

Summary of Comments Related to the Collection of Information

Rail Fixed Guideway Systems; State Safety Oversight

OMB Control NO. 2132-0558

FTA published a notice of proposed rulemaking implementing Section 5329(e) on February 27, 2015 (80 FR 11002). FTA received 52 comments from individuals and organizations in response to the NPRM, some of which addressed the paperwork burdens under the proposed rule, namely, the requirement for RFGSs to report all accidents and incidents to their SSOA, and the obligation of SSOAs to investigate all of those accidents and incidents. As a result of those comments, FTA amended the reporting burden so that RFGSs will only report (notify of) accidents meeting certain thresholds, and will not need to report (notify of) incidents. Conversely, incidents will not need to be investigated by an SSOA. Although accidents will still need to be investigated, the SSOA may permit the RFGS to conduct the investigation, but in such instances, the SSOA must conduct an independent review and analysis of the RFGS's findings. A summary of the comments is below. This summary of comments and FTA's response appeared in the publication of the Final Rule.

Comment Summary from NPRM:

FTA received six comments regarding the NPRM's economic burden estimates. Several commenters claimed that FTA had underestimated the level of burden due to the increased oversight requirements, in particular the lack of funding for the additional requirements; omission of oversight activities; the added burden of reporting and data management, and an underestimate of labor hours and cost.

One commenter estimated the cost of implementing the proposed rule for their transit agency for the first year, noting that this cost would not be eligible for the capital grant funding assistance provided by FTA, thereby burdening local funding partners with an unfunded mandate instead. Another respondent commented on a number of omitted oversight tasks that would be detrimental to the SSOA's ability to implement the minimum requirements of the proposed SSO program, but did not specify what they were.

Two commenters mentioned the increased burden of additional notifications, investigations and reporting requirements resulting from broadened definitions of accidents, incidents and occurrences, without potential increase in safety benefits. Another commenter noted the additional costs of data collection, management and analysis, a cornerstone of implementing SMS. While the RTA currently collects this data, it is not all on the same data systems or on compatible data systems. The RTA would need to develop data systems and analytical tools to meet the requirements of other safety rules still pending, making it difficult to know the cost of the rule.

One commenter said that the labor hours and costs were grossly underestimated, despite which the estimated costs show a four-fold increase over current costs. Also, they noted that other rules will further change the current rail safety program rule (49 CFR part 659) requirements.

FTA Response:

It is difficult for FTA to respond to RTA cost estimates of the likely burden of the new proposed rule without knowledge of specific data or knowing what the additional burdens would be if they are not specified. The requirements of the SSO rule pertain to responsibilities that an SSOA will carry out and only slightly impact the RTAs through additional reporting and investigations. The additional economic cost to the RTAs is not expected to be significant and MAP-21 authorized FTA to provide supplemental funding to SSOAs to offset their oversight expenses.

In response to the comments to the NPRM, FTA has undertaken the following actions that will reduce the economic burden estimates of the proposed final SSO rule. First, RTAs will now only be required to report incidents that affect the operations of the RTA. This means near misses/close calls or safety rule and policy violations are no longer required to be reported to the SSOA or FTA, eliminating the cost of conducting an investigation. However, RTAs are still required to collect this information and make it available to SSOAs or FTA during an investigation or audit to reduce recurrences and support the practice of SMS. The reduction in the number of injuries triggering the accident notification threshold from two individuals down to one person could increase the number of accidents reported by about 7,000 incidents per year, but redefining "accident" to include only serious injuries is likely to reduce the number of overall events triggering notification and a subsequent investigation. Based on an FTA study on the cost of reporting to NTD, the new requirements will not significantly increase reporting costs for agencies, likely less than a few thousand dollars across the industry in the first year, and half of that in subsequent years. Similarly, the additional accidents that must be investigated under the new definitions will not be too burdensome since they will require a lower level of investigation effort than the more serious incidents involving fatalities and derailments, likely less than \$100,000 a year for the RTAs and SSOAs.

FTA recognizes that relevant safety information may be stored electronically and require investment in data systems to better analyze the data to support SMS practices. SMS is mentioned by reference in the proposed rule since SSOAs will be responsible for ensuring that SMS principles are adopted into the transit agency safety plans

and practiced to improve safety performance. The full cost of implementing SMS principles will be included in the Public Transportation Agency Safety Rule. Similarly, the costs of training are included in the Public Transportation Safety Certification Training Program.

FTA acknowledges that the labor costs were underestimated in the NPRM since it did not include full labor costs. Consequently, the labor costs have been revised to include a 56 percent allowance for employee fringe benefits based on Bureau of Labor Statistics data for 2014. In addition, the labor cost for investigations has also been revised to reflect a higher cost for this specialty, and the numbers for labor hours for investigations have also been revised based on comments received through the NPRM. The economic burden estimates for the final rule are now revised to reflect the redefined role of the SSOA in accident investigations.