

Final Rule for 49 CFR Part 270 System Safety Program:

Side by Side Comparison of Part 673 and Part 270 Requirements



AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

Hosted by the Federal Railroad Administration (FRA)
and American Public Transportation Association (APTA)

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Moderator

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Sr. Director for Engineering and Commuter
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Presenters



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To Ask a Question

During the Presentation:

- Submit a question by typing into the Question box on your attendee control panel, then click the “send arrow” located at the bottom of the box

After the Presentation:

- Select the “raise hand” icon to indicate you wish to ask your question directly to our presenters
- The APTA moderator will announce you by name and unmute your audio line so you can ask your question.

System Safety Program Part 270 Session

Presented by:

Larry Day and Michael Ramsey

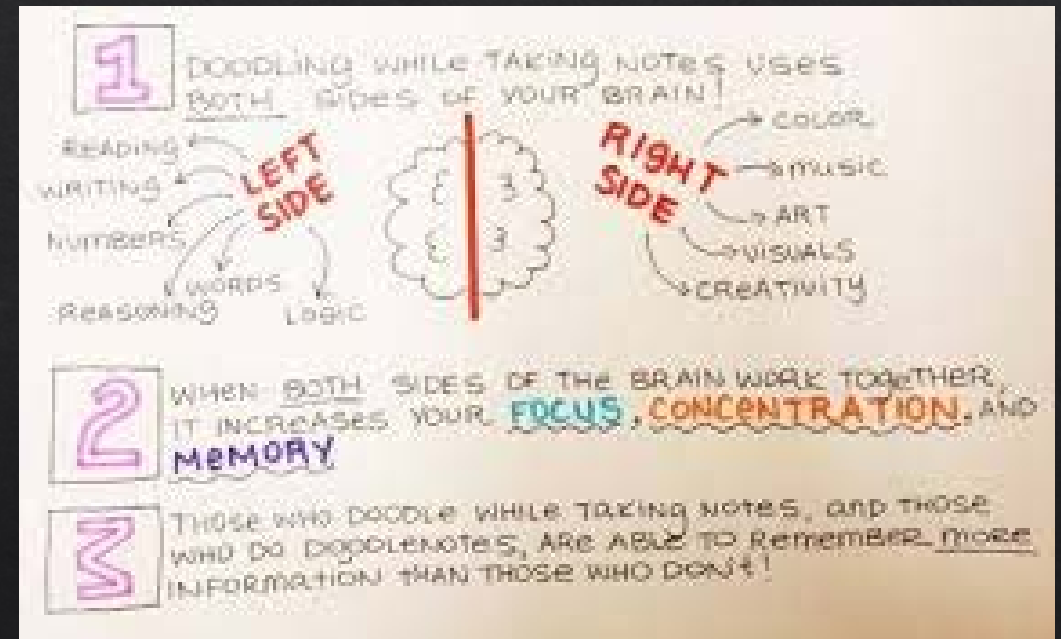
October 14, 2020

141 Days Until March 4th



Agenda

- ◆ FRA SSP vs FTA SMS
 - ◆ Target audience – Employees/Contractors
- ◆ Consultation
 - ◆ What to submit with SSP submission
- ◆ Current FRA approval process
 - ◆ Changes on our side
- ◆ Questions and Answers
 - ◆ Common issues



FRA SSP vs FTA SMS

UNOFFICIAL REVIEW – FOR DISCUSSION ONLY

- ◊ There are some similarities, but FRA requests more details in each element
- ◊ FRA is looking for short and concise plans so employees/contractors can read and understand it
- ◊ Risk Based Hazard Management can have similarities to FTA's process but data collected for the commuter rail MUST be separated from the rest of the data
 - ◊ Merging the data could result in non-compliance with Part 270

FRA SSP vs FTA SMS

System Safety Program Part 270

...improve railroad safety through structured, proactive processes and procedures developed and implemented by railroads. ...systematically evaluates railroad safety hazards and the resulting risks on their systems and manages those risks in order to reduce the number and rates of railroad accidents, incidents, injuries, and fatalities.

Public Transportation Agency Safety Plan Part 673

enhancing the safety of public transportation in the United States.

FRA SSP vs FTA SMS

System Safety Program Part 270

§ 270.103 (c) Program Goals

...goals will be achieved and what management's responsibilities are to achieve them. At a minimum, the goals shall be:

- (1) Long-term;*
- (2) Meaningful;*
- (3) Measurable; and*
- (4) Focused on the identification of hazards and the mitigation or elimination of the resulting risks.*

Public Transportation Agency Safety Plan Part 673

§ 673.23 (a) Safety Management Policy

must establish its organizational accountabilities and responsibilities... includes the agency's safety objectives and safety performance targets.

FRA SSP vs FTA SMS

System Safety Program Part 270

§ 270.103 (e) PRO mgmt. & org. structure

...railroad's management responsibilities within the system safety program...how safety responsibilities are distributed within the railroad organization...roles and responsibilities in the railroad's system safety program for each host railroad, contract operator, shared track/corridor operator, and any persons utilizing or providing significant safety-related services...

Public Transportation Agency Safety Plan Part 673

§ 673.23 (d) (4) Key Staff

...designate key staff, groups of staff, or committees to support the Accountable Executive, Chief Safety Officer, or SMS Executive in developing, implementing, and operating the agency's SMS.

FRA SSP vs FTA SMS

System Safety Program Part 270

§ 270.103 (j) Emergency management

...processes used by the railroad to manage emergencies that may arise within its system....

Public Transportation Agency Safety Plan Part 673

§ 673.11 (a) (6) General Requirements

...emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of employee responsibilities during an emergency; and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area.

FRA SSP vs FTA SMS

System Safety Program Part 270

§ 270.103 (i) SSP employee/contractor training

...which employees who are responsible for implementing and supporting the SSP, and any persons utilizing or providing significant safety-related services will be trained on the railroad's system safety program.

Public Transportation Agency Safety Plan Part 673

§ 673.29 (a) Competencies and training

...establish a comprehensive safety training program for all agency employees and contractors directly responsible for the management of safety in the agency's public transportation system. The training program must include refresher training, as necessary.

FRA SSP vs FTA SMS

System Safety Program Part 270

§ 270.103 (p) RBHM program

- ...(i)...identify hazards on the...system;*
- (ii)...analyze identified hazards and support the (RBHM) program;*
- (iii) ...methods used...determine the severity and frequency of hazards and to determine the corresponding risk; and*
- (iv) The methods used in the risk-based hazard analysis to identify actions that mitigate or eliminate hazards and corresponding*

Public Transportation Agency Safety Plan Part 673

§ 673.25 (c) Safety Risk Management

- ...establish activities to evaluate and prioritize the safety risk associated with the potential consequences of safety hazards. Safety risks must be evaluated in terms of probability and severity and take into account mitigations already in place to reduce the probability or severity of the potential consequence(s) analyzed.*
- (2) ...establish criteria for the development of safety risk mitigations that are necessary based on the results of the agency's safety risk evaluation.*

FRA SSP vs FTA SMS

System Safety Program Part 270

§ 270.103 (p) RBHM program

...(v) ...goals...

(vi) ...make decisions that affect safety of the system...

(vii) ...support continuous safety improvement...

(viii) ...maintain records of identified hazards and risks and mitigation or identified hazards...

FRA Audit Management Division - For Discussion Purposes Only

Public Transportation Agency Safety Plan Part 673

§ 673.27 (b) Safety Assurance

...must establish activities to:...Monitor its operations to identify hazards not identified through the Safety Risk Management process... Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended... Monitor information reported through any internal safety reporting programs...

FRA SSP vs FTA SMS

System Safety Program Part 270

§ 270.103 (t) Safety Culture

A railroad shall set forth a statement in its SSP plan that describes how it measures the success of its safety culture ...

Public Transportation Agency Safety Plan Part 673

§ 673.29 (b) Safety Communication

...communicate safety and safety performance information throughout the agency's organization that, at a minimum, conveys information on hazards and safety risks relevant to employees' roles and responsibilities and informs employees of safety actions taken in response to reports submitted through an employee safety reporting program.

FRA SSP vs FTA SMS

§ 673.11 (b) General Requirements

A transit agency may develop one Public Transportation Agency Safety Plan for all modes of service, or may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity.

Consultation

- ◆ Submission of the SSP also requires submission of the work done with consultation (separate document)

Consultation

____ Yes ____ No.....Did the Passenger Rail Operation submit a consultation statement? 270.107(b)

If No, contact P.R.O. to ask why.

Consultation statement to include:

1. Detailed description of the process utilized to consult with directly affected employees?
270.107(b)(1)
____ Yes ____ No
2. Was notice sent out to directly affected employees at least 60 days before the meeting?
270.107(a)(3)(ii)
____ Yes ____ No
3. Where was the announcement set to labor represented employees? (check those that apply)

____ General Chairperson

____ Labor point of contact for the passenger rail operation

Is there documentation showing agreement between passenger rail operation and labor
as to whom the contact will be?

Yes No

Consultation

4. How was the announcement set to non-represented employees? (check those that apply)
- ☐ Electronically
 - ☐ Posting notification in a location easily accessible and visible
 - ☐ Hard copy notification
5. Was the meeting held no later than July 2, 2020? 270.107(a)(3)(i)
- ☐ Yes ☐ No
6. Did the passenger rail operation consult in a manner that was honest, fair and reasonable to generally pursue agreement on the content of the plan (good faith)?
- ☐ Yes ☐ No
- a. Was there a lack of good faith, in that the directly affected employees expressed concern with certain parts of the SSP plan and these were neither addressed in further consultation meetings nor attempts to address those concerns by making changes to the SSP plan? ☐ Yes ☐ No
7. Were additional meetings held that the passenger rail operation made a “best effort” to reach an agreement with its employees on the contents of the system safety program?
- ☐ Yes ☐ No

Consultation

8. How much time was given for employees to review the plan?

(App. B recommends 60 days for non-represented employees)

_____ days

9. Was agreement reached on all aspects of the plan? *Part 270 – Appendix B*

_____ Yes _____ No

10. Was any feedback provided by employees (both labor and/or non-represented employees/contractors)? *Part 270 – Appendix B*

- a. If no for either 6 or 7 above, was a sufficient number of meetings held with its employees to address or make an attempt to address any concerns raised by the employees or whether the passenger rail operation had made an effort to respond to feedback provided by the employees during the consultation process?

Part 270 – Appendix B

_____ Yes _____ No

11. When the plan was submitted to the FRA, was it also simultaneously sent to all individuals identified in the service list? 270.107(b)(3)

_____ Yes _____ No

Consultation

11. When the plan was submitted to the FRA, was it also simultaneously sent to all individuals identified in the service list? 270.107(b)(3)

☐ Yes ☐ No

Have any comments been received by labor or non-represented employees within 30 days of the filing date of the passenger rail operation's SSP plan? (date 30 days after submission date ____/____/20____)

☐ Yes ☐ No

Consultation

Service List submission:

1. Does the list contain name and contact information for president or general chairperson for any non-profit employee labor organization representing a craft or class of directly affected employees? 270.107(b)(3)

☐ Yes ☐ No

If no, is a primary point of contact for the passenger rail operation name and contact information included? (must have one or the other, both is acceptable)

☐ Yes ☐ No

2. Are any names and contact information included for any directly affected employees who significantly participated in the consultation process independently of labor? 270.107(b)(3)

☐ Yes ☐ No

Plan amendments and consultation process:

1. Is there a description in the SSP plan of the process the passenger rail operation will use to consult with its directly affected employees on any subsequent substantive amendments to the system safety program? 270.107(d)

☐ Yes ☐ No

Current FRA approval process

- ◆ The SME review process is set...but

Current FRA approval process

- ◇ The SME review process is set...but



just as the first SSP was being approved

Current FRA approval process

Trains.com

In the Kansas City Southern case, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit remanded the matter to the FRA to either better explain its reasoning or take a new action. The court held that the FRA's "passive approval system and complete absence of any accompanying explanation ... [means] the administrative record is devoid of any explanation or reasoning for the administrative steps taken and legal determinations made by the agency." The FRA had approved the plan allowing KCS de Mexico engineers to operate into the U.S., which unions had protested since it

- ◇ This now means that once we (RSS) approve a plan we have to send it to our legal department (RCC) for review
- ◇ This has added 30-60 days to the review process
- ◇ "The first few plans"

Questions and Answers

- ◆ Any and all questions regarding the SSP development process
- ◆ Any Elements/Sections giving you trouble?
- ◆ Not sure what to do?

- Raise your hand
- Type it in the 'chat' box
- Email to Narayana, Mike or myself

141 Days Until March 4th



Additional Question or
Informal Reviews?

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Adjournment

Thank You!