

Request for OMB Review
State Safety Oversight of Rail Fixed Guideway Systems

1. Explain the circumstances that make the collection of information necessary.

49 U.S.C. Section 5330 directed the Federal Transit Administration (FTA) to issue a rule requiring states to oversee the safety and security of rail fixed guideway systems (RFGS) not regulated by the Federal Railroad Administration (FRA). FTA published its final rule adopting a new part 659, Rail Fixed Guideway Systems; State Safety Oversight, on December 27, 1995 (60 FR 67034). The safety provisions of the final rule went into effect January 1, 1997, and the security provisions were in effect as of January 1, 1998. On April 29, 2005, FTA published a revised version of the final rule that went into effect on May 1, 2006.

Section 5330 requires each state with an existing or anticipated RFGS regulated by Part 659 to designate an oversight agency to establish standards for rail safety and security practices and procedures to be used by rail transit agencies within its purview. In addition, the state oversight agency must oversee the execution of these practices and procedures to ensure compliance with the provisions of Part 659. The state oversight agency must develop a written program standard that requires each RFGS under its jurisdiction to develop and implement a System Safety Program Plan (SSPP) and System Security Plan for its operations and services.

Section 5330 requires each state oversight agency to perform the following functions:

- (a)** Develop and administer a Program Standard in compliance with 49 CFR Part 659.
- (b)** Require that each RFGS under its jurisdiction develop a SSPP and System Security Plan. The state oversight agency must review and approve the SSPP, System Security Plan and its compliance with the state oversight agency's Program Standard.
- (c)** Require RFGSs under its jurisdiction to perform internal safety and security reviews of their operations and report findings and proposed corrective actions to the state oversight agency along with a timeline for implementing the corrective actions and the name of the individual or department responsible for their implementation within the rail transit agency.
- (d)** Requiring RFGSs to perform annual reviews of their SSPPs and System Security Plans, and to submit annual reports detailing program activities. The annual reports must be accompanied by a letter of certification from the rail transit agency's Chief Executive certifying the agency's compliance with its SSPP and System Security Plan. The state oversight agency must also perform its own onsite review of the RFGS's implementation of its SSPP and System Security Plan at least once every three years.
- (e)** Require RFGSs to develop, document, and administer a hazard management process meeting the requirements of Part 659.
- (f)** Require RFGSs to notify the state oversight agency of accidents meeting the reporting thresholds of 49 CFR Part 659 within 2 hours of their occurrence. State oversight agencies must also investigate, or cause to be investigated, any accident involving a RFGS vehicle or taking place on RFGS controlled property meeting these thresholds.

- (g) Require the development of corrective action plans for (1) results from investigations, in which identified causal and contributing factors are determined by the RFGS or state oversight agency as requiring corrective actions and (2) findings from safety and security reviews performed by the oversight agency.
- (h) Make annual reports to FTA, certifying their compliance with Part 659. The annual reports are made using an annual reporting template prepared and distributed by FTA's Office of Safety and Security each year.

If a state fails to comply with the requirements of 49 CFR Part 659, FTA may withhold up to five percent of funds apportioned under section 5307 to a state, or urbanized area within a state.

To comply with Section 5330, state oversight agencies are required to submit all program documentation and the RFGS' SSPP and accident investigation procedures to FTA electronically as part of an initial submission requirement to help FTA monitor state compliance with the rule. Further, if any changes are made to these documents, state oversight agencies must submit modified documents electronically to FTA as part of their annual submission and annual certification. The state oversight agency must also review and approve, in writing, the RFGS's SSPP, System Security Plan, internal safety and security review reports, accident investigation reports and corrective action plans.

2. How, by whom, and for what purpose the information is to be used and the consequences if the information is not collected?

Collection of information for this program is necessary to ensure that state oversight agencies can perform their designated safety and security functions. Without comprehensive safety and security information from RFGSs, state oversight agencies will be unable to monitor safety and security as directed by section 5330 and 49 CFR Part 659.

In addition, FTA has identified and strengthened minimum safety and security requirements in part 659 and must review and approve state oversight agency and RFGS incorporation of these requirements into their respective programs to verify compliance. FTA must also receive, electronically, both an annual report and an annual certification from each state oversight agency to verify its compliance with Section 5330. FTA will use this information in exercising its authority to withhold federal funding to a state or an urbanized area in the state in the event compliance is not reached.

Safety and security information will be submitted to the state oversight agency from the RFGS in the form of (1) SSPPs, (2) System Security Plans, (3) hazard management procedures, (4) formal investigation reports of accidents and hazardous conditions, (5) accident investigation procedures, (6) annual audit reports, and (7) other safety and security documents requested by the state oversight agency.

Collection of this information will enable the state oversight agency to monitor effectively the safety and security of the RFGS. If the state oversight agency is unable to collect the identified safety information from the RFGS, the agency cannot not possibly implement the

requirements of 49 CFR Part 659. In addition, without certification from the state oversight agency, FTA would be unable to determine each state's compliance with Section 5330.

This information collection satisfies the Safety goals in the Departmental Strategic Plan.

3. Describe whether collection of information involves information technology and any consideration of using information technology to reduce the burden.

Since each state must designate its own oversight agency to comply with section 5330, some states may create additional information reporting requirements, or adopt standardized forms to streamline the collection of information from the RFGS. FTA makes no specific requirements concerning the format of the information reported to the state oversight agency. Moreover, FTA does not require the use of a specific technology or format for the annual reports to be submitted by the state oversight agencies. However, FTA will provide each state with a certification form to verify compliance with section 5330. FTA recognizes the wide variety of available technologies and encourages both the RFGSs and the oversight agencies to use the ones best suited to their operating conditions.

While states may chose to increase the information requirements for compliance with Section 5330, FTA's requirements have been carefully designed to require only the minimum information necessary to implement an effective state oversight program. Wherever possible, FTA's requirements have attempted to incorporate existing standards, such as those devised by the American Public Transit Association (APTA) in its Manual for the Development of Rail Transit System Safety Program Plans, or to limit the reporting of unnecessary information by defining terms such as "accident" and "hazardous conditions" in ways that ensure only events of significance to the safety of the RFGS are reported to the state safety oversight agency.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2.

Section 5330 legislation was drafted by Congress to address the public need for state safety oversight of RFGSs and contains the first federal requirements for state safety oversight of RFGSs. Since Section 5330 went into effect in 1995 every state with a RFGS has designated a state oversight agency to oversee that system's operations and maintenance. There is therefore no duplication of effort in the FTA requirements for section 5330. Instead, the information requested for compliance with Section 5330 is unique to each RFGS and is available from no other source.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Section 5330 applies only to RFGSs that receive funds under Section 5307. Small businesses are not covered by FTA's state safety oversight requirements.

6. Describe consequences to federal program or policy activities if the collection were not collected or collected less frequently.

FTA has limited the information requirements of its implementation of Section 5330 legislation to those requirements absolutely essential for state oversight of the safety of RFGSs. Any delay or curtailment in the reporting system designed by FTA would hamper greatly the ability of state oversight agencies to monitor effectively the safety of RFGSs and for FTA to monitor state implementation of rule requirements.

7. Explain any special circumstances that would an information collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

The information collected is consistent with the guidelines in 5 CFR 1320.6.

8. Describe efforts to consult with persons outside the agency to obtain their views.

A 60-day Federal Register Notice was published on June 23, 2008, pages 35436-35437, soliciting comments prior to submission to the Office of Management and Budget (OMB). No comments have been received. A 30-day notice was published on September 12, 2008, pages 53071 and 53072.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift is made to respondents.

10. Describe any assurance of confidentiality provided by to respondents and the basis for the assurance in statute, regulation, or agency policy.

There will be no questions of a confidential nature for individuals on the information reported by the RFGS to the state oversight agency, or on the information reported by the state oversight agency to FTA. In the Final Rule, FTA encourages states to provide a legal recourse for protecting the information provided to the state oversight agency from being eligible for use in court suits against RFGS.

11. Provide additional justification for any questions of a sensitive nature.

No individuals are asked any questions of a sensitive nature in this collection of information. Only RFGSs and state oversight agencies will be providing information.

12. Provide estimates of the hour burden of the collection of information and annualized cost to respondents.

Based on the data reported by each of the states involved in the State Safety Oversight (SSO) program in Calendar Year (CY) 2007, FTA estimates the Annual Information Collection Burden for states implementing Section 5330 requirements to be **33,770 total hours**. This equates to

approximately **767 hours** devoted to information collection activities for each of the RFGs in the SSO Program.

FTA's estimate of the Annual Information Collection Burden for Rail Transit Agencies implementing Section 5330 requirements is based on data developed jointly by FTA and the Government Accountability Office (GAO) in 2006. Using this data, FTA estimates that the annual information collection burden for Rail Transit Agencies is approximately **108,623 total hours**, or approximately **2,469 hours** at each of the 44 rail transit agencies in the SSO Program.

A detailed discussion of these estimates is provided below.

Estimated Cost for States Implementing Section 5330 Requirements, Including Information Collection Activities

In the revised rule, FTA estimated that the 26 state oversight agencies designated to implement 49 CFR Part 659 requirements would spend approximately 60,000 labor hours (28.85 full-time equivalents or approximately \$2.1 million in labor) each year to implement minimum Part 659 requirements. This estimate used a labor rate of \$35 per hour which at the time, was the average hourly rate for State employees working on the State Safety Oversight (SSO) program. This estimate did not cover instances where States chose to use contractor hours instead of state employee hours to implement 49 CFR Part 659 minimum requirements. Further, this estimate did not include hours and resources devoted by states to activities that exceeded 49 CFR Part 659 minimum requirements.

FTA estimated that approximately half of this time (30,000 hours) would be spent on activities related to information collection, verification, analysis and management, including developing and updating Program Standards, reviewing and approving rail transit agency safety and security plans, documenting the results of on-site reviews and assessments, reviewing and approving accident investigations, reviewing and assessing the rail transit agency's implementation of its hazard management program and internal safety and security audit process, and certifying and reporting annually to FTA.

According to this estimate, in 2005, FTA determined that each state oversight agency would devote approximately 680 hours to information collection activities required to implement minimum Part 659 requirements for each of the 44 rail transit agencies in the SSO program. However, Annual Reports received by FTA for the SSO Program for Calendar Year (CY) 2007 showed that the program's 26 SSO agencies actually devoted a collective 32.47 full-time equivalents or 67,537.6 hours to implementing Section 5330 requirements and spent over \$4 million on these programs. These amounts include both contractor hours and hours devoted to activities that exceed 49 CFR Part 659 minimum requirements and were not distributed evenly over each of the SSO agencies.

Based on this information, FTA estimates that in CY 2007, SSO agencies devoted approximately half of the total level of effort they reported (**33,770 hours**) to information collection activities. This breaks down to approximately **767 hours** devoted by each state to each of the 44 rail transit agencies in the SSO program.

Estimated Costs for Rail Transit Agencies in Implementing Section 5330 Requirements, Including Information Collection Activities

In 2006, in partnership with the GAO, FTA determined that the rail transit agencies in the SSO program at that time devoted 99.41 full-time equivalents (207,369.26 hours) to implementing 49 CFR Part 659 requirements. As with the SSO agencies, approximately half of this time (108,623 hours) was spent on information collection, analysis, verification, and management, including developing, revising and reviewing safety and security plans and procedures, documenting accident investigations and the hazard management program, documenting internal audits, reviewing records and reports to assess implementation of safety and security activities, and communicating with the SSO agencies. On average, this assessment means that each of the 44 rail transit agencies in the SSO program in 2007 spent approximately **2,468.7 hours per year** on activities involving the collection of information.

Costs to State Oversight Agencies

To comply with Section 5330, state oversight agencies must perform several initial activities to establish their oversight programs. Once these activities have been completed, state oversight agencies will be required to conduct periodic monitoring and investigation activities to maintain compliance.

Initially, state oversight agencies must develop and approve a systems safety program standard that will be utilized by the RFGS to develop their SSPPs and System Security Plans. State oversight agencies must also review and approve the SSPPs and System Security Plans submitted by the RFGSs. The state oversight agency must also review and approve the RFGS' annual report on its internal safety and security reviews. In addition to monitoring the RFGS' implementation of its hazard management process, the state oversight agency must conduct and oversee the investigation of accidents including the review and approval of accident investigation reports and corrective action plans. The state safety oversight agency must also conduct a three-year safety review and report these findings.

The state oversight agencies must continue to monitor RFGS compliance with the system safety program standard; monitor notification procedures; maintain data collection activities; and develop and submit annual reports and certifications to FTA.

The following table describes the costs of both the initial and ongoing activities required for state oversight agencies to maintain compliance with section 5330 legislation. Costs have been estimated at a labor rate of **\$35.00 per hour**. This rate represents the hourly rate of an individual in the 70th percentile of the average state pay schedule.

Annual Activity for Compliance with Section 5330	Labor Hours	Total Cost
State Oversight Agencies		
Develop and adopt program standard*	650	\$22,750.00
Develop and adopt program procedures*	650	\$22,750.00
Review and update program standard and procedures	1,210	\$42,350.00
Review and approve RFGS SSPP	980	\$34,300.00
Review and approve RFGS system security plan	980	\$34,300.00
Travel	2,200	\$77,000.00
Review and approve RFGS procedures	1,330	\$46,550.00
Review and approve SSPP modifications and updates	980	\$34,300.00
Review and approve system security plan modifications and updates	980	\$34,300.00
Perform three-year review of RFGS	2,850	\$99,750.00
Training	1,100	\$38,500.00
Review and approve internal safety review report	980	\$34,300.00
Review and approve internal security review report	980	\$34,300.00
Prepare three-year safety and security review report	5,250	\$183,750.00
Prepare accident investigation report	880	\$30,800.00
Review and approve RFGS accident investigation reports	1,610	\$56,350.00
Review, approve and track corrective action plans	2,380	\$83,300.00
Monitor RFGS adherence to hazard management process	5,490	\$192,150.00
Designation Submission*	16	\$560.00
Initial Submission*	1,160	\$40,600.00
Annual Submission	1,076	\$37,660.00
Periodic Submission	38	\$1,330.00
Total State Oversight Agencies	33,770.00	1,181,950.00

* non-recurring expense

Estimate for State Oversight Agencies

Costs to Rail Fixed Guideway Systems

To comply with the requirements of Section 5330, RFGSs must develop and implement a SSPP and System Security Plan that meets the criteria established in the state oversight agencies system safety program standard. The system must also conduct internal safety and security reviews according to procedures identified in both plans and in compliance with minimum requirements specified in the rule. An annual report must be drafted and submitted to the state oversight agency for review and approval. Additional activities include the implementation of an approved hazard management process; the notification, investigation, and reporting of accidents that occur at the fixed guideway system; and the preparation and implementation of corrective action plans. The RFGS must also conduct an annual emergency preparedness drill and report its findings to the state oversight agency.

The estimates in the following table, calculated at a rate of **\$35.00 per labor hour**, reflect the varying levels of compliance already in existence throughout the industry, as well as for new requirements to be implemented.

Annual Activity for Compliance with Section 5330	Labor Hours	Total Cost
Rail Transit Agencies		
Develop system safety program plan*	2,875	\$100,625.00
Review and update system safety program plan	3,460	\$121,100.00
Develop system security plan*	1,850	\$64,750.00
Review and update system security plan	2,845	\$99,575.00
Develop program procedures*	2,725	\$95,375.00
Review and update program procedures	1,898	\$66,430.00
Travel	1,900	\$66,500.00
Conduct internal safety and security reviews	6,980	\$244,300.00
Prepare internal safety and security review reports	3,740	\$130,900.00
Prepare annual internal safety and security review report for state oversight	4,908	\$171,780.00
Conduct accident investigations	13,750	\$481,250.00
Prepare accident investigation reports	8,785	\$307,475.00
Investigate unacceptable hazardous conditions	6,430	\$225,050.00
Prepare unacceptable hazardous condition reports	5,515	\$193,025.00
Implement hazard management process	14,810	\$518,350.00
Prepare and submit corrective action plans	8,750	\$306,250.00
Coordinate hazard management program activities with state oversight	10,930	\$382,550.00
Maintain safety data	1,636	\$92,260.00
Plan and conduct annual emergency preparedness drill	1,550	\$54,250.00
Prepare and submit after-action report for annual emergency drill	500	\$17,500.00
Maintain security data	1,636	\$92,260.00
Make submissions to state oversight agency	1,200	\$42,000.00

Total Rail Transit Agencies	108,623.00	\$3,803,555.00
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* non-recurring expense

Estimate for Rail Transit Agencies

13. Estimate of the total cost burden to respondents or record keepers resulting from the collection of information (not including the cost of any hour burden shown in items 12 and 14).

There is no additional cost beyond that shown in items 12 and 14.

14. Estimate of annualized cost to the federal government.

To comply with Section 5330 legislation, FTA must make an initial review of each state oversight agency's system safety program standard and procedures to determine compliance. Each year thereafter, FTA must continue to monitor compliance. In addition, FTA must provide technical assistance and general monitoring services to manage the Section 5330 program. The table below provides estimates of the labor costs to FTA for compliance with Section 5330 legislation.

Compliance monitoring audits have demonstrated their effectiveness to improve the state oversight for accident/hazardous condition investigations, accident reporting, and implementing corrective actions for causes of accidents. It is necessary to provide technical assistance and training to prevent future accidents with injuries and fatalities. Costs are based on **\$35.00 per labor hour**.

Annual Activity for Compliance with Section 5330	Labor Hours	Total Cost
Federal Transit Administration		
Review state oversight agency designation submissions	500	\$17,500.00
Review state oversight agency initial submissions	500	\$17,500.00
Review state oversight agency annual submissions	1,700	\$59,500.00
Review state oversight agency periodic submissions	2,000	\$70,000.00
Technical assistance for state oversight agencies	3,000	\$105,000.00
Compliance monitoring	2,500	\$87,500.00
Total Federal Transit Administration	10,200.00	\$357,000.00

Estimate for Federal Transit Administration

15. Explain the reasons for any program changes or adjustments reported in items 13 and 14 of OMB Form 83-I.

The burden hours and costs increased. FTA now has more accurate information regarding the level of effort spent performing information collection, analysis and reporting by local and state agencies implementing 49 CFR Part 659. FTA also revised 49 CFR Part 659 on April 29, 2005, and provided additional clarifications on specific activities, such as the hazard management process, in the fall of 2007. Finally, the number of states and rail transit agencies implementing 49 CFR Part 659 provisions has been increasing each year.

Based on information submitted to FTA in annual reports prepared by the states in 2006 and 2007, FTA now estimates that states collectively spend 33,770 hours performing information collection, analysis and reporting activities to ensure safety oversight of the 44 rail transit agencies in the SSO program. This number has been revised from the earlier estimate to reflect the growing number of states implementing 49 CFR Part 659, the additional effort required to implement clarifications made by FTA for the revised 49 CFR Part 659, and the level of effort actually reported by the states to FTA.

Based on information collected by the Government Accountability Office (GAO) and FTA in 2006, FTA also has revised its estimate for the 44 rail transit agencies covered by 49 CFR Part 659. FTA now estimates that the rail transit agencies spend 108,623 hours performing information collection, analysis and reporting activities to implement 49 CFR Part 659. This is a significant increase from the previous estimate.

The number of rail transit agencies covered by 49 CFR Part 659 has increased. In addition, over the last five years, minimum levels of effort to meet FTA's requirements for 49 CFR Part 659 have also increased, as accident investigation procedures, internal safety audit programs, and the hazard management programs have matured. Finally, based on the GAO assessment, FTA now has more accurate information regarding the level of effort actually being spent on information collection, analysis, and reporting for 49 CFR Part 659 requirements.

16. Plans for tabulation and publication for collections of information whose results will be published.

FTA will prepare an annual report on accident statistics as reported by state safety oversight agencies in their annual submission to FTA.

17. If seeking approval not to display the expiration date for OMB approval, explain the reasons.

There is no reason not to display the expiration date of OMB approval.

18. Explain any exception to the certification statement identified in Item 19 of OMB Form 83-I.

There are no exceptions to the certification statement.

19. Collections of Information Employing Statistical Methods:

Not applicable.