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(4) The system or main headquarters address located in the United States;

(5) The email addresses for the passenger rail operation's or directly affected employees' points of contact; and

(6) The daytime telephone numbers for the passenger rail operation'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 passenger rail operation 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 passenger rail operation that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically. A passenger rail operation 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.

[85 FR 12851, Mar. 4, 2020]

PART 271—RISK REDUCTION PROGRAM

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APPENDIX A TO PART 271—FEDERAL RAILROAD ADMINISTRATION GUIDANCE ON THE RISK REDUCTION PROGRAM CONSULTATION PROCESS

APPENDIX B TO PART 271—PROCEDURES FOR SUBMISSION OF RRP 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: 85 FR 9314, Feb. 18, 2020, unless otherwise noted.

Subpart A—General

§ 271.1 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. Each railroad subject to this part must establish a Risk Reduction Program (RRP) that systematically evaluates railroad safety hazards on its system and manages the risks associated with those hazards 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 RRP. 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 a railroad compiles or collects solely for the purpose of planning, implementing, or evaluating an RRP under this part.

(d) This part does not require an RRP to address hazards completely unrelated to railroad safety and that fall under the exclusive jurisdiction of another Federal agency. Additionally, an RRP required by this part is not intended to address and should not address the safety of employees while performing inspections, tests, and maintenance, except where FRA has already addressed workplace safety issues, such as blue signal protection in part 218 of this chapter. FRA does not intend to approve any specific portion of an RRP plan that relates exclusively to employee working conditions.

§ 271.3 Application.

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

- (1) Class I railroads;
- (2) Railroads determined to have inadequate safety performance pursuant to § 271.13; and
- (3) Railroads that voluntarily comply with the requirements of this part pursuant to § 271.15.

(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;

(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 § 271.5); and

(5) Commuter or intercity passenger railroads that are subject to Federal system safety program requirements contained in part 270 of this chapter.

(c) If a railroad contracts out significant portions of its operations, the contractor and the contractor's employees performing the railroad's operations shall be considered directly affected employees for purposes of this part.

§ 271.5 Definitions.

As used in this part only—

Accident/incident means an “accident/incident” as defined in § 225.5 of this chapter.

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Confidential Close Call Reporting System (C³RS) means an FRA-sponsored voluntary program designed to improve the safety of railroad operations by allowing railroad employees to confidentially report currently unreported or underreported unsafe events.

FRA means the Federal Railroad Administration.

FRA Associate Administrator means the Associate Administrator for Railroad Safety and Chief Safety Officer, Federal Railroad Administration, or the Associate Administrator's delegate.

Fully implemented means that all elements of an RRP as described in the RRP plan are established and applied to the safety management of the railroad.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of a

system, equipment, or property; or damage to the environment.

Inadequate safety performance means safety performance that FRA has determined to be inadequate based on the criteria described in § 271.13.

Mitigation strategy means an action or program intended to reduce or eliminate the risk associated with a hazard.

Person means an entity of any type covered under 49 U.S.C. 21301, 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; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor.

Pilot project means a limited scope project used to determine whether quantitative evaluation and analysis suggests that a particular system or mitigation strategy has potential to succeed on a full-scale basis.

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

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 HMP means a risk-based hazard management program (HMP).

Risk reduction means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of safety risk mitigation strategies. It includes systematic procedures, practices, and policies for the management of safety risk.

RRP means a Risk Reduction Program.

RRP plan means a Risk Reduction Program plan.

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

Safety performance means a realized or actual safety accomplishment relative to stated safety objectives.

Safety outreach means the communication of safety information to support the implementation of an RRP throughout a railroad.

Senior management means personnel at the highest level of a railroad's management who are responsible for making major policy decisions and long-

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term business plans regarding the operation of the railroad.

STB means the Surface Transportation Board of the United States.

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.

[85 FR 9314, Feb. 18, 2020, as amended at 85 FR 12852, Mar. 4, 2020]

§ 271.7 [Reserved]

§ 271.9 Penalties and responsibility for compliance.

(a) Any person that violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least the minimum civil monetary penalty and not more than the ordinary maximum civil monetary penalty 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 violations has created an imminent hazard of death or injury to individuals, or has caused death or injury, a penalty not to exceed the aggravated maximum civil monetary penalty per violation may be assessed. *See* 49 CFR part 209, appendix A. Each day a violation continues shall constitute a separate offense. Any person that knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311. *See* FRA's website at www.fra.dot.gov for a statement of agency civil penalty policy.

(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.

§ 271.11 Discovery and admission as evidence of certain information.

(a) *Protected information*. Except as provided in paragraph (a)(3) of this section, any information compiled or collected after February 17, 2021 solely for the purpose of planning, implementing, or evaluating a risk reduction program under this part shall not be subject to discovery, admitted into evidence, or considered for other purposes in a Federal or State court proceeding for damages involving personal injury, wrongful death, or property damage. 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 § 271.103(b) and a railroad's statement of mitigation measures under § 271.103(c);

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

(3) A railroad may include a Confidential Close Call Reporting System (C³RS) program in a risk reduction program established under this part. For Federal or State court proceedings described by this paragraph (a) that are initiated after March 4, 2021, the information protected by this paragraph (a) includes C³RS information a railroad includes in its risk reduction program,

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even if the railroad compiled or collected the C³RS information on or before February 17, 2021, for purposes other than planning, implementing, or evaluating a risk reduction program under this part.

(b) *Non-protected information.* This section does not affect the discovery, admissibility, or consideration for other purposes in a Federal or State court proceeding 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 proceeding 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 proceeding for damages involving personal injury, wrongful death, or property damage on or before February 17, 2021. Specifically, the types of information not affected by this section include:

(1) Information compiled or collected on or before February 17, 2021;

(2) Information compiled or collected on or before February 17, 2021 and that continues to be compiled or collected, even if used to plan, implement, or evaluate a railroad's risk reduction program; or

(3) Information that is compiled or collected after February 17, 2021, 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 proceeding for damages involving personal injury, wrongful death, or property damage, those rules and laws are preempted.

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(e) *Enforcement.* This section does not apply to civil or criminal law enforcement proceedings.

[85 FR 9314, Feb. 18, 2020, as amended at 85 FR 12852, Mar. 4, 2020]

§ 271.13 Determination of inadequate safety performance.

(a) *General.* (1) This section describes FRA's methodology for determining which railroads shall establish an RRP because they have inadequate safety performance. FRA's methodology consists of a two-phase annual analysis, comprised of both a quantitative analysis and qualitative assessment. FRA's methodology analyzes all railroads except for:

(i) Railroads excluded from this part under § 271.3(b);

(ii) Railroads already required to comply with this part;

(iii) Railroads that are voluntarily complying with this part under § 271.15; and

(iv) Except as provided in paragraph (a)(2) of this section, new start-up railroads that have reported accident/incident data to FRA pursuant to part 225 of this chapter for fewer than three years.

(2) Notwithstanding paragraph (a)(1)(iv) of this section, railroads formed through amalgamation of operations (for example, railroads formed through consolidations, mergers, or acquisitions of control) are included in the analysis using the combined data of the pre-amalgamation entities.

(b) *Quantitative analysis*—(1) *Methodology.* The first phase of FRA's annual analysis is a statistically-based quantitative analysis of each railroad within the scope of the analysis, using historical safety data maintained by FRA for the three most recent full calendar years. The purpose of the quantitative analysis is to make a threshold identification of railroads that possibly have inadequate safety performance. The quantitative analysis consists of a preliminary selection and a rate-based analysis. Only railroads that the preliminary selection identifies will proceed to the rate-based analysis.

(i) The preliminary selection calculates the following values:

(A) A railroad's number of worker on duty fatalities during the 3-year period, calculated using "Worker on Duty-Railroad Employee (Class A)," "Worker on Duty-Contractor (Class F)," and "Worker on Duty-Volunteer (Class H)" information reported on FRA Form 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter; and

(B) The sum total of a railroad's number of worker on duty injuries/illnesses during the 3-year period (calculated using "Worker on Duty-Railroad Employee (Class A)," "Worker on Duty-Contractor (Class F)," and "Worker on Duty-Volunteer (Class H)" information reported on FRA Form 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter) added to the number of rail equipment accidents/incidents during the 3-year period (calculated using information reported on FRA Forms 6180.54 and 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter).

(ii) For railroads that the preliminary selection identifies, as described in paragraph (b)(2)(i) of this section, the rate-based analysis calculates the following three factors:

(A) A railroad's number of worker on duty fatalities during the 3-year period, calculated using "Worker on Duty-Railroad Employee (Class A)," "Worker on Duty-Contractor (Class F)," and "Worker on Duty-Volunteer (Class H)" information reported on FRA Form 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter;

(B) A railroad's on duty employee injury/illness rate, calculated using "Worker on Duty-Railroad Employee (Class A)," "Worker on Duty-Contractor (Class F)," and "Worker on Duty-Volunteer (Class H)" information reported on FRA Form 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter. FRA calculates this rate using the following formula, which gives the rate of employee injuries/illnesses per 200,000 employee hours over a 3-year period:

Injury/Illness Rate = (Total FRA Reportable Worker On Duty Injuries + Total FRA Reportable On Duty Employee Illnesses over a 3-year

Period)/(Total Employee Hours over a 3-year Period/200,000); and

(C) A railroad's rail equipment accident/incident rate, calculated using information reported on FRA Forms 6180.54 and 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter. FRA calculates this rate using the following formula, which gives the rate of rail equipment accidents/incidents per 1,000,000 train miles operated over a 3-year period:

Rail Equipment Accident/Incident Rate = Total FRA Reportable Rail Equipment Accidents/Incidents over a 3-year Period/(Total Train Miles over a 3-year Period/1,000,000)

(2) *Identification.* (i) The preliminary selection phase of the quantitative analysis identifies railroads for further analysis in the rate-based analysis if at least one of the following two conditions exist within the scope and time-frame of the analysis:

(A) A railroad has one or more worker on duty fatalities as calculated in paragraph (b)(1)(i)(A) of this section; or

(B) A railroad is at or above the 90th percentile for the sum total of worker on duty injuries/illnesses and rail equipment accidents/incidents, as calculated in paragraph (b)(1)(i)(B) of this section.

(ii) For railroads identified in the preliminary selection, the rate-based analysis identifies railroads as possibly having inadequate safety performance if at least one of the following two conditions exists within the scope and time frame of the analysis:

(A) A railroad has one or more worker on duty fatalities as calculated in paragraph (b)(1)(ii)(A) of this section; or

(B) A railroad is at or above the 90th percentile of railroads identified in the preliminary selection in either of the factors described in paragraphs (b)(1)(ii)(B) and (C) of this section.

(c) *Qualitative assessment.* The second phase of FRA's analysis is a qualitative assessment of railroads identified in the quantitative analysis as possibly having inadequate safety performance.

(1) *Notification and railroad/employee comment.* FRA will notify a railroad in writing if FRA conducts a qualitative assessment of the railroad because the

quantitative analysis identified the railroad as possibly having inadequate safety performance.

(i) No later than 15 days after receiving FRA's written notice, a railroad shall notify its employees of FRA's written notice. The railroad shall post this employee notification at all locations where the railroad reasonably expects its employees to report and to have an opportunity to observe the notice. The railroad shall post and continuously display the employee notification until 45 days after FRA's initial written notice. The railroad shall notify employees who do not have a regular on-duty point for reporting to work by other means, under the railroad's standard practice for communicating with employees. The notification shall inform railroad employees that they may confidentially submit comments to FRA regarding the railroad's safety performance and that employees shall file any such comments with the FRA Associate Administrator for Railroad Safety and Chief Safety Officer, 1200 New Jersey Avenue SE, Washington, DC 20590 no later than 45 days following FRA's initial written notice.

(ii) No later than 45 days after receiving FRA's written notice, a railroad may provide FRA documentation supporting any claims that the railroad does not have inadequate safety performance.

(2) *Methodology.* No later than 90 days after providing the initial notice to a railroad identified by the quantitative analysis, FRA will conduct a qualitative assessment of the identified railroad and make a final determination regarding whether it has inadequate safety performance. The qualitative assessment will consider any documentation provided by the railroad, comments submitted by railroad employees, and any other pertinent information, including information regarding violations FRA has issued against the railroad.

(d) *Final notification.* For each railroad that FRA provides an initial written notice, FRA will provide a final written notice informing the railroad whether or not FRA determines that the railroad has demonstrated inadequate safety performance.

(e) *Compliance.* (1) A railroad with inadequate safety performance shall develop and implement an RRP meeting the requirements of this part and submit an RRP plan meeting the filing and timing requirements in § 271.301.

(2) A railroad with inadequate safety performance must comply with the requirements of this part for a minimum of five years from the date FRA approves the railroad's RRP plan under subpart D of this part.

(f) *Petition for reconsideration of inadequate safety performance determination.*

(1) To appeal a final written notice under paragraph (d) of this section, a railroad shall file a petition for reconsideration with the Administrator. To file a petition, the railroad must:

(i) File the petition no later than 30 days after the date the railroad receives FRA's final written notice under paragraph (d) of this section informing the railroad that it has demonstrated inadequate safety performance; and

(ii) File the petition in accordance with the procedures in §§ 211.7(b)(1) and 211.57 of this chapter.

(2) FRA will process petitions under § 211.59 of this chapter.

(g) *Petition to discontinue compliance with this part.* After the five-year compliance period, the railroad may petition FRA for approval to discontinue compliance with this part. A railroad shall file a petition, and FRA will process the petition, under the procedures contained in § 211.41 of this chapter. When processing a petition, FRA will reevaluate the railroad's safety performance to determine whether the railroad's RRP has resulted in significant and sustained safety improvements, and whether these measured improvements are likely sustainable in the long term. FRA's evaluation will include a quantitative analysis as described in paragraph (b) of this section, although FRA will not automatically grant a petition to discontinue compliance if the quantitative analysis results do not meet the identification thresholds described in paragraph (b)(2) of this section. For all petitions under this section, FRA will also examine qualitative factors and review information from FRA RRP audits and other relevant sources.

§ 271.15 Voluntary compliance.

(a) *General.* A railroad not otherwise subject to this part may voluntarily comply by establishing and fully implementing an RRP meeting the requirements of this part. A voluntary RRP shall be supported by an RRP plan that has been submitted to FRA for approval pursuant to the requirements of subpart D of this part. After FRA has approved its RRP plan, a voluntarily-compliant railroad that fails to comply with the requirements of this part is subject to civil penalties or other FRA enforcement action.

(b) *Duration.* A voluntarily-compliant railroad will be required to comply with the requirements of this part for a minimum period of five years, running from the date on which FRA approves the railroad's plan pursuant to subpart D of this part.

(c) *Notification to discontinue compliance.* After this five-year period, a voluntarily-compliant railroad may discontinue compliance with this part by providing written notice to the FRA Associate Administrator for Railroad Safety and Chief Safety Officer, 1200 New Jersey Avenue SE, Washington, DC 20590.

(d) *Discovery and admission as evidence of certain information.* The information protection provisions in § 271.11 apply to information compiled or collected pursuant to a voluntary RRP that is conducted in accordance with the requirements of this part and as provided by § 271.301(b)(4)(ii).

Subpart B—Risk Reduction Program Requirements

§ 271.101 Risk reduction programs.

(a) *Program required.* Each railroad shall establish and fully implement an RRP meeting the requirements of this part. An RRP shall systematically evaluate railroad safety hazards on a railroad's system and manage the resulting risks to reduce the number and rates of railroad accidents/incidents, injuries, and fatalities. An RRP is an ongoing program that supports continuous safety improvement. A railroad shall design its RRP so that it promotes and supports a positive safety

culture at the railroad. An RRP shall include the following:

(1) A risk-based hazard management program, as described in § 271.103;

(2) A safety performance evaluation component, as described in § 271.105;

(3) A safety outreach component, as described in § 271.107;

(4) A technology analysis and technology implementation plan, as described in § 271.109;

(5) RRP implementation and support training, as described in § 271.111; and

(6) Involvement of railroad employees in the establishment and implementation of an RRP, as described in § 271.113.

(b) *RRP plans.* A railroad's RRP shall be supported by an FRA-approved RRP plan meeting the requirements of subpart C of this part.

(c) *Host railroads and system safety programs.* (1) If a railroad subject to this part (RRP railroad) hosts passenger train service for a railroad subject to the system safety program requirements in part 270 of this title (system safety program (SSP) railroad), the RRP railroad shall communicate with the SSP railroad to coordinate the portions of the system safety program applicable to the RRP railroad hosting the passenger train service.

(2) The RRP railroad shall incorporate its communication and coordination with the SSP railroad into its own RRP.

(d) *Persons that perform or utilize significant safety-related services.* Under § 271.205(a)(3), a railroad's RRP plan shall identify 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 railroad operations purposes. For example, a railroad's RRP plan shall identify entities such as host railroads, contract operators, shared track/corridor operators, or other contractors utilizing or performing significant safety-related services. A railroad shall identify such persons even if the persons are not required to comply with this part (*e.g.*, a railroad shall identify a tourist railroad that operates over the railroad's track even though the tourist railroad is exempt from this

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rule under § 271.3(b)(2)). A railroad shall ensure persons performing or utilizing significant safety-related services support and participate in its RRP.

§ 271.103 Risk-based hazard management program.

(a) *General.* (1) An RRP shall include an integrated, system-wide, and ongoing risk-based HMP that proactively identifies hazards and mitigates the risks resulting from those hazards.

(2) A risk-based HMP shall be fully implemented (*i.e.*, activities initiated) within 36 months after FRA approves a railroad's RRP plan pursuant to § 271.301(d).

(b) *Risk-based hazard analysis.* As part of its risk-based HMP, a railroad shall conduct a risk-based hazard analysis that addresses, at a minimum, the following aspects of a railroad's system: Infrastructure; equipment; employee levels and work schedules; operating rules and practices; management structure; employee training; and other areas impacting railroad safety that are not covered by railroad safety laws or regulations or other Federal laws or regulations. A railroad shall make the results of its risk-based hazard analysis available to FRA upon request. At a minimum, a risk-based hazard analysis shall:

(1) Identify hazards by analyzing:

(i) Aspects of the railroad's system, including any operational changes, system extensions, or system modifications; and

(ii) Accidents/incidents, injuries, fatalities, and other known indicators of hazards;

(2) Calculate risk by determining and analyzing the likelihood and severity of potential events associated with identified risk-based hazards; and

(3) Compare and prioritize the identified risks for mitigation purposes.

(c) *Mitigation strategies.* (1) As part of its risk-based HMP, a railroad shall design and implement mitigation strategies that improve safety by:

(i) Mitigating or eliminating aspects of a railroad's system that increase risks identified in the risk-based hazard analysis; and

(ii) Enhancing aspects of a railroad's system that decrease risks identified in the risk-based hazard analysis.

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(2) A railroad may use pilot projects, including pilot projects conducted by other railroads, to determine whether quantitative data suggests that a particular mitigation strategy has potential to succeed on a full-scale basis.

§ 271.105 Safety performance evaluation.

(a) *General.* As part of its RRP, a railroad shall develop and maintain ongoing processes and systems for evaluating the safety performance of its system and identifying and analyzing its safety culture. A railroad's safety performance evaluation shall consist of both a safety monitoring and a safety assessment component.

(b) *Safety monitoring.* A railroad shall monitor the safety performance of its system by, at a minimum, establishing processes and systems to acquire safety data and information from the following sources:

(1) Continuous monitoring of operational processes and systems (including any operational changes, system extensions, or system modifications);

(2) Periodic monitoring of the operational environment to detect changes that may generate new hazards;

(3) Investigations of accidents/incidents, injuries, fatalities, and other known indicators of hazards;

(4) Investigations of reports regarding potential non-compliance with Federal railroad safety laws or regulations, railroad operating rules and practices, or mitigation strategies established by the railroad; and

(5) A reporting system through which employees can report safety concerns (including, but not limited to, hazards, issues, occurrences, and incidents) and propose safety solutions and improvements.

(c) *Safety assessment.* To assess the need for changes to a railroad's mitigation strategies or overall RRP, a railroad shall establish processes to analyze the data and information collected pursuant to paragraph (b) of this section (as well as any other relevant data regarding its operations, products, and services). At a minimum, this assessment shall:

(1) Evaluate the overall effectiveness of the railroad's RRP in reducing the

number and rates of railroad accidents/incidents, injuries, and fatalities;

(2) Evaluate the effectiveness of the railroad's RRP in meeting the goals described by its RRP plan (see § 271.203(c));

(3) Evaluate the effectiveness of risk mitigations in reducing the risk associated with an identified hazard. Any hazards associated with ineffective mitigation strategies shall be reevaluated through the railroad's risk-based HMP, as described in § 271.103; and

(4) Identify new, potential, or previously unknown hazards, which shall then be evaluated by the railroad's risk-based HMP, as described in § 271.103.

§ 271.107 Safety outreach.

(a) *Outreach.* An RRP shall include a safety outreach component that communicates RRP safety information to railroad personnel (including contractors) as that information is relevant to their positions. At a minimum, a safety outreach program shall:

(1) Convey safety-critical information;

(2) Explain why RRP-related safety actions are taken; and

(3) Explain why safety procedures are introduced or changed.

(b) *Reporting to management.* The status of risk-based HMP activities shall be reported to railroad senior management on an ongoing basis.

§ 271.109 Technology analysis and technology implementation plan.

(a) *General.* As part of its RRP, a Class I railroad shall conduct a technology analysis and develop and adopt a technology implementation plan no later than February 17, 2023. A railroad with inadequate safety performance shall conduct a technology analysis and develop and adopt a technology implementation plan no later than three years after receiving final written notification from FRA to comply with this part, pursuant to § 271.13(d), or no later than February 17, 2023, whichever is later. A railroad that the STB reclassifies or newly classifies as a Class I railroad shall conduct a technology analysis and develop and adopt a technology implementation plan no later than three years following the effective

date of the classification or reclassification or no later than April 18, 2023, whichever is later. A voluntarily-compliant railroad shall conduct a technology analysis and develop and adopt a technology implementation plan no later than three years after FRA approves the railroad's RRP plan.

(b) *Technology analysis.* A technology analysis shall evaluate current, new, or novel technologies that may mitigate or eliminate hazards and the resulting risks identified through the risk-based HMP. The railroad shall analyze the safety impact, feasibility, and costs and benefits of implementing technologies that will mitigate or eliminate hazards and the resulting risks. 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.

(c) *Technology implementation plan.* A railroad shall develop, and periodically update as necessary, a technology implementation plan that contains a prioritized implementation schedule describing the railroad's plan for development, adoption, implementation, maintenance, and use of current, new, or novel technologies on its system over a 10-year period to reduce safety risks identified in the railroad's risk-based HMP.

(d) *Positive train control.* Except as required by subpart I of part 236 of this chapter, if a railroad decides to implement positive train control systems 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).

§ 271.111 Implementation and support training.

(a) A railroad shall provide RRP training to each employee, including an employee of any person identified by the railroad's RRP plan pursuant to § 271.205(a)(3) as performing significant safety-related services on the railroad's behalf or utilizing significant safety-related services provided by the railroad, who has significant responsibility for implementing and supporting the railroad's RRP. This training shall help ensure that all personnel with significant responsibility for implementing and supporting the RRP understand the goals of the program, are familiar with the elements of the railroad's program, and have the requisite knowledge and skills to fulfill their responsibilities under the program.

(b) A railroad shall keep a record of training conducted under this section and update that record as necessary. A railroad shall make training records available for inspection and copying upon the request of representatives of FRA or States participating under part 212 of this chapter.

(c) Training under this section may include, but is not limited to, interactive computer-based training, video conferencing, or formal classroom training.

§ 271.113 Involvement of railroad employees.

(a) An RRP shall involve a railroad's directly affected employees in the establishment and implementation of the RRP.

(b) For example, a railroad must have a process for involving directly affected employees when identifying hazards, developing and implementing mitigation strategies, conducting internal annual assessments, or otherwise performing actions required by this part.

Subpart C—Risk Reduction Program Plan Requirements

§ 271.201 General.

A railroad shall adopt and implement its RRP through a written RRP plan containing the elements described in this subpart. A railroad's RRP plan

shall be approved by FRA according to the requirements contained in subpart D of this part.

§ 271.203 Policy, purpose and scope, and goals.

(a) *Policy statement.* An RRP plan shall contain a policy statement endorsing the railroad's RRP. This statement shall be signed by the chief official at the railroad (e.g., chief executive officer).

(b) *Purpose and scope.* An RRP plan shall contain a statement describing the purpose and scope of the railroad's RRP. This purpose and scope statement shall describe:

- (1) The railroad's safety philosophy and safety culture;
- (2) How the railroad promotes improvements to its safety culture; and
- (3) The roles and responsibilities of railroad personnel (including management) within the railroad's RRP.

(c) *Goals.* An RRP plan shall contain a statement that defines the specific goals of the RRP and describes clear strategies for reaching those goals. These goals shall be long-term, meaningful, measurable, and focused on the mitigation of risks arising from identified safety hazards.

§ 271.205 System description.

(a) An RRP plan shall contain a description of the characteristics of the railroad's system. At a minimum, the system description shall:

- (1) Support the identification of hazards by establishing a basic understanding of the scope of the railroad's system;
- (2) Include components briefly describing the railroad's history, operations, scope of service, maintenance, physical plant, and system requirements;

(3) Identify all 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 railroad operations purposes. For example, a railroad's RRP plan shall identify entities such as host railroads, contract operators, shared

track/corridor operators, or other contractors utilizing or performing significant safety-related services. A railroad shall identify such persons even if the persons are not required to comply with this part (*e.g.*, a railroad shall identify a tourist railroad that operates over the railroad's track even though the tourist railroad is exempt from this part pursuant to § 271.3(b)(2)); and

(4) Describe how the railroad will ensure that any persons identified pursuant to paragraph (a)(3) of this section will support and participate in the railroad's RRP. For example, the system description shall describe the extent to which such persons will, as part of the railroad's RRP, assist in identifying hazards, developing and implementing mitigation strategies, conducting internal annual assessments, or otherwise performing actions required by this part.

(b) [Reserved]

§ 271.207 Consultation requirements.

(a) *General duty.* (1) Each railroad required to establish an RRP 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 RRP plan.

(2) A railroad that consults with a non-profit employee labor organization is considered to have consulted with the directly affected employees represented by that organization. For directly affected employees represented by a non-profit employee labor organization, the primary point of contact shall be either the general chairperson of the non-profit employee labor organization or a non-profit employee labor organization primary point of contact the railroad and the non-profit employee labor organization agree on at the beginning of the consultation process.

(b) *Preliminary meeting.* A railroad shall have a preliminary meeting with its directly affected employees to discuss how the consultation process will proceed. A railroad is not required to discuss the substance of an RRP plan during this preliminary meeting.

(1) A Class I railroad shall meet no later than October 15, 2020 with its directly affected employees to discuss the consultation process. The Class I railroad shall notify the directly affected employees of this meeting no less than 60 days before it is scheduled.

(2) A railroad determined to have inadequate safety performance shall meet no later than 30 days following FRA's notification with its directly affected employees to discuss the consultation process. The inadequate safety performance railroad shall notify the directly affected employees of this meeting no less than 15 days before it is scheduled.

(3) A railroad that the STB reclassifies or newly classifies as a Class I railroad shall meet with its directly affected employees to discuss the consultation process no later than 30 days following the effective date of the classification or reclassification. The reclassified or newly classified Class I railroad shall notify the directly affected employees of this meeting no less than 15 days before it is scheduled.

(4) A voluntarily-compliant railroad that files a notification with FRA of its intent to file an RRP plan under § 271.301(b)(4)(i) shall meet with its directly affected employees to discuss the consultation process no later than 30 days following the date that the railroad filed the notification. The voluntarily-compliant railroad shall notify the directly affected employees of this meeting no less than 15 days before it is scheduled.

(5) Compliance with the mandatory preliminary meeting requirements of this paragraph (b) does not constitute full compliance with the consultation requirements of this section.

(c) *Guidance.* Appendix A to this part contains guidance on how a railroad could comply with the requirements of this section.

(d) *Railroad consultation statements.* A railroad required to submit an RRP plan under § 271.301 shall also submit, together with that plan, a consultation statement that includes the following information:

(1) A detailed description of the process the railroad utilized to consult with its directly affected employees;

(2) If the railroad could not reach agreement with its directly affected employees on the contents of its RRP plan, identification of any known areas of non-agreement and an explanation why it believes agreement was not reached; and

(3) A service list containing the names 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, or each non-profit employee labor organization primary point of contact the railroad and the non-profit employee labor organization agree on at the beginning of the process. The service list must also contain the name and contact information for any directly affected employee who significantly participated in the consultation process independently of a non-profit employee labor organization. When a railroad submits its RRP plan and consultation statement to FRA under § 271.301, it shall also simultaneously send a copy of these documents to all individuals identified in the service list. A railroad may send the documents to the identified individuals via electronic means or other service means reasonably calculated to succeed.

(e) *Statements from directly affected employees.* (1) If a railroad and its directly affected employees cannot reach agreement on the proposed contents of an RRP plan, the directly affected employees may file a statement explaining their views on the plan on which agreement was not reached with the FRA Associate Administrator for Railroad Safety and Chief Safety Officer, 1200 New Jersey Avenue SE, Washington, DC 20590. The FRA Associate Administrator shall consider any such views during the plan review and approval process.

(2) A railroad's directly affected employees have 30 days following the railroad's submission of a proposed RRP plan to submit the statement described in paragraph (e)(1) of this section.

[85 FR 9314, Feb. 18, 2020, as amended at 85 FR 12852, Mar. 4, 2020]

§ 271.209 Consultation on amendments.

A railroad's RRP plan shall 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 RRP plan. The requirements of this section do not apply to non-substantive amendments (*e.g.*, amendments that update names and addresses of railroad personnel).

§ 271.211 Risk-based hazard management program process.

(a) *Risk-based hazard analysis.* An RRP plan shall describe the railroad's method for conducting its risk-based hazard analysis pursuant to § 271.103(b). At a minimum, the description shall specify:

(1) The processes the railroad will use to identify hazards and the risks associated with those hazards;

(2) The sources the railroad will use to support the ongoing identification of hazards and the risks associated with those hazards; and

(3) The processes the railroad will use to compare and prioritize identified risks for mitigation purposes.

(b) *Mitigation strategies.* An RRP plan shall describe the railroad's processes for designing and implementing mitigation strategies pursuant to § 271.103(c). At a minimum, the description shall specify the railroad's processes for:

(1) Identifying and selecting mitigation strategies; and

(2) Monitoring an identified hazard through the mitigation of the risk associated with that hazard.

§ 271.213 Safety performance evaluation process.

An RRP plan shall describe a railroad's processes for identifying and analyzing its safety culture pursuant to § 271.105(a), monitoring safety performance pursuant to § 271.105(b), and conducting safety assessments pursuant to § 271.105(c).

§ 271.215 Safety outreach process.

An RRP plan shall describe a railroad's processes for communicating

safety information to railroad personnel and management pursuant to § 271.107.

§ 271.217 Technology implementation plan process.

(a) An RRP plan shall contain a description of the railroad's processes for:

(1) Conducting a technology analysis pursuant to § 271.109(b); and

(2) Developing a technology implementation plan pursuant to § 271.109(c).

(b) [Reserved]

§ 271.219 Implementation and support training plan.

(a) An RRP plan shall contain a training plan describing the railroad's processes, pursuant to § 271.111, for training employees with significant responsibility for implementing and supporting the RRP (including employees of a person identified pursuant to § 271.205(a)(3) as performing significant safety-related services on the railroad's behalf or utilizing significant safety-related services provided by the railroad for railroad operations purposes who have significant responsibility for implementing and supporting the railroad's RRP).

(b) The training plan shall describe the content of the RRP training for each position or job function identified pursuant to § 271.225(b)(3) as having significant responsibilities for implementing the RRP.

§ 271.221 Involvement of railroad employees process.

An RRP plan shall contain a description of the railroad's processes for involving railroad employees in the establishment and implementation of an RRP pursuant to § 271.113. 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 employees for the purposes of this section.

§ 271.223 Internal assessment process.

(a) An RRP plan shall describe the railroad's processes for conducting an internal assessment of its RRP pursuant to subpart E of this part. At a minimum, this description shall contain the railroad's processes used to:

(1) Conduct an internal assessment of its RRP;

(2) Internally report the results of its internal assessment to railroad senior management; and

(3) Develop improvement plans, including developing and monitoring recommended improvements (including any necessary revisions or updates to the RRP plan) for fully implementing the railroad's RRP, complying with the implemented elements of the RRP plan, or achieving the goals identified in the railroad's RRP plan pursuant to § 271.203(c).

(b) [Reserved]

§ 271.225 RRP implementation plan.

(a) An RRP plan shall describe how the railroad will implement its RRP. A railroad may implement its RRP in stages, so long as the railroad fully implements the entire RRP within 36 months of FRA's approval of the plan.

(b) At a minimum, a railroad's implementation plan shall:

(1) Cover the entire implementation period;

(2) Contain a timeline describing when certain implementation milestones will be achieved. Implementation milestones shall be specific and measurable;

(3) Describe the roles and responsibilities of each position or job function that has significant responsibility for implementing the railroad's RRP or any changes to the railroad's RRP (including any such positions or job functions held by a person that enters 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 railroad operations purposes); and

(4) Describe how significant changes to the RRP may be made.

Subpart D—Review, Approval, and Retention of Risk Reduction Program Plans

§ 271.301 Filing and approval.

(a) *Filing.* A railroad shall submit one copy of its RRP plan to the FRA Associate Administrator for Railroad Safety and Chief Safety Officer, 1200 New

Jersey Avenue SE, Washington, DC 20590.

(b) *Filing timeline.* (1) A Class I railroad shall submit its RRP plan no later than August 16, 2021.

(2) A railroad with inadequate safety performance shall submit its RRP plan no later than 180 days after receiving final written notification from FRA that it shall comply with this part, pursuant to § 271.13(d), or no later than August 16, 2021, whichever is later.

(3) A railroad that the STB reclassifies or newly classifies as a Class I railroad shall submit its RRP plan no later than 90 days following the effective date of the classification or reclassification or no later than August 16, 2021, whichever is later.

(4)(i) Before submitting an RRP plan for FRA's review and approval, a voluntarily-compliant railroad shall notify FRA of its intent to submit an RRP plan by providing written notice to the FRA Associate Administrator for Railroad Safety and Chief Safety Officer, 1200 New Jersey Avenue SE, Washington, DC 20590.

(ii) The date that FRA receives a voluntarily-compliant railroad's written notice or February 18, 2021, whichever is later, serves as the date on which the voluntarily-compliant railroad may start compiling or collecting information solely for the purpose of planning, implementing, or evaluating a risk reduction program, as described by § 271.11.

(iii) A voluntarily-compliant railroad shall submit its RRP plan no later than 180 days after FRA receives written notice that the voluntarily-compliant railroad intends to submit an RRP plan for review and approval.

(c) *RRP plan requirements.* An RRP plan submitted by a railroad shall include:

(1) The signature, name, title, address, and telephone number of the chief official responsible for safety and who bears the primary managerial authority for implementing the submitting railroad's safety policy. By signing, this chief official is certifying that the contents of the RRP plan are accurate and that the railroad will implement the contents of the program as approved by FRA;

(2) The contact information for the primary person responsible for managing the RRP;

(3) The contact information for the senior representatives of any person that the railroad has determined has entered 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 railroad operations purposes (including host railroads, contract operators, shared track/corridor operators, and other contractors); and

(4) As required by § 271.207(d), a statement describing how it consulted with its directly affected employees on the contents of its RRP plan. Directly affected employees have 30 days following the railroad's submission of its proposed RRP plan to file a statement under § 271.207(e)(2).

(d) *Approval.* (1) Within 90 days of receipt of an RRP plan, or within 90 days of receipt of each RRP plan submitted before the start of railroad operations, FRA will review the proposed RRP plan to determine if it sufficiently addresses the required elements. This review will also consider any statement submitted by directly affected employees pursuant to § 271.207(e).

(2) FRA will notify the primary contact person of the submitting railroad in writing whether FRA has approved the proposed plan and, if not approved, the specific points in which the RRP plan is deficient. FRA will also provide this notification to each individual identified in the service list accompanying the consultation statement required under § 271.207(d).

(3) If FRA does not approve an RRP plan, the submitting railroad shall amend the proposed plan to correct all identified deficiencies and shall provide FRA a corrected copy no later than 90 days following receipt of FRA's written notice that the submitted plan was not approved. If FRA determines that the necessary corrections are substantively significant, it will direct the railroad to consult further with its directly affected employees regarding the corrections. If the corrections are substantively significant, a railroad will also be required to include an updated consultation statement, along with its

resubmitted plan, pursuant to § 271.207(d). Directly affected employees will also have 30 days following the railroad's resubmission of its proposed RRP plan to file a statement addressing the substantively significant changes under § 271.207(e). Within 60 days of receipt of a corrected RRP plan, FRA will review the corrected RRP plan to determine if it sufficiently addresses the identified deficiencies.

(4) Approval of a railroad's RRP plan under this part does not constitute approval of the specific actions the railroad will implement under its RRP plan and shall not be construed as establishing a Federal standard regarding those specific actions.

(e) *Electronic submission.* All documents required to be submitted to FRA under this part may be submitted electronically pursuant to the procedures in appendix B to this part.

§ 271.303 Amendments.

(a) *Consultation requirements.* (1) For substantive amendments, a railroad shall follow the process, described in its RRP plan pursuant to § 271.209, for consulting with its directly affected employees and submitting a consultation statement to FRA. The requirements of this paragraph (a)(1) do not apply to non-substantive amendments (e.g., amendments that update names and addresses of railroad personnel).

(2) If a railroad and its directly affected employees cannot reach agreement on the proposed contents of a substantive amendment, the directly affected employees may file a statement with FRA under the procedures in § 271.207(e)(1). A railroad's directly affected employees have 15 days following the railroad's submission of a proposed amendment to submit the statement described in this paragraph.

(b) *Filing.* (1) A railroad shall submit any amendment(s) to its approved RRP plan to FRA's Associate Administrator not less than 60 days before the proposed effective date of the amendment(s). The railroad shall file the amendment(s) with a cover letter outlining the proposed change(s) to the approved RRP plan.

(2) 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 of this section, although the railroad shall still file the amended RRP plan 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 described by this section.

(c) *Review.* (1) FRA will review a proposed amendment to an RRP plan within 45 days of receipt. FRA will then notify the primary contact person of the railroad regarding whether FRA has approved the proposed amendment. FRA will also provide this notification to each individual identified in the service list accompanying the consultation statement required under paragraph (a)(1) of this section. If not approved, FRA will inform the railroad and the individuals identified in the service list of the specific points in which the proposed amendment is deficient.

(2) If FRA has not notified the railroad and the individuals identified in the service list by the proposed effective date of the amendment whether the amendment has been approved or not, the railroad may implement the amendment, subject to FRA's decision.

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

§ 271.305 Reopened review.

Following approval of an RRP plan or an amendment to such a plan, FRA may reopen review of the plan or amendment, in whole or in part, for cause stated.

§ 271.307 Retention of RRP plans.

(a) *Railroads.* A railroad shall retain at its system and division headquarters one copy of its RRP plan and each subsequent amendment to that plan. A railroad may comply with this requirement by making an electronic copy available.

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(b) *Inspection and copying.* A railroad shall make a copy of the RRP plan and each subsequent amendment available to representatives of FRA or States participating under part 212 of this chapter for inspection and copying during normal business hours.

Subpart E—Internal Assessments

§ 271.401 Annual internal assessments.

(a) Beginning with the first calendar year after the calendar year in which FRA approves a railroad's RRP plan pursuant to § 271.301(d), the railroad shall annually (*i.e.*, once every calendar year) conduct an internal assessment of its RRP.

(b) The internal assessment shall determine the extent to which the railroad has:

(1) Achieved the implementation milestones described in its RRP plan pursuant to § 271.225(b);

(2) Complied with the implemented elements of the approved RRP plan;

(3) Achieved the goals described in its RRP plan pursuant to § 271.203(c);

(4) Implemented previous internal assessment improvement plans pursuant to § 271.403; and

(5) Implemented previous external audit improvement plans pursuant to § 271.503.

(c) A railroad shall ensure that the results of its internal assessments are internally reported to railroad senior management.

§ 271.403 Internal assessment improvement plans.

(a) Within 30 days of completing its internal assessment, a railroad shall develop an improvement plan that addresses the findings of its internal assessment.

(b) At a minimum, a railroad's improvement plan shall:

(1) Describe recommended improvements (including any proposed revisions or updates to the RRP plan the railroad expects to make through the amendment process described in § 271.303) that address the findings of the internal assessment for fully implementing the railroad's RRP, complying with the implemented elements of the RRP plan, achieving the goals identified in the railroad's RRP plan

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pursuant to § 271.203(c), and implementing previous internal assessment improvement plans and external audit improvement plans;

(2) Identify by position title the individual who is responsible for carrying out the recommended improvements;

(3) Contain a timeline describing when specific and measurable milestones for implementing the recommended improvements will be achieved; and

(4) Specify processes for monitoring the implementation and evaluating the effectiveness of the recommended improvements.

§ 271.405 Internal assessment reports.

(a) Within 60 days of completing its internal assessment, a railroad shall submit a copy of an internal assessment report to the FRA Associate Administrator for Railroad Safety and Chief Safety Officer, 1200 New Jersey Avenue SE, Washington, DC 20590.

(b) This report shall be signed by the railroad's chief official responsible for safety and who bears primary managerial authority for implementing the railroad's safety policy. The report shall include:

(1) A description of the railroad's internal assessment;

(2) The findings of the internal assessment;

(3) A specific description of the recommended improvements contained in the railroad's internal assessment improvement plan, including any proposed amendments the railroad intends to make to the railroad's RRP plan pursuant to § 271.303; and

(4) The status of the recommended improvements contained in the railroad's internal assessment improvement plan and any outstanding recommended improvements from previous internal assessment improvement plans.

Subpart F—External Audits

§ 271.501 External audits.

FRA will conduct (or cause to be conducted) external audits of a railroad's RRP. Each audit shall evaluate the railroad's compliance with the elements of its RRP required by this part. A railroad shall make documentation

kept pursuant to its RRP plan available for inspection and copying by representatives of FRA or States participating under part 212 of this chapter upon request. FRA will provide a railroad written notice of the audit results.

§ 271.503 External audit improvement plans.

(a) *Submission.* Within 60 days of receiving FRA's written notice of the audit results, if necessary, a railroad shall submit for approval an improvement plan addressing any instances of deficiency or non-compliance found in the audit to the FRA Associate Administrator for Railroad Safety and Chief Safety Officer, 1200 New Jersey Avenue SE, Washington, DC 20590.

(b) *Requirements.* At a minimum, an improvement plan shall:

(1) Describe the improvements the railroad will implement to address the audit findings;

(2) Identify by position title the individual(s) responsible for carrying out the improvements necessary to address the audit findings; and

(3) Contain a timeline describing when milestones for implementing the recommended improvements will be achieved. These implementation milestones shall be specific and measurable.

(c) *Approval.* If FRA does not approve the railroad's improvement plan, FRA will notify the railroad of the plan's specific deficiencies. The railroad shall amend the proposed plan to correct the identified deficiencies and provide FRA a corrected copy no later than 30 days following receipt of FRA's notice that the proposed plan was not approved.

(d) *Status reports.* Upon the request of the FRA Associate Administrator, a railroad shall provide FRA for review a status report on the implementation of the improvements contained in the improvement plan.

good faith consult with and use its best efforts to reach agreement with its directly affected employees on the contents of the RRP plan. See § 271.207(a)(1). 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 RRP 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.

I. THE MEANING OF "GOOD FAITH" AND "BEST EFFORTS"

"Good faith" and "best efforts" are not interchangeable terms representing a vague standard for the § 271.207 consultation process. Rather, each term has a specific and distinct meaning. When consulting with directly affected employees, therefore, a railroad shall independently meet the standards for both the good faith and best efforts obligations. A railroad that does not meet the standard for one or the other will not be in compliance with the consultation requirements of § 271.207.

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 an RRP 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 RRP plan, and the railroad neither addresses those concerns in further consultation nor attempts to address those concerns by making changes to the RRP 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 shall pursue to reach agreement with its employees on the contents of its RRP plan. 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

APPENDIX A TO PART 271—FEDERAL RAILROAD ADMINISTRATION GUIDANCE ON THE RISK REDUCTION PROGRAM CONSULTATION PROCESS

A railroad required to develop a risk reduction program (RRP) under this part shall in

a timely manner, and thereby failed to provide employees sufficient time to engage in the consultation process. A railroad would also likely not meet the best efforts obligation if it presented employees with an RRP plan and only permitted the employees to express agreement or disagreement on the plan (assuming that the employees had not previously indicated that such a consultation would be acceptable). A railroad may, however, wish to hold off substantive consultations regarding the contents of its RRP plan until one year after publication of the rule to ensure that information generated as part of the process is protected from discovery and admissibility into evidence under § 271.11. 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 RRP plans, FRA will determine on a case-by-case basis whether a railroad has met its § 271.207 good faith and best efforts obligations. This determination will be based upon the consultation statement submitted by the railroad pursuant to § 271.207(b) and any statements submitted by employees pursuant to § 271.207(c). If FRA finds that these statements do not provide sufficient information to determine whether a railroad used good faith and best efforts to reach agreement, FRA may investigate further and contact the railroad or its employees to request additional information. (FRA also expects a railroad's directly affected employees to utilize good faith and best efforts when negotiating on the contents of an RRP plan. If FRA's review and investigation of the statements submitted by the railroad under § 271.207(b) and the directly affected employees under § 271.207(c) reveal that the directly affected employees did not utilize good faith and best efforts, FRA could consider this as part of its approval process.)

If FRA determines that a railroad did not use good faith and best efforts, FRA may disapprove the RRP plan submitted by the railroad and direct the railroad to comply with the consultation requirements of § 271.207. Pursuant to § 271.301(b)(3), if FRA does not approve the RRP 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 an RRP plan meeting the consultation requirements of § 271.207, the railroad could be subject to penalties for failure to comply with § 271.301(b)(3).

II. 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 § 271.207. Therefore, it is important to maintain a flexible approach to the § 271.207 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 an RRP plan. This guidance may be useful as a starting point for railroads that are uncertain about how to comply with the § 271.207 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 shall 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 an RRP plan.

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

As provided in § 271.207(b)(1), a railroad consulting with the representatives of a non-profit employee labor organization on the contents of an RRP 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 an RRP plan.

(1) Pursuant to § 271.207(b)(1), 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) within 240 days from February 18, 2020 to begin the process of consulting on the contents of the railroad's RRP plan. A railroad must provide notice at least 60 days before the scheduled meeting.

(2) During the time between the initial meeting and the applicability date of § 271.11,

the parties may meet to discuss administrative details of the consultation process as necessary.

(3) Within 60 days after February 17, 2021, a railroad should have a meeting with the representatives of the directly affected employees to discuss substantive issues with the RRP plan.

(4) Within 180 days after February 17, 2021 or as otherwise provided by §271.301(b), a railroad would file its RRP plan with FRA.

(5) As provided by §271.207(e), if agreement on the contents of an RRP 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.

(b) 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, 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 RRP 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 RRP plan.

(1) Within 120 days from February 18, 2020, a railroad may notify non-represented employees that—

(A) 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 RRP plan;

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

(C) If a railroad is unable to reach agreement with its directly affected employees on the contents of the proposed RRP 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.

(2) This initial notification (and all subsequent communications, as necessary or appropriate) could be provided to non-represented employees in the following ways:

(A) Electronically, such as by email or an announcement on the railroad's website;

(B) By posting the notification in a location easily accessible and visible to non-represented employees; or

(C) 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.

(3) Following the initial notification (and before submitting its RRP plan to FRA), a railroad should provide non-represented employees a draft proposal of its RRP 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.

(4) Following this 60-day comment period and any changes to the draft RRP plan made as a result, the railroad should submit the proposed RRP plan to FRA, as required by this part.

(5) As provided by §271.207(e), if agreement on the contents of an RRP 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 B TO PART 271—PROCEDURES FOR SUBMISSION OF RRP PLANS AND STATEMENTS FROM DIRECTLY AFFECTED EMPLOYEES

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

SUBMISSION BY A RAILROAD AND DIRECTLY AFFECTED EMPLOYEES

(a) As provided for in §271.101, each railroad must establish and fully implement an RRP 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. The RRP shall be fully implemented and supported by a written RRP plan. Each railroad must submit its RRP plan to FRA for approval as provided for in §271.201.

(b) As provided for in §271.207(e), if a railroad and its directly affected employees cannot come to agreement on the proposed contents of the railroad's RRP plan, the directly affected employees have 30 days following the railroad's submission of its proposed RRP 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.

(c) The railroad's and directly affected employees' submissions shall be sent to the Associate Administrator for Railroad Safety and Chief Safety Officer, FRA. The mailing address for FRA is 1200 New Jersey Avenue SE, Washington, DC 20590. When a railroad submits its RRP plan and consultation statement to FRA pursuant to § 271.301, it must also simultaneously send a copy of these documents to all individuals identified in the service list pursuant to § 271.207(d)(3).

(d) Each railroad and directly affected employee is authorized to file by electronic means any submissions required under this part. Before any person files a submission 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.

(e) 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, Federal Railroad Administration, 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 RRP 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.

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