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lists, or data, and specifically includes a passenger rail operation's analysis of its safety risks under § 270.103(q)(1) and a passenger rail operation's statement of mitigation measures under § 270.103(q)(2);

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

(3) A passenger rail operation may include a Confidential Close Call Reporting System (C³RS) program in a system safety 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 passenger rail operation includes in its system safety program, even if the passenger rail operation compiled or collected the C³RS information on or before August 14, 2017, for purposes other than planning, implementing, or evaluating a system safety 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 proceedings for damages involving personal injury, wrongful death, or property damage of information compiled or collected for a purpose other

than that specifically identified in paragraph (a) of this section. Such information shall continue to be discoverable, admissible, or considered for other purposes in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage if it was discoverable, admissible, or considered for other purposes in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage on or before August 14, 2017. Specifically, the types of information not affected by this section include:

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

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

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

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

(d) *Preemption.* To the extent that State discovery rules and sunshine laws would require disclosure of information protected by this section in a Federal or State court proceedings for damages involving personal injury, wrongful death, or property damage, those rules and laws are preempted.

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

[81 FR 53896, Aug. 12, 2016, as amended at 85 FR 12847, Mar. 4, 2020]

§ 270.107 Consultation requirements.

(a) *General duty.* (1) Each passenger rail operation required to establish a system safety program under this part shall in good faith consult with, and use its best efforts to reach agreement with, all of its directly affected employees, including any non-profit labor

organization representing a class or craft of directly affected employees, on the contents of the SSP plan.

(2) A passenger rail operation that consults with a non-profit employee labor organization as required by paragraph (a)(1) of this section is considered to have consulted with the directly affected employees represented by that organization. For directly affected employees represented by a non-profit employee labor organization, the primary point of contact shall be either the general chairperson of that non-profit employee labor organization or a non-profit employee labor organization primary point of contact the passenger rail operation and the non-profit employee labor organization agree on at the beginning of the consultation process. If a passenger rail operation contracts out significant portions of its operations, the contractor and the contractor's employees performing those operations shall be considered directly affected employees for the purposes of this part.

(3) A passenger rail operation shall have a preliminary meeting with its directly affected employees to discuss how the consultation process will proceed. A passenger rail operation is not required to discuss the substance of an SSP plan during this preliminary meeting. A passenger rail operation must:

(i) Hold the preliminary meeting no later than July 2, 2020;

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

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

(b) *Consultation statements.* A passenger rail operation required to submit an SSP plan under §270.201 must also submit, together with the plan, a consultation statement that includes the following information:

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

(2) If the passenger rail operation could not reach agreement with its directly affected employees on the contents of its SSP plan, identification of any known areas of disagreement and

an explanation of why it believes agreement was not reached; and

(3) A service list containing the name and contact information for either each international/national president and general chairperson of any non-profit employee labor organization representing a class or craft of the passenger rail operation's directly affected employees, or each non-profit employee labor organization primary point of contact the passenger rail operation and the non-profit employee labor organization agree on at the beginning of the consultation process. The service list must also contain the name and contact information for any directly affected employee who significantly participated in the consultation process independently of a non-profit employee labor organization. When a passenger rail operation submits its SSP plan and consultation statement to FRA pursuant to §270.201, it must also simultaneously send a copy of these documents to all individuals identified in the service list.

(c) *Statements from directly affected employees.* (1) If a passenger rail operation and its directly affected employees cannot reach agreement on the proposed contents of an SSP plan, the directly affected employees may file a statement with the FRA Associate Administrator for Railroad Safety and Chief Safety Officer explaining their views on the plan on which agreement was not reached with the FRA Associate Administrator for Railroad Safety and Chief Safety Officer at Mail Stop 25, 1200 New Jersey Avenue SE, Washington, DC 20590. The FRA Associate Administrator for Railroad Safety and Chief Safety Officer shall consider any such views during the plan review and approval process.

(2) A passenger rail operation's directly affected employees have 30 days following the date of the submission of a proposed SSP plan to submit the statement described in paragraph (c)(1) of this section.

(d) *Consultation requirements for system safety program plan amendments.* A passenger rail operation's SSP plan must include a description of the process the passenger rail operation will use to consult with its directly affected

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employees on any subsequent substantive amendments to the system safety program. The requirements of this paragraph do not apply to non-substantive amendments (*e.g.*, amendments that update names and addresses of railroad personnel).

[85 FR 12847, Mar. 4, 2020]

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

§ 270.201 Filing and approval.

(a) *Filing.* (1) Each passenger rail operation to which this part applies shall submit one copy of its SSP plan to the FRA Associate Administrator for Railroad Safety and Chief Safety Officer, 1200 New Jersey Avenue SE, Washington, DC 20590, no later than March 4, 2021, or not less than 90 days before commencing passenger operations, whichever is later.

(2) The passenger rail operation shall not include in its SSP plan the risk-based hazard analysis conducted pursuant to § 270.103(q). A passenger rail operation shall make the results of any risk-based hazard analysis available upon request to representatives of FRA and States participating under part 212 of this chapter.

(3) The SSP plan shall include:

(i) The signature, name, title, address, and telephone number of the chief safety officer who bears primary managerial authority for implementing the program for the submitting passenger rail operation. By signing, this chief official is certifying that the contents of the SSP plan are accurate and that the passenger rail operation will implement the contents of the program as approved by FRA;

(ii) The contact information for the primary person responsible for managing the system safety program; and

(iii) The contact information for the senior representatives of any host railroad, contractor operator, shared track/corridor operator, or persons utilizing or providing significant safety-related services.

(4) As required by § 270.107(b), each passenger rail operation must submit with its SSP plan a consultation statement describing how it consulted with

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its directly affected employees on the contents of its SSP plan. Directly affected employees may also file a statement in accordance with § 270.107(c).

(b) *Approval.* (1) Within 90 days of receipt of an SSP plan, FRA will review the SSP plan to determine if the elements prescribed in this part are sufficiently addressed. This review will also consider any statement submitted by directly affected employees pursuant to § 270.107(c).

(2) FRA will notify each person identified in the SSP plan under § 270.201(a)(3) in writing whether the proposed plan has been approved by FRA, and, if not approved, the specific points in which the SSP plan is deficient. FRA will also provide this notification to each individual identified in the service list accompanying the consultation statement required under § 270.107(b).

(3) If FRA does not approve an SSP plan, the affected passenger rail operation shall amend the proposed plan to correct all deficiencies identified by FRA and provide FRA with a corrected copy of the SSP plan not later than 90 days following receipt of FRA's written notice that the proposed SSP plan was not approved.

(4) Approval of an SSP plan under this part does not constitute approval of the specific actions a passenger rail operation will implement under an SSP plan pursuant to § 270.103(q)(2) and shall not be construed as establishing a Federal standard regarding those specific actions.

(c) *Review of amendments.* (1)(i) A passenger rail operation shall submit any amendment(s) to the SSP plan to FRA not less than 60 days before the proposed effective date of the amendment(s). The passenger rail operation shall file the amended SSP plan with a cover letter outlining the changes made to the original approved SSP plan by the proposed amendment(s). The cover letter shall also describe the process the passenger rail operation used pursuant to § 270.107(d) to consult with its directly affected employees on the amendment(s).

(ii) If an amendment is safety-critical and the passenger rail operation is unable to submit the amended SSP