

11 FEDERAL RAILROAD ADMINISTRATION
Critical Incident Stress Plans
(Title 49 Code of Federal Regulations Part 272)
SUPPORTING JUSTIFICATION
OMB Control No. 2130-0602

Summary of Submission

- This submission is a request for an extension with change of the last three-year approval granted by the Office of Management and Budget (OMB) on August 8, 2017, and which expires August 31, 2020.
- The Federal Railroad Administration (FRA) published the required 60-day *Federal Register* Notice on April 15, 2020. See 85 FR 21066. FRA received no comments in response to this Notice.
- The total number of burden hours requested for this information collection is 467 hours. The total number of burden hours previously approved by OMB was 314 hours.
- The total number of responses requested for this information collection is 5,064. The total number of responses previously approved by OMB was 663.
- Overall, the adjustments increased the burden by 153 hours and responses by 4,401 after a thorough review of the data.
- The answer to question number 12 itemizes all information collection requirements with each requirement of these rules.
- The answer to question number 15 itemizes all adjustments associated with this rule.
- There are no program changes at this time.

1. Circumstances that make collection of the information necessary.

Background

On October 16, 2008, the Rail Safety Improvement Act of 2008 (Public Law 110-432, Division A) (RSIA) was enacted. Section 410 of the RSIA (Section 410) mandates that the Secretary of Transportation (Secretary) require “each Class I railroad carrier, each intercity passenger railroad carrier, and each commuter railroad carrier to develop and submit for approval to the Secretary a critical incident stress plan that provides for debriefing, counseling, guidance, and other appropriate support services to be offered to

an employee affected by a critical incident.”¹ Section 410 mandates that the plans include provisions for relieving employees who are involved in, or who witness, critical incidents from their tours of duty, and for providing leave for such employees from their normal duties as may be necessary and reasonable to receive preventive services and treatment related to the critical incident.² In addition to the statutory mandate in Section 410, this final rule is also issued pursuant to FRA’s general rulemaking authority at 49 U.S.C. 20103.

As required by Section 410(a), FRA consulted with the Department of Health and Human Services (HHS) and the Department of Labor (DOL) in preparing this final rule. Specifically, in addition to consulting with representatives of HHS and DOL, FRA provided those departments with an advance copy of this proposed regulation and requested input on FRA’s approach. FRA has incorporated the suggestions provided by both HHS’s Substance Abuse and Mental Health Services Administration and DOL’s Wage and Hour Division.

On March 25, 2014, FRA issued the Critical Incident Stress Plans rule in accordance with a statutory mandate that the Secretary require certain major railroads to develop, and submit to the Secretary for approval, critical incident stress plans that provide for appropriate support services to be offered to their employees who are affected by a “critical incident,” as defined by the Secretary. The final rule contains a definition of the term “critical incident,” the elements appropriate for the rail environment to be included in a railroad’s critical incident stress plan, the type of employees to be covered by the plan, a requirement that a covered railroad submit its plan to FRA for approval, and a requirement that a railroad adopt and comply with its FRA-approved plan.

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

This is an extension with change to a current collection of information entirely associated with FRA’s Part 272 rule. The information collected is used by FRA to ensure that Class I, intercity passenger, and commuter railroads that already have critical incident stress plans meet the minimum standards of this Part. Specifically, FRA reviews written critical incident stress plans/material modifications to critical incident stress plans to ensure that they have provisions for the following: (a) Informing each directly-involved employee as soon as practicable of the stress relief options that he or she may request; (b) Offering timely relief from the balance of the duty tour for each directly-involved employee, after the employee has performed any actions necessary for the safety of persons and contemporaneous documentation of the incident; (c) Offering timely transportation to each directly-involved employee’s home terminal, if necessary; (d) Offering counseling, guidance, and other appropriate support services to each directly-involved employee; (e) permitting relief from the duty tour(s) subsequent to the critical

¹ See Section 410(a).

² See Section 410(b).

incident, for an amount of time to be determined by each railroad, if requested by a directly-involved employee, as may be necessary and reasonable; (f) permitting each directly-involved employee such additional leave from normal duty as may be necessary and reasonable to receive preventive services or treatment related to the incident or both; and (g) addressing how the railroad's employees operating or otherwise working on track owned by or operated over by a different railroad will be afforded the protections of the plan.

Under Section 272.103(b), covered railroads are required to serve—either by hard copy or electronically—a copy of the railroad's critical incident stress plan on the national/international president of any non-profit employee labor organization representing a class or craft of the railroad's employees subject to this Part.

Under Section 272.103(c), labor organizations representing a class or craft of the railroad's employees may file comment with FRA on the railroad's critical incident stress plan or a material modification to the railroad's critical incident stress plan.

Under Section 272.103(e), railroads must submit modification of their initially FRA approved critical incident stress plans to the agency. FRA reviews these modified plans to ensure that they comply with all the requirements of the regulation.

Finally, under Section 272.105, railroads are mandated to file their critical incident stress plans and any modifications to these plans electronically with FRA. FRA reviews such electronic submissions to ensure that all necessary information is provided.

3. Extent of automated information collection.

Over many years, FRA has strongly endorsed and highly encouraged the use of the latest information technology, particularly electronic recordkeeping, to reduce burden on the railroad industry, wherever feasible. In this rule, § 272.105 mandates that each covered railroad to which this Part applies file required critical incident stress plans by electronic means. FRA has created a secure document submission site for this requirement. Under § 272.105(a), FRA stipulates that all critical incident stress plan submissions be sent to the following Web link: <http://safetydata.fra.dot.gov/OfficeofSafety/CISP>.

One hundred percent (100%) of responses are electronically transmitted.

4. Efforts to identify duplication.

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

Similar data are unavailable from any other source.

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

Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities.

“Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars.³

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.⁴ Based on the definition of “small entity,” only one commuter or other short-haul railroad is considered a small entity: the Hawkeye Express (operated by the Iowa Northern Railway Company).

The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1-1. The current threshold is \$37.1 million or less.⁵

Based on the railroad reporting data from 2018, there are 736 Class III railroads with 695 railroads on the general system. Due to the applicability of the rule, however, none of these railroads would be impacted. The railroad reporting data also show that there are 34 intercity passenger and commuter railroads. Although one of these railroads is considered small entity, it does not fall within the rule’s definition of a “commuter

³ See “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A.

⁴ See 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

⁵ The Class III revenue threshold is \$37,108,875 or less, last updated in 2018. (The Class II threshold is between \$37,108,875 and \$463,860,933; and the Class I threshold is \$463,860,933 or more.)

railroad.”

FRA believes that no small entities will be affected by the requirements of this part. Additionally, FRA believes that no contractors considered to be small entities will be adversely affected by the requirements of this part. FRA certified this in the final rule associated with these requirements.

6. Impact of less frequent collection of information.

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

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

Without this collection of information, railroad employees’ would not have the necessary awareness and knowledge of their employer’s critical incident stress plan. Such knowledge and awareness will help them to recognize and cope with symptoms of normal stress reactions that commonly occur as a result of a critical incident, reduce their chance of developing a disorder such as depression, PTSD, or ASD as a result of a critical incident, and recognize symptoms of psychological disorders that sometimes occur as a result of a critical incident and know how to obtain prompt evaluation and treatment of any such disorder, if necessary.

Without this collection of information, railroads would not experience certain benefits that FRA anticipates with the implementation of this final rule. FRA expects that implementation of this rule's requirements will yield important economic benefits by reducing long-term healthcare costs associated with treating PTSD, ASD, and other stress reactions, as well as costs that accrue either when an employee is unable to return to work for a significant period of time or when workers leave railroad employment due to being affected by PTSD, ASD, or other stress reactions. Additionally, any safety risk posed by having a person who has just been involved in a critical incident performing safety critical functions will be reduced.

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

7. Special circumstances.

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

8. Compliance with 5 CFR 1320.8.

As required by the Paperwork Reduction Act of 1995, FRA published a notice in the Federal Register on April 15, 2020, soliciting comment on this particular information collection.⁶ FRA received no comments pertaining to this collection of information in response to this notice.

9. Payments or gifts to respondents.

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

10. Assurance of confidentiality.

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

11. Justification for any questions of a sensitive nature.

⁶ See: 85 FR 21066

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

12. Estimate of burden hours for information collected.

CFR Section	Respondent universe	Total Annual responses	Average time per responses	Total annual burden hours	Total cost equivalent ⁷
272.103(a)—Railroad submission of critical incident stress plan (CISP) to FRA for approval	1 new railroad	1 plan	12 hours	12 hours	\$912
—(b) RR CISP copy to 5 labor organizations	41 railroads	20 plan copies	5 minutes	1.7 hours	\$129
—(c)(1) Rail labor organization comment to FRA on CISP submission	5 employee labor organizations	5 comments	2 hours	10 hours	\$760
—(c)(2) Rail labor affirmative statement to FRA that comment copy has been served on railroad	5 employee labor organizations	5 certifications	5 minutes	.4 hours	\$30
—(e) Railroad submission of updated/modified existing CISP to FRA for approval	41 railroads	4 updated/modified plans	6 hours	24 hours	\$1,824
—(f) Copy to RR employees of updated/modified CISP ⁸	41 railroads	5,000 copies	5 minutes	416.7 hours	\$31,669
—(g) Railroads make copies of CISP available to FRA inspector upon request	41 railroads	25 plan copies	5 minutes	2.1 hours	\$160
272.105—Requirement to file CISP electronically	41 railroads	4 CISP electronic submissions	8 minutes	.5 hours	\$38
Total	41 railroads	5,064	N/A	467 hours	\$35,522

⁷ The dollar equivalent cost is derived from the Surface Transportation Board’s Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

⁸ FRA understands most railroads provide their CISP information to employees via a company portal or other electronic means, thus FRA reduced the estimate of actual physical copies to 5,000 to reflect that understanding.

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13. Estimate of total annual costs to respondents.

Besides the burden hours listed in the answer to question number 12 above, there would be some additional costs to respondents.

14. Estimate of Cost to Federal Government.

For the government costs associated with this information collection requirement, FRA uses an hourly wage rate of \$116 to represent the government cost burden.⁹

The breakdown of the government costs is:

\$1,392	Initial Review of Revised plans (2 GS-14 staff members x 3 hours per revised plan x 2 revisions each x \$116/hour)
\$1,740	Additional review and respond to railroads (1 GS-14 staff member x 15 hours x \$116/hour)
\$928	Review of 1 New Start-up Railroad Plan (2 GS-14 staff members x 4 hours each x \$116/hour)
\$4,060	TOTAL COST

15. Explanation of program changes and adjustments.

The current OMB agency inventory for this information collection exhibits a total burden of 314 hours and 663 responses, while the present submission reflects a total burden of 467 hours and 5,064 responses. Hence, there is a total increase in burden of 153 hours and 4,401 responses.

FRA provided a thorough review of this package and determined many of our initial figures were based on rough estimates.

TABLE FOR ADJUSTMENTS

CFR Section	Total Annual responses	Total Annual responses	Adjustments	Total annual burden hours	Total annual burden hours	Adjustments

⁹ GS-14, Step 5 hourly wage rate of \$66.10 with 75-percent additional overhead burden = \$115.68 ≈ \$116

	Current Inventory	Requesting Inventory	Description	Current Inventory	Requesting Inventory	Description
272.103(a)— Railroad submission of critical incident stress plan (CISP) to FRA for approval	3 plans	1 plan	-2 plans	48 hours	12 hours	-36 hours
—(b) RR CISP copy to 5 labor organizations	15 plan copies	20 plan copies	5 plan copies	11.3 hours	1.7 hours	-9.6 hours
—(c)(1) Rail labor organization comment to FRA on CISP submission	65 comments	5 comments	-60 comments	195 hours	10 hours	-185 hours
—(c)(2) Rail labor affirmative statement to FRA that comment copy has been served on railroad	65 certifications	5 certifications	-60 certifications	16.3 hours	.4 hours	-15.9 hours
—(e) Railroad submission of updated/modified existing CISP to FRA for approval	0	4 updated/modified plans	4 updated/modified plans	0	24 hours	24 hours
—(f) Copy to RR employees of updated/modified CISP	500 copies	5,000 copies	4,500 copies	42 hours	417 hours	375 hours
—(g) Railroads make copies of CISP available to FRA inspector upon request	12 plan copies	25 plan copies	13 plan copies	1 hour	2 hours	1 hour
272.105— Requirement to file CISP electronically	0	4 CISP electronic submissions	4 CISP electronic submissions	0	0.5 hours	0.5 hours

16. Publication of results of data collection.

There are no plans for publication of this submission.

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

17. Approval for not displaying the expiration date for OMB approval.

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in a Notice in the Federal Register.

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

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