1), in PRIIA, concerning accident investigations. *See* SPRC at 6; CCJPA at 6.

MassDOT, NNEPRA/MEDOT, and VTrans additionally commented that Surface Transportation Board (STB) precedent allows States to maintain an STB status as a “non-carrier” when a State acquires track, right-of-way, and related physical assets. MassDOT explained that “ownership of railroad assets does not necessarily confer upon the asset owner rail carrier status.” *See* MassDOT at 2. NNEPRA/MEDOT stated that NNEPRA does not provide railroad transportation, but rather pays Amtrak the difference between service costs and revenues to operate the Downeaster service. *See* NNEPRA/MEDOT at 4. VTrans noted that it already delegates responsibility to railroad carriers through long-term contractual relationships. *See* VTrans at 3. VTrans contended State ownership of railroad property leased to a railroad carrier does not make the State a railroad carrier for the Interstate Commerce Act, the Federal Employers Liability Act, and the Railway Labor Act. *See* VTrans at 7-8. Further, VTrans argued that State financial support for

Amtrak services, such as that required by PRIIA section 209, should not trigger the SSP rule's applicability. VTrans at 11.

The State Comments, NCDOT, and NNEPRA/MEDOT commented that some State statutes prohibit States from owning or operating a railroad. *See, e.g.*, SPRC at 9; CCJPA at 9; NCDOT at 2; NNEPRA/MEDOT at 4. As such, the States argued, requiring States to comply with the SSP rule would require States to seek statutory authority to engage in rail operations, or it would prevent them from underwriting the service at all. *See* SPRC at 9; CCJPA at 9.

Finally, the State Comments argued FRA expanded the definition of "railroad" in part 270 without authority to include entities that "contract out operation of the railroad to another person." *See* SPRC at 7; CCJPA at 7. The State Comments asserted that FRA's regulatory definition is broader than the statutory definition, and there is no clear direction from Congress to extend the definition as FRA proposed. *See* SPRC at 7; CCJPA at 8.

2. *State Comments Alleged the SSP Rule Imposes Burdens Without Improving Safety*

The State Comments continued to argue the SSP rule would impose substantial burdens on States. *See* SPRC at 9; CCJPA at 10. The State Comments explained State sponsors<sup>5</sup> "do not employ qualified railroad personnel with the detailed technical knowledge to develop, implement, and oversee compliance with an SSP." *See* SPRC at 10; CCJPA at 11. They also claimed FRA's regulatory impact statement "underestimates the costs to States of compliance with the proposed SSP requirements" and "did not consider" the costs of "developing, implementing, and monitoring compliance with an SSP" and the "negative impacts on the overall insurance market." *See* SPRC at 11; CCJPA at 13. Further, the State Comments alleged the rule would require States to renegotiate operating agreements which would increase costs. *See* SPRC at 12; CCJPA at 13. In sum, the State Comments indicated the SSP rule's financial burdens could cause States to discontinue IPR service entirely, and may therefore necessitate repaying Federal grants or loans for early termination of service. *See* SPRC at 13; CCJPA at 14. Moreover, the State Comments argued that including State sponsors in the rule could subject sponsors to

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<sup>5</sup> There is currently no statutory or regulatory definition of the term "sponsor" in relation to IPR service. The Joint Petition appears to understand "sponsor" in this context as being a State that "provide[s] financial support" for IPR routes and "contract[s] for the operation of IPR." *See* Joint Pet. at 2, fn. 2. The NCDOT petition defines "sponsors" as "State or other public entities that own railroads, equipment or that financially sponsor intercity passenger rail service." NCDOT Pet. at 3. In its proposed revisions to the strawman text FRA presented during the October 2017 RSAC meeting, SPRC suggested defining "State sponsor" as "a State, regional or local authority, that contracts with a railroad to provide intercity passenger railroad transportation pursuant to Section 209 of the Passenger Rail Investment and Improvement Act of 2008, as amended." *See* Comments of the SPRC at 2. For purposes of discussion in this rule, FRA understands "State sponsor" as being a State, regional, or local authority, or other public entity, that provides financial (and potentially other) support for IPR routes.

other statutory obligations, such as railway labor and retirement requirements, and would increase costs and discourage IPR service. *See* SPRC at 14; CCJPA at 16.

The State Comments asserted that “FRA has not demonstrated that requiring States, as well as IPR operators, to be responsible for full SSP compliance would improve safety.” SPRC at 3; CCJPA at 3. The State Comments theorized that requiring both the IPR operator and State sponsor to develop an SSP would be duplicative and could create “contradictory and possibly conflicting measures.” *See* SPRC at 3, 10, 13; CCJPA at 3; WSDOT at 1. To support this claim, the State Comments pointed to the NTSB’s report in the Dupont, Washington 501 accident to suggest that because the NTSB issued a recommendation to Amtrak to include the various responsible parties in a comprehensive safety management system (SMS), and NTSB did *not* issue a recommendation to WSDOT to develop such an independent safety program, applying the SSP rule to the States would not improve safety. *See* SPRC at 13-14; CCJPA at 15.

Finally, the States indicated that State sponsors of IPR service lack control over the operator (typically, Amtrak), and although they pay Amtrak to keep the service running (as required by PRIIA), the only remedy they have for oversight is to cancel the contract (*i.e.*, terminate the IPR service entirely). *See, e.g.*, NCDOT at 3; CCJPA at 12, 14. WSDOT noted that non-operating State sponsors “do not control operations nor have access to critical safety reports or other information” and lack the required “appropriate expertise, authority, and ability to receive timely critical information to make decisions or take appropriate actions.” WSDOT at 1-2. WSDOT reiterated that contractor operators have the appropriate personnel to meet safety requirements and provide oversight, and having States duplicate that effort would potentially create conflicting, redundant, and deflative measures. *See* WSDOT at 3. MassDOT agreed that the SSP rule “imputes to the States a non-existent degree of State control over Amtrak’s day-to-day operations.” *See* MassDOT at 2. MassDOT distinguished the service and contract provided by MBTA (contracting out commuter rail operations to a third-party operator) from itself, where MassDOT funds (as required by PRIIA) certain IPR multi-state (Massachusetts, New Hampshire, Vermont) routes without an operational role for MassDOT. *See* MassDOT at 2. MassDOT posited that including a State sponsor as a regulated entity “adds confusion as to responsibility, threatens clear and timely communications between appropriate parties and misdirects regulatory attention.” *See* MassDOT at 4. VTrans, like NNEPRA, MassDOT, and NCDOT, explained that it has no authority to govern or enforce any safety rules, even when it is the owner of the property, and all responsibilities lie with the actual rail operators. *See* VTrans at 11.

3. *State Comments Alleged Requirements to Consult with its IPR Operators’ Employees Would Interfere with State-IPR Operator Contracts*

Finally, the State Comments argued States should not be required to consult with their IPR operators’ employees because it “introduces substantial barriers to efficient

procurement practices.” See SPRC at 16; CCJPA at 18. WSDOT and MassDOT shared the concern that direct contact with an IPR service operator’s employees could create labor and operator issues. See WSDOT at 3; MassDOT at 4. NCDOT emphasized it is not a party to, nor is it privy to, Amtrak’s agreements with its host railroads and the SSP rule would purportedly insert States into that relationship. See NCDOT at 3.

With the above arguments, the State Comments, MassDOT, NCDOT, NNEPRA/MEDOT, VTrans, and WSDOT, urged FRA to amend the SSP rule to exempt State sponsors from part 270.

#### 4. *Other Comments Related to States’ Concerns*

In contrast to the above arguments, APTA commented that it supports the part 270 definition of “railroad,” supports FRA’s statement that “each entity involved in providing passenger rail service—including “State sponsors”—is responsible for complying with Federal rail safety requirements,” and believes “[S]tates must be solely responsible for [their] employees and contractor’s compliance.” See APTA at 2. CTDOT supported FRA’s proposal to allow for designation of another entity to ensure compliance with the SSP, and explained the entities it would so designate for its three passenger services (New Haven Line, Hartford Line, and Shore Line East). See CTDOT at 1.<sup>6</sup>

Amtrak agreed with FRA’s statement that “the vast majority of State providers of [IPR] service would fall under Amtrak’s [SSP plan].” See Amtrak at 2. Amtrak asserted that “uniformity in the management of system safety program elements is critical to the successful implementation of risk reduction efforts.” See *id.* Amtrak stated that it supplemented its Amtrak-wide SSP plan with separate agreements with host railroads, tenant railroads, and States, detailing specific aspects of the service and infrastructure, along with the responsibilities of each party, and incorporated these agreements by reference into its SSP plan.<sup>7</sup> See *id.* Amtrak explained these supplemental, collaborative, written agreements can prevent variation in programs that could lead to duplication of efforts or issues where entities think they may be obligated to provide oversight of Amtrak beyond their skills or resources. See *id.* Amtrak requested that FRA clarify that these agreements align with FRA’s intent to sufficiently detail the requirements and obligations of each party. See *id.*

Finally, a member of the public, Mr. Quinton Simpson stated “even if the State contracts” an IPR service provider, the State has responsibility and “needs to ensure that the company is operating safely.” Similarly, Dr. Edwin “Chip” Kraft commented to FRA that the “type of communications disconnect resulting in avoidance of responsibility” is what the SSP rule is trying to prevent.

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<sup>6</sup> See FRA-2011-0060-0068 (received Aug. 12, 2019). CTDOT provided clarifying comments dated November 20, 2019, after the comment period closed, which FRA added to the docket. See FRA-2011-0060-0074.

<sup>7</sup> FRA notes that because of the stay of the SSP rule, FRA has neither approved nor disapproved Amtrak’s SSP plan under the rule.

## **B. Other Topics**

### *1. Consultation Comments*

FRA received two comments regarding FRA's proposed changes to the consultation provision in § 270.107. Amtrak commented that it "concur[s] with the [NPRM's] proposed clarifications" to require serving "notice on the general chairpersons of labor organizations representing directly affected railroad employees." *See* Amtrak at 1. Further, Amtrak detailed its own experience on the labor consultation process in developing its SSP plan, and indicated that without such "continuous communication and collaboration between labor organizations and Amtrak management, its [SSP plan] to implement the [Safety Management System] would not be as successful nor sustainable." *See id.* at 1-2. Additionally, Mr. Simpson commented that he agrees that the contact of the General Chairperson makes sense because "the local chairperson was the liaison between the worker and the company."

### *2. Information Protections*

Amtrak commented that it agrees with the NPRM's proposal to extend the SSP information protections to a C<sup>3</sup>RS program included as part of an SSP, even if the railroad joined C<sup>3</sup>RS on or before August 14, 2017. *See* Amtrak at 2. Further, Amtrak requested "that any information resulting from its [SSP plan] processes prior to the effective date of the rule's protection provisions be afforded like protections from discovery or use in civil litigation." *See id.* Amtrak also requested the "protections include information developed in [S]tate sponsored routes, including in circumstances where [S]tate entities may be subject to disclosure requirements." *See id.* at 3.

APTA supported the proposed protection for C<sup>3</sup>RS outlined in § 270.105(a)(3), but requested it be expanded from Federal or State court proceedings to also protect from other requests to release the data, like requests under the Freedom of Information Act (FOIA) or Freedom of Information Law. *See* APTA at 1. Further, APTA stated the "protection should also apply to any Federal program utilized by the railroads, such as [the Rail Information Sharing Environment (RISE)] or Clear Signal for Action [(CSA)]." *See id.* at 2. MBTA supported the C<sup>3</sup>RS program and, like APTA, commented that FRA "should expand the privacy protections . . . to FOIA requests, as long as the information being requested supports the SSP." *See* MBTA at 1. Similarly, AAR supported the proposed inclusion of FRA's C<sup>3</sup>RS program in the information protections, but stated the provision should go further to include railroads' "in-house close call confidential reporting systems." *See* AAR at 2.

### *3. Submission Time*



FRA requested comments on whether a one-year period after publication of the final rule was appropriate for submission of SSP plans for FRA review. APTA requested that FRA provide two years, to mirror what the Federal Transit Administration (FTA) provided in implementing the SMS program. See APTA at 2. MBTA supported extending compliance dates and providing one year for submission of SSP plans to allow sufficient time for railroads to reengage labor representatives. See MBTA at 1. Amtrak asked FRA to implement the rule as soon as possible. See Amtrak at 3.

#### 4. *RRP Rule*

Finally, AAR commented that the NPRM “ignores AAR’s supplemental comments to the RRP rule, filed October 31, 2018.” AAR’s comment also stated “[b]y adopting [AAR’s] proposed changes to the RRP regulatory text, FRA can dramatically speed up the enhancement of safety on the nation’s railroads, at no risk.” See AAR at 1.

After thoroughly considering the comments received on the NPRM, FRA is amending part 270 to clarify the application of the rule’s requirements to each “passenger rail operation,” as opposed to each “railroad.” FRA believes that this approach addresses the concerns raised by the States; effectuates FRA’s intent for system safety; provides for a more natural understanding of how system safety works on a practical level; and will ensure each passenger rail operation develops and implements a compliant SSP.<sup>8</sup>

#### 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 SSP 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), *Protected information*.) The rule also specifies certain categories of information that are not protected, including information a railroad has 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), *Non-protected information*.) The final rule contains significant discussion of the protections and exceptions. (See 77 FR 55373, 55378-79, 55390-92, and 55406, September 7, 2012; 81 FR 53851, 53855-56, 53858-60, 53878-82, and 53900, August 12, 2016.)

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<sup>8</sup> FRA’s treatment of passenger rail service in this rule is only intended to affect the application of Federal safety requirements FRA administers and enforces.

FRA also has established two voluntary, independent programs that exemplify the philosophy of risk reduction: the Confidential Close Call Reporting System (C<sup>3</sup>RS) and the Clear Signal for Action (CSA) program.<sup>9</sup> FRA has developed these programs in the belief that, in addition to processing and technology innovations, solutions based on human factors can make significant contributions to improving safety in the railroad industry.

The C<sup>3</sup>RS and CSA program embody many of the concepts and principles found in an SSP: 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. While FRA does not require any railroad to implement a C<sup>3</sup>RS or CSA program as part of its SSP, FRA does believe that these types of programs would prove useful in the development of an SSP, and it encourages railroads to include such programs as part of their SSPs.

**11. Justification for any questions of a sensitive nature.**

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

**12. Estimate of burden hours for information collected.**

Based on the latest FRA data, the respondent universe affected by this rule is estimated at 35 commuter and intercity passenger railroads. FRA derived the wage rates from the Surface Transportation Board Website for 2018 wage data, and it uses the average annual wages for each employee group as follows: For Executives, Officials, and Staff Assistants, this cost amounts to \$115 per hour. For Professional and Administrative staff, this cost amounts to \$76 per hour.

CFR Section/Subject	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Dollar Cost Equivalent
270.103–System Safety Program Plan (SSP Plan) – Comprehensive written SSP Plan that meets all of this section’s requirements	35 passenger rail operations	11.7 plans	40 hours	467 hours	\$42,777
-- Copies of designations to	35 passenger	11.7 copies	2 minutes	.4 hours	\$30

<sup>9</sup> The history and structure of the C<sup>3</sup>RS and CSA program were discussed extensively in the SSP NPRM. 77 FR 55375-76.

non-profit employee labor organizations ( <b>New requirement</b> )	rail operations				
-- Designation notifications to employees not represented by non-profit employee labor organizations ( <b>New requirement</b> )	35 passenger rail operations	11.7 notices	5 minutes	1 hour	\$76
-- Records of system safety training for employees/contractors/others	35 passenger rail operations	495 records	15 seconds	2 hours	\$157
-- (q)(1) Performance of risk-based hazard analyses and furnishing of results of risk-based hazard analyses upon request of FRA/participating part 212 States	35 passenger rail operations	35 analyses results	20 hours	700 hours	\$53,200
-- (q)(2) Identification and implementation of risk mitigation methods and furnishing of descriptions of specific risk mitigation methods that address hazards upon request of FRA/participating part 212 States	35 passenger rail operations	35 mitigation methods descriptions	10 hours	350 hours	\$26,600
-- (r)(1) Performance of technology analysis and furnishing of results of system's technology analysis upon request of FRA/participating part 212 States	35 passenger rail operations	35 results of technology analysis	10 hours	350 hours	\$26,600
270.107(a)–Consultation requirements -- consultation with directly affected employees on SSP Plan	35 passenger rail operations	11.7 consults (w/labor union reps.)	1 hour	12 hours	\$912
-- (a)(3)(ii) Notification to directly affected employees of preliminary meeting at least 60 days before being held	35 passenger rail operations	11.7 notices	30 minutes	6 hours	\$456
-- (b) Consultation statements that includes service list with name & contact information for labor organization chairpersons & non-union employees who participated in process	35 passenger rail operations	11.7 statements	1 hour	12 hours	\$912
-- Copies of consultations statements to service list individuals	35 passenger rail operations	11.7 copies	1 minute	.2 hours	\$15

270.201(b) – SSP Plan found deficient by FRA and requiring amendment	35 passenger rail operations	4 amended plans	30 hours	120 hours	\$9,120
-- Review of amended SSP Plan found deficient and requiring further amendment	35 passenger rail operations	1 further amended plan	20 hours	20 hours	\$1,520
-- Reopened review of initial SSP Plan approval for cause stated	35 passenger rail operations	1 amended plans	30 hours	30 hours	\$2,280
270.203 – Retention of SSP Plans-- Retained copies of SSP Plans	35 passenger rail operations	16 copies	10 minutes	3 hours	\$228
270.303 – Annual internal SSP assessments/reports conducted	35 passenger rail operations	16 evaluations/reports	2 hours	32 hours	\$2,432
-- Certification of results of internal assessment by chief safety official	35 passenger rail operations	35 certification statements	2 hours	70 hours	\$8,050
270.305 – External safety audit -- Submission of improvement plans in response to results of FRA audit	35 passenger rail operations	6 plans	12 hours	72 hours	\$8,280
-- Improvement plans found deficient by FRA and requiring amendment	35 passenger rail operations	2 amended plans	10 hours	20 hours	\$1,520
-- Status report to FRA of implementation of improvements set forth in the improvement plan	35 passenger rail operations	2 reports	4 hours	8 hours	\$608
Appendix B – Additional documents provided to FRA upon request	35 passenger rail operations	4 documents	15 minutes	1 hour	\$76
Appendix C – Written requests to file required submissions electronically	35 passenger rail operations	7 written requests	15 minutes	2 hours	\$152
Totals	35 passenger rail operations	776 responses	N/A	2,279 hours	\$186,001

**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.**

To calculate the government administrative cost, the 2019 Office of Personnel Management wage rates were used. The average wage (of step 5) was used as a midpoint. Wages were considered at the burdened wage rate by multiplying the actual wage rate by an overhead cost of 75 percent. The follow table shows the estimated average annual cost to the Federal government to review all the required documents and conduct the external audits (starting at year 3) associated with this rule.

Pay Grade	Annual-Average Wage Rate	Percent Share of Time Use (Wages * 0.50, 0.75)	Total Wages (Wages * 1.75 of Overhead Cost)
<b>Year 1</b>			
GS-13	\$116,353	Half time	\$101,809
GS-14	\$137,491	Half time	\$120,305
GS-14	\$137,491	Half time	\$120,305
Total of Year 1			\$342,419
<b>Year 2</b>			
GS-13	\$116,353	Half time	\$101,809
GS-14	\$137,491	Half time	\$120,305
GS-14	\$137,491	Half time	\$120,305
Total of Year 2			\$342,419
<b>Year 3</b>			
GS-13	\$116,353	Three-quarter time	\$152,713
GS-14	\$137,491	Three-quarter time	\$180,457
GS-14	\$137,491	Three-quarter time	\$180,457
Total of Year 3			\$513,627
<b>Estimated Average Annual Cost of Year 1 to Year 3</b>			<b>\$399,488</b>

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

Currently, the OMB inventory for this collection of information shows a total burden of 2,084 hours and 738 responses, while this updated submission reflects a total burden of 2,279 hours and 776 responses. Overall, the adjustments increased the burden by 195 hours and by 38 responses.

The tables below provide specific information on the review of any of the estimates that have changed.

**Table for Program Change**

CFR Section/Subject	Total Annual Responses			Total Annual Burden Hours		
	Previous Submission	Current Submission	Difference	Previous Submission	Current Submission	Difference
-- Copies of railroad (RR)	0	12 copies	12 copies	0	.4 hours	.4 hours

designations to non-profit employee labor organizations (New requirement)						
-- Designation notifications to employees not represented by non-profit employee labor organizations (New requirement)	0	12 notices	12 notices	0	1 hour	1 hour
Total	0		24 responses	0		1.4 hours (rounded to 1 hour)

**Program changes** listed above increased the burden by 1 hour and increased the number of responses by 24.

**Table for Adjustments**

CFR Section/Subject	Total Annual Responses			Total Annual Burden Hours		
	Previous Submission	Current Submission	Difference	Previous Submission	Current Submission	Difference
270.103–System Safety Program Plan (SSP Plan) – Comprehensive written SSP Plan that meets all of this section’s requirements	9 plans	12 plans	3 plans	360 hours	467 hours	107 hours
-- (q)(1) Performance of risk-based hazard analyses and furnishing of results of risk-based hazard analyses upon request of FRA/participating part 212 States	33 analyses results	35 analyses results	2 analyses results	660 hours	700 hours	40 hours
-- (q)(2) Identification and implementation of risk mitigation methods and	33 mitigation methods descriptions	35 mitigation methods descriptions	2 mitigation methods descriptions	330 hours	350 hours	20 hours

furnishing of descriptions of specific risk mitigation methods that address hazards upon request of FRA/participating part 212 States						
-- (r)(1) Performance of technology analysis and furnishing of results of system's technology analysis upon request of FRA/participating part 212 States	33 results of technology analysis	35 results of technology analysis	2 results of technology analysis	330 hours	350 hours	20 hours
270.107(a)– Consultation requirements -- consultation with directly affected employees on SSP Plan	11 consults (w/labor union reps.)	12 consults (w/labor union reps.)	1 consult (w/labor union reps.)	11 hours	12 hours	1 hour
-- (a)(3)(ii) Notification to directly affected employees of preliminary meeting at least 60 days before being held	11 notices	12 notices	1 notice	6 hours	6 hours	0
-- (b) Consultation statements that includes service list with name & contact information for labor organization chairpersons & non-union employees who participated in process	11 statements	12 statements	1 statement	11 hours	12 hours	1 hour
-- Copies of consultations statements to service list	11 copies	12 copies	1 copy	.2 hours	.2 hour	0

individuals						
270.203 – Retention of SSP Plans-- Retained copies of SSP Plans	15 copies	16 copies	1 copy	3 hours	3 hours	0
-- Certification of results of internal assessment by chief safety official	33 certification statements	35 certification statements	2 certification statements	66 hours	70 hours	4 hours
Totals			14 responses			193.6 hours (rounded to 194 hours)

**Adjustments** listed above increased the burden by 194 hours and increased the number of responses by 14.

**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.