



# Railroad Safety Advisory Committee

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## **Risk Reduction Program Working Group Update**

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## **The 47<sup>th</sup> Railroad Safety Advisory Committee Meeting**

Washington, DC  
September 27, 2012

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# Background

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- Established December 8, 2011
  - Purpose: to develop requirements for certain railroads to develop a Risk Reduction Program as mandated by the Rail Safety Improvement Act of 2008 (RSIA).
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# Timeframe Allotted

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- Statutory Deadline: final rule October, 2012
- Extension: NPRM August, 2012



# First Meeting Highlights

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- Reviewed task statement
  - Reviewed comments from ANPRM
  - Reviewed required elements as outlined in RSIA
  - Reviewed current programs consistent with RRP (both labor and management perspectives)
  - Developed initial framework or outline
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# Second Meeting Highlights

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- Held April 10<sup>th</sup> and 11<sup>th</sup> in Washington, DC
  - Reviewed revised outline/framework
  - Initiated discussion of scope (which railroads must comply)
  - Held extensive discussions on protection of data/information
  - Held extensive discussions on consultation of affected employees
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# Third Meeting Highlights

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- Held May 16-17 in Washington,
  - Items discussed include:
    - Scope of rule (definition of inadequate safety performance)
    - Scope of communication/outreach
    - Protection of data/information? (Section 109)
    - Consultation with affected employees (Section 103(g))
    - Timelines
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# Fourth Meeting Highlights

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- Held June 13 in Washington, DC
  - Items discussed include:
    - Definition of “Inadequate Safety Performance”
    - Compliance duration/cycle for railroads with inadequate safety records
    - Protection of data/information? (Section 109)
    - Consultation with affected employees (Section 103(g))
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# Go-to-Meetings and Webinars

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- Working Group Go-to-Meetings for general discussions were held on:
    - February 13
    - May 29
  - Working Group Go-to-Webinars to discuss the definition of inadequate safety performance were held on:
    - May 29
    - June 1
    - June 25
    - July 18
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# Items Requiring Specific Report

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- Determine the required elements of an acceptable Risk Reduction Program.
    - An RRP must include the following:
      - Risk-based Hazard Management Program
      - Safety Evaluation Program
      - Safety Outreach Program
      - Technology Implementation Program
      - Fatigue Management Program.
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# Items Requiring Specific Report

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- Determine minimum requirements for Risk Reduction Program Plan
    - RRP policy statement;
    - RRP purpose and scope statement;
    - RRP goals statement;
    - Description of the railroad's system;
    - Description of the process the railroad will use to consult with directly affected employees on amendments to the RRP plan;
    - RRP Implementation Plan;
    - Statement describing the railroad's risk-based hazard analysis process; risk-based hazard management process; and risk-based hazard management program implementation plan;
    - Statement describing the railroad's safety evaluation process;
    - Statement describing the railroad's safety Outreach;
    - Technology Implementation Plan and the results of the technology analysis.
    - Fatigue Management Plan.
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# Items Requiring Specific Report

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- Determine the approach to risk-based hazard analysis
    - Examine accident/incident and other data—identify hazards
    - Assess risk associated with identified hazards
    - Prioritize risks for elimination or control
    - Design and implement risk controls
    - Track mitigations through to resolution
    - Report to leadership on status of program
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# Items Requiring Specific Report

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- Establish time frames of program submission, FRA review, railroad re-submission, etc.
    - Railroad submits initial plan 1 year after effective date of rule
    - FRA reviews within 180 days
    - If there are deficiencies, railroad has 30 days to revise and resubmit
    - Railroad submits amendments not later than 60 days before proposed effective date of amendment
    - If FRA has not responded within 45 days, railroad may implement amendment subject to FRA decision
    - If amendment not approved by FRA, railroad has 30 days to correct deficiencies in plan amendment
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# Items Requiring Specific Report

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- Select criteria to identify railroads that have an inadequate safety record.
    - Phase I: quantitative analysis
      - Fatalities
      - FRA reportable injury/illness rate
      - FRA reportable accident/incident rate
      - FRA violation rate
    - Phase II: qualitative analysis, final decision by Associate Administrator for Safety
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# Items Requiring Specific Report

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- Identify the compliance duration/cycle for railroads with inadequate safety records
    - Any railroad required to comply with this rule because of inadequate safety performance may after five years following FRA's approval of the program plan petition the FRA for the right to end their compliance with Part 271.
    - FRA will review
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# Items Requiring Specific Report

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- How should Risk Reduction Program Plans address Technology Implementation Plan?
    - Railroad must conduct technology analysis
      - Safety impact, feasibility, costs and benefits of current, new, or novel technologies to mitigate risks
      - Include 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
    - Railroad must develop technology implementation plan
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# Items Requiring Specific Report

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- Final determination regarding which risk-based hazard data should be protected from discovery.
  - (a) Any information (including plans, reports, documents, surveys, schedules, lists, or data) compiled or collected solely for the purpose of developing, implementing, or evaluating a Risk Reduction Program under this part, including a railroad carrier's analysis of its safety risks ...and its statement of the mitigation measures with which it would address those risks ..., shall not be subject to discovery, admitted into evidence, or considered for other purposes in a Federal or State court proceeding for damages involving property damage, personal injury, or wrongful death.

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# Items Requiring Specific Report

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- Final determination regarding which risk-based hazard data should be protected from discovery.
    - (b) This section does not affect the discovery, admissibility, or consideration for other purposes of information (including plans, reports, documents, surveys, schedules, lists, or data) compiled or collected for a purpose other than that specifically identified in paragraph (a) of this section that either (1) existed prior to [insert effective date of rule]; (2) existed prior to [insert effective date of rule] and that continues to be compiled or collected; or (3) is compiled or collected after [insert effective date of rule]. Such information shall continue to be discoverable and admissible into evidence if it was discoverable and admissible prior to the existence of this section.
  - - (c) State discovery rules and sunshine laws which could be used to require the disclosure of information protected by paragraph (a) of this section are preempted
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# Items Requiring Specific Report

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- What processes should be in place in the event a Risk Reduction Program Plan is not approved?
    - FRA reviews within 180 days
    - FRA shall notify affected railroad of the specific points in which the plan is deficient.
    - Affected railroad shall amend the proposed plan to correct all deficiencies and provide FRA with a corrected copy of the risk reduction program plan not later than 30 days following receipt of FRA's written notice that the proposed risk reduction program plan was not approved
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# Items Requiring Specific Report

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- What processes will be used to periodically audit Risk Reduction Programs after they have been approved?
    - Railroads conduct annual internal assessment of program
      - Extent to which program is fully implemented
      - Extent of compliance with implemented elements of approved plan
      - Extent to which goals have been achieved
    - Railroads submit report to FRA with findings and improvement plans
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# Items Requiring Specific Report

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- What processes will be used to periodically audit Risk Reduction Programs after they have been approved?
    - FRA will conduct periodic audit of a railroad's compliance with its own plan
    - FRA will provide written notice of audit findings
    - Railroad will develop improvement plan for FRA approval
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# Consultation with Labor

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- Each railroad required to establish a risk reduction 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 on the contents of the risk reduction program.
  - For purposes of this part, the term directly affected employees includes any non-profit employee labor organization representing a class or craft of directly affected employees of the railroad. A railroad that consults with such a non-profit labor organization is considered to have consulted with the directly affected employees represented by that organization.
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# Consultation with Labor

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- Railroad must submit a consultation statement with its RRP Plan
  - Railroad must identify any portion of an RRP that would affect provision of CBA
  - Service list with names, contact information for labor representatives consulted
  - Employees may file statement with FRA if agreement is not reached
  - Railroads must also consult with labor on substantive amendments to plan
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# NPRM status

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- RRP Working Group ended with a general understanding and tentative agreement
  - Time constraints did not allow formal vote, or full consensus process.
  - Draft NPRM has been approved by the FRA Administrator.
  - NPRM is currently being reviewed at OST.
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# Next Steps

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- RRP Regulation is currently considered a significant rulemaking by OMB.
  - FRA has presented justification to OMB to revise it to non-significant, awaiting their decision.
  - Following publication, FRA will reconvene working group during the comment period to discuss specific comments.
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