

DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

SUPPORTING STATEMENT

Rail Fixed Guideway Systems; State Safety Oversight

OMB Control No. 2132-0558

This justification statement is associated with a request for an extension of a currently approved information collection.

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) that are not regulated by the Federal Railroad Administration (FRA). FTA published its Final Rule adopting a new 49 CFR 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. 49 U.S.C. Section 5330 applies to RFGSs that receive funds under FTA's 49 U.S.C. Section 5307 – Urbanized Area Formula Program. 49 U.S.C. Section 5330 does not provide funding.

49 U.S.C. Section 5330 requires each state with an existing or anticipated RFGS regulated by 49 CFR 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 49 CFR 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.

49 U.S.C. 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. (Implementation Guidelines, pages 33-36, and Resource Toolkit, pages 8-75, provide a sample Program Standard.)
- (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. (Implementation Guidelines, pages 42 and 49-52, and Resource Toolkit, Appendix E, provide a sample SSPP and Appendix G provides a sample System Security Plan.)

- (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. (Implementation Guidelines, pages 61-65, and Resource Toolkit, pages 38-41 and Appendix K.)
- (d) Require RFGSs to perform annual reviews of its 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. (Implementation Guidelines, pages 53-55, and Resource Toolkit, Appendix F and Appendix H.)
- (e) Require RFGSs to develop, document, and administer a hazard management process meeting the requirements of 49 CFR Part 659. (Implementation Guidelines, pages 56-60, Resource Toolkit, pages 44-49, and Hazard Management Clarification Letter.)
- (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 that meets these thresholds. (Implementation Guidelines, pages 64-72, and Resource Toolkit, pages 51-59 and Appendix I.)
- (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. (Implementation Guidelines, pages 82-84, and Resource Toolkit, pages 68-72.)
- (h) Make annual reports to FTA, certifying their compliance with 49 CFR Part 659. (Annual Reporting Template.)

If a state fails to comply with the requirements of 49 CFR Part 659, FTA may withhold up to 5 percent of funds apportioned under 49 U.S.C. Section 5307 to a state or urbanized area within a state.

To comply with 49 U.S.C. 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.

This information collection satisfies the safety goal in the Departmental Strategic Plan.

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 would be unable to monitor safety and security as directed by 49 U.S.C. Section 5330 and 49 CFR Part 659.

In addition, FTA has identified and strengthened minimum safety and security requirements in 49 CFR 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 49 U.S.C. 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 is 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 enables 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 could 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 49 U.S.C. Section 5330.

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

FTA collects information annually from the states and also requests materials and documentation to support the performance of audits and reviews at the states. Annual submissions to FTA are made in a Microsoft Excel template through e-mail. The elements that the states must include in this publicly available report are specified in 49 CFR Part 659.39 (c). All other submissions made to FTA as part of audits or reviews are comprised of existing and available documentation in Microsoft and Adobe formats that are submitted through e-mail or uploaded through a file transfer protocol. FTA does not have a formal information technology system to support the collection of information from the states; however, 49 CFR Part 659.39 (e) provides FTA with the authority to develop and use such a system should the agency determine that it is necessary or beneficial.

In terms of information the states collect from the rail transit agencies, since each state must designate its own oversight agency to comply with 49 U.S.C. 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 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 49 U.S.C. Section 5330. FTA recognizes the wide variety of available technologies and encourages both the RFGSs and the oversight agencies to discover the ones best suited to their operating conditions.

While states may chose to increase the information requirements for compliance with 49 U.S.C. Section 5330, FTA's requires 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.

49 U.S.C. 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 49 U.S.C. 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 49 U.S.C. Section 5330. The information requested for compliance with 49 U.S.C. 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.

49 U.S.C. Section 5330 applies only to RFGSs that receive funds under 49 U.S.C. Section 5307 – Urbanized Area Formula Program. 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 collection requirements of its implementation of 49 U.S.C. Section 5330 legislation to those requirements that are 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 effectively monitor the safety of RFGSs and for FTA to monitor state implementation of rule requirements.

7. Explain any special circumstances that would cause 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 August 29, 2011, pages 53713-53714, soliciting comments prior to submission to the Office of Management and Budget (OMB). No comments were received. A 30-day Federal Register notice was published on November 16, 2011.

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 encouraged 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 questions of a sensitive nature in this information collection. Only RFGSs and state oversight agencies will provide the 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) 2010, FTA estimates the annual information collection burden for states implementing Section 5330 requirements to be 57,696 total hours. This equates to approximately 1,202 hours devoted to information collection activities for each of the 48 RFGSs in the SSO Program.

FTA's estimate of the annual information collection burden for Rail Transit Agencies implementing 49 U.S.C. Section 5330 requirements is based on data developed jointly by FTA and the Government Accountability Office (GAO) in 2006 and growth in the rail transit industry through 2010. Using this data, FTA estimates that the annual information collection burden for Rail Transit Agencies is approximately 118,498 total hours, or approximately 2,469 hours for each of the 48 rail transit agencies in the SSO Program.

FTA has not conducted a transit agency resource assessment since 2006. Additionally, rail transit agency implementation requirements have not changed since the GAO study. However, the rail transit community has grown from 44 rail transit agencies to 48. The data included in the report addresses this increase by applying a growth factor to the figures from the 2006 assessment.

Total burden hours: 57,696 hours (State Oversight Agencies) + 118,498 hours (Rail Transit Agencies) = 176,194 hours

The following tables provide a breakdown of the hours and costs.

Costs to State Oversight Agencies

FTA collected resource allocation data from the 28 state oversight agencies designated to implement 49 CFR Part 659 requirements. To comply with 49 U.S.C. Section 5330, state oversight agencies must perform several initial activities to establish their oversight programs. Once these activities have been completed, state oversight agencies are 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.

FTA used an hourly rate of \$40.84 to calculate total costs. This figure is the mean hourly wage for full-time state and local government "general and operations managers" in 2010 as reported by the Bureau of Labor Statistics. Using this rate, FTA estimated the state oversight agency information collection activity costs to be \$2,356,386.

The following table describes the costs of both the initial and ongoing information collection activity costs required for state oversight agencies to maintain compliance with 49 U.S.C. Section 5330 legislation.

Annual Activity for Compliance with Section 5330	Labor Hours	Total Cost
State Oversight Agencies		
Develop and adopt program standard*	700	\$ 28,588.00
Develop and adopt program procedures*	700	\$ 28,588.00
Review and update program standard and procedures	1,456	\$ 59,463.04
Review and approve RFGS SSPP	1,920	\$ 78,412.80
Review and approve RFGS system security plan	1,920	\$ 78,412.80
Travel	2,688	\$109,777.92
Review and approve RFGS procedures	1,536	\$ 62,730.24
Review and approve SSPP modifications and updates	1,536	\$ 62,730.24
Review and approve system security plan modifications and updates	1,536	\$ 62,730.24
Perform three-year review of RFGS	4,608	\$188,190.72
Training	1,920	\$ 78,412.80
Review and approve internal safety review report	2,112	\$ 86,254.08
Review and approve internal security review report	2,112	\$ 86,254.08
Prepare three-year safety and security review report	6,720	\$274,444.80
Prepare accident investigation report	2,688	\$109,777.92
Review and approve RFGS accident investigation reports	3,072	\$125,460.48
Review, approve and track corrective action plans	7,680	\$313,651.20
Monitor RFGS adherence to hazard management process	9,600	\$392,064.00
Designation Submission*	15	\$ 612.60
Initial Submission*	1,135	\$ 46,353.40
Annual Submission	1,764	\$ 72,041.76
Periodic Submission	280	\$ 11,435.20
Total State Oversight Agencies	57,698	\$2,356,386.32

* non-recurring expense

Estimate for State Oversight Agencies

Costs to Rail Fixed Guideway Systems

To comply with the requirements of 49 U.S.C. 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 \$40.84 per labor hour, reflect the varying levels of compliance already in existence throughout the industry, as well as for new

requirements to be implemented. Using this rate, FTA estimated the rail transit agencies information collection activity costs to be \$4,839,451.

Annual Activity for Compliance with Section 5330	Labor Hours	Total Cost
Rail Transit Agencies		
Develop system safety program plan*	3,136	\$128,089.09
Review and update system safety program plan	3,775	\$154,152.44
Develop system security plan*	2,018	\$82,422.55
Review and update system security plan	3,104	\$126,752.51
Develop program procedures*	2,973	\$121,406.18
Review and update program procedures	2,071	\$ 84,561.08
Travel	2,073	\$ 84,650.18
Conduct internal safety and security reviews	7,615	\$310,978.04
Prepare internal safety and security review reports	4,080	\$166,627.20
Prepare annual internal safety and security review report for state oversight	5,354	\$218,664.79
Conduct accident investigations	15,000	\$612,600.00
Prepare accident investigation reports	9,584	\$319,395.71
Investigate unacceptable hazardous conditions	7,015	\$286,474.04
Prepare unacceptable hazardous condition reports	6,016	\$245,708.29
Implement hazard management process	16,156	\$659,825.89
Prepare and submit corrective action plans	9,545	\$389,836.36
Coordinate hazard management program activities with state oversight	11,924	\$486,961.31
Maintain safety data	1,785	\$ 72,888.26
Plan and conduct annual emergency preparedness drill	1,691	\$ 69,056.73
Prepare and submit after-action report for annual emergency drill	545	\$ 22,276.36
Maintain security data	1,785	\$ 72,888.26
Make submissions to state oversight agency	1,309	\$ 53,463.27
Total Rail Transit Agencies	118,498	\$4,839,450.89

* 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 49 U.S.C. 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 49 U.S.C. Section 5330 program. The table below provides estimates of the labor costs to FTA for compliance with 49 U.S.C. 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 \$40.84 per labor hour. Using this rate, FTA estimates the total cost to be \$416,568.00.

Annual Activity for Compliance with Section 5330	Labor Hours	Total Cost
Federal Transit Administration		
Review state oversight agency designation submissions	500	\$ 20,420.00
Review state oversight agency initial submissions	500	\$ 20,420.00
Review state oversight agency annual submissions	1,700	\$ 69,420.00
Review state oversight agency periodic submissions	2,000	\$ 81,680.00
Technical assistance for state oversight agencies	3,000	\$122,520.00
Compliance monitoring	2,500	\$102,100.00
Total Federal Transit Administration	10,200.00	\$416,568.00

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 total burden hours increased from 142,393 hours for the previous request to 176,194 hours for this request, representing a net increase of 33,801 burden hours. This is an adjustment due to an increase in the number of rail transit agencies from 44 to 48 and the growing number of states implementing 49 CFR Part 659 provisions.

Total costs have also increased due to the change in wage used. FTA used an hourly rate of \$40.84 to calculate total cost, up from \$35.00 in the previous estimate. This figure is the mean hourly wage for full-time state and local government “general and operations managers” in 2010 as reported by the Bureau of Labor Statistics.

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.

