

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

PROPOSED RULEMAKING ORDER

The State of Wisconsin Department of Transportation Proposes an Order to Create Permanent Rule Wis. Admin. Code. ch. trans 10 Relating to Transit safety oversight program for rail fixed guideway transportation systems.

INTRODUCTION

The Statement of Scope for this rulemaking, SS 090-16, was approved by the Governor on October 4, 2016, published in Register No. 730A2 on October 10, 2016, and approved by the Secretary of the State of Wisconsin Department of Transportation (“Department”) Mark Gottlieb, P.E., as required by s. 227.135(2), Stats., on November 1, 2016. The analysis below was prepared by the Department.

ANALYSIS

Statutes Interpreted: s. 85.066, Stats.

Statutory Authority: s. 85.16(1), and s. 85.066(2), Stats.

Explanation of Agency Authority: Section 85.16(1), Stats., authorizes the Secretary of the Department to make rules deemed necessary to the discharge of the powers, duties and functions vested in the Department.

Section 85.066(2), Stats. requires the Department to develop and administer a transit safety oversight program to oversee, enforce, investigate, and audit all safety aspects of rail fixed guideway transportation systems.

Related Statute or Rule: Not Applicable (“N/A”)

Plain Language Analysis: This rulemaking is necessary to comply with federal law requiring states to develop, certify with the Federal Transit Administration (FTA), and administer a state safety oversight (SSO) program in accordance with new federal rule 49 CFR Part 674. Failure by the state establish an FTA-certified, Part 674-compliant SSO program by the statutory deadline of April 15, 2019, will result in FTA withholding all Chapter 53 funds from both the state and all entities obtaining those funds through the state.

Background: Effective on October 1, 2012, the federal Moving Ahead for Progress in the 21st Century Act (MAP-21) addressed state of good repair, performance, program efficiency, and safety of public transportation. MAP-21 gave FTA new authority to strengthen safety of public transportation systems by establishing and enforcing a new comprehensive framework to oversee them. Section 5329 of MAP-21 contains the framework of the new federal safety program, including updates to the SSO program.

On August 22, 2012, FTA’s Office of Budget and Policy put out a summary paper titled “Moving Ahead for Progress in the 21st Century Act (MAP-21): A Summary of Public Transportation Provisions” (https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/MAP21_essay_style_summary_v5_MASTER.pdf).

The following is an excerpt from the summary paper's overview of the Section 5329 safety program, specifically concerning new requirements for SSO programs:

State Safety Oversight

MAP-21 includes new requirements for the State Safety Oversight (SSO) program, through which States with heavy rail, light rail, and streetcar systems must establish safety oversight for these transit systems. MAP-21 requires State Safety Oversight Agencies (SSOAs) to be legally and financially independent from the rail systems they oversee, and have the authority, staff training, and expertise to enforce Federal and State safety laws. FTA must certify whether each SSO is adequate and meets the requirements. FTA will oversee implementation of the SSO programs and audit each SSO agency at least triennially.

Through MAP-21, Congress directed FTA to engage in rulemaking to give effect to the statutory provisions, including for the enhanced SSO program. Accordingly, FTA promulgated 49 CFR Part 674 to replace the former SSO program rule, 49 CFR Part 659. By extension, the state rulemaking for Trans 10 is in direct response to both the statutory requirements of MAP-21 and the regulatory requirements of Part 674.

To address the statutory and regulatory requirements in MAP-21 and 49 CFR Part 674, Trans 10 is divided into five parts, as follows:

Part 1 details the purpose and scope of the transit safety oversight program, including the statutory authority for the program, and the program's applicability to the Department and owners or operators of rail fixed guideway transportation systems.

Part 2 details the program's high-level policy to oversee, enforce, investigate, and audit all safety aspects of all rail fixed guideway transportation systems in the state.

Part 3 specifies various definitions used within the transit safety oversight program.

Part 4 designates the Department as the authorized state safety oversight agency for the State of Wisconsin. The section also details the requirements and authority of the state safety oversight agency, as follows:

- Requires financial and legal separation from any public transportation agency under the Department's oversight.
- Prohibits the Department from providing public transportation services in an area with a rail fixed guideway transportation system under the Department's oversight.
- Requires the Department to have the ability to determine appropriate staffing levels for the transit safety oversight program.
- Prohibits the Department from employing certain individuals who administer or provide services to a rail fixed guideway transportation system under the Department's oversight.
- Requires the Department to have the ability to determine employee qualifications compliant with a federal public transportation safety certification training program.
- Requires the Department to review, approve, oversee, and enforce the safety plan for every rail transit agency under the Department's oversight.
- Requires the Department to audit the safety of plan of every rail transit agency under the Department's oversight, at least once every three years.

- Authorizes the Department to enforce minimum standards for safety for rail fixed guideway transportation system under the Department's oversight.
- Authorizes the Department to conduct inspections, audits, and investigations for events that occur on any rail fixed guideway transportation system under the Department's oversight.

Part 5 requires the Department to have a state safety oversight program standard that applies to all rail fixed guideway transportation systems under the Department's oversight.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

Trans 10 is consistent with both the authorizing legislation for SSO programs found in 49 U.S.C. § 5329(e), and the FTA's final rule for SSO programs found in 49 CFR Part 674.

Under federal law, 49 U.S.C. § 5329(e), the national public transportation safety program requires that:

...eligible State[s] shall have in effect a State safety oversight program approved by the Secretary under which the State...assumes responsibility for overseeing rail fixed guideway public transportation safety;...adopts and enforces Federal and relevant State laws on rail fixed guideway public transportation safety;...establishes a State safety oversight agency;...determines, in consultation with the Secretary, an appropriate staffing level for the State safety oversight agency that is commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems in the eligible State;...requires that employees and other designated personnel of the eligible State safety oversight agency who are responsible for rail fixed guideway public transportation safety oversight are qualified to perform such functions through appropriate training, including successful completion of the public transportation safety certification training program established under subsection (c); and...prohibits any public transportation agency from providing funds to the State safety oversight agency....

Under federal regulation, 49 CFR Part 674, an SSO program is required to:

...[e]xplicitly acknowledge the State's responsibility for overseeing the safety of the rail fixed guideway public transportation systems within the State;...establish minimum standards for the safety of all rail fixed guideway public transportation systems within its oversight...review and approve the Public Transportation Agency Safety Plan for every rail fixed guideway public transportation system within its oversight...oversee an RTA's execution of its Public Transportation Agency Safety Plan...enforce the execution of a Public Transportation Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate...[and]...ensure that a Public Transportation Agency Safety Plan meets the requirements at 49 U.S.C. 5329(d)...[have] primary responsibility for the investigation of any allegation of noncompliance with a Public Transportation Agency Safety Plan...[and have] primary responsibility for the investigation of an accident on a rail fixed guideway public transportation system.

Wisconsin's SSO program is tailored to meet the requirements under 49 U.S.C. § 5329(e) and the rules promulgated by FTA under 49 CFR Part 674. Consistent with federal law, s. 85.066(2), Stats. authorizes the Department to develop and administer such a program.

Comparison with Rules in Adjacent States:

- **Illinois:** Illinois has qualifying rail fixed guideway public transportation systems and has an SSO program; as a result, Illinois is also required to comply with the new federal requirements under 49 CFR Part 674. Currently, bills seeking to bring the Illinois SSO program into federal compliance are

pending in both houses of the Illinois legislature: SB2527 (filed 2/16/2016) and HB6206 (filed February 11, 2016).

- **Iowa:** Iowa does not have any qualifying rail fixed guideway public transportation systems and so does not have an SSO program; as a result, Iowa is not required to comply with the new federal requirements under 49 CFR Part 674.

- **Michigan:** Michigan has qualifying rail fixed guideway public transportation systems and has an SSO program; as a result, Michigan is also required to comply with the new federal requirements under 49 CFR Part 674. Michigan is currently drafting legislation seeking to bring the Michigan SSO program into federal compliance, though it has no current plans for an administrative rule.

- **Minnesota:** Minnesota has qualifying rail fixed guideway public transportation systems and has an SSO program; as a result, Minnesota is also required to comply with the new federal requirements under 49 CFR Part 674. To achieve federal compliance, Minnesota has adopted the federal law and approach concerning its SSO program; currently, Minnesota has one related state law: 299A.017 STATE SAFETY OVERSIGHT, and has no current plan for an administrative rule.

Summary of the Factual Data and Analytical Methodologies: N/A

Analysis Regarding Rule's Effect on Small Businesses: N/A

Effect on small business: N/A

The agency contact person listed below is also the small business regulatory coordinator for this proposed rule. This proposed rule, fiscal estimate, and other related documents may be viewed at <https://health.wisconsin.gov/admrules/public/Home>.

Agency Contact Person:

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Place Where Comments Should Be Submitted and Deadline:

Comments may be submitted to the agency contact person listed above or through the Legislature's Administrative Rules website <http://docs.legis.wisconsin.gov/code> until the deadline given in the forthcoming notice of public hearing.

TEXT OF RULE

SECTION 1: Ch. Trans 10 is created to read:

Trans 10.01 Purpose and scope.

(1) STATUTORY AUTHORITY. This chapter interprets and implements s. 85.066(2), Stats., and establishes the administrative policies and procedures for the transit safety oversight program for rail fixed guideway transportation systems in the state.

(2) APPLICABILITY. This chapter applies to the department and any person that owns or operates rail fixed guideway transportation systems in the state.

Trans 10.02 Policy.

(1) As authorized by s. 85.066(2), Stats., and in accordance with 49 U.S.C. § 5330 49 U.S.C. § 5329(e), 49 CFR Part 659, until rescinded, 49 CFR Part 674, and this chapter, the department shall develop and administer the transit safety oversight program for the purpose of overseeing the safety of rail fixed guideway transportation systems within the state.

(2) The department shall oversee, enforce, investigate, and audit all safety aspects of all rail fixed guideway transportation systems in the state in accordance with the program standard established under this chapter and applicable federal and state law.

(3) The department shall have sufficient authority, resources, and qualified personnel to oversee the number, size, and complexity of rail fixed guideway transportation systems that operate within the state in accordance with this chapter.

Trans 10.03 Definitions.

In this chapter:

(1) “Agency safety plan” means the document or documents describing an RTA’s safety policies, objectives, responsibilities, and procedures.

(2) “CAP” means corrective action plan.

(3) “Department” means the Wisconsin department of transportation.

(4) “FTA” means the federal transit administration, an agency within the United States department of transportation.

(5) “National public transportation safety plan” means the federal plan to improve the safety of all public transportation systems that receive federal financial assistance under 49 U.S.C. Chapter 53.

(6) “Person” means any natural person, partnership, corporation, business entity, or governmental body.

(7) “Public transportation safety certification training program” means either the certification training program for federal and state employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies directly responsible for safety oversight, established through interim provisions in accordance with 49 U.S.C. § 5329(c)(2), or the program authorized by 49 U.S.C. § 5329(c)(1).

(8) “Rail fixed guideway public transportation system” means any fixed guideway system, whether in engineering, construction, or revenue operation, that uses rail, is operated for public transportation, is within the jurisdiction of the state, and is not subject to the jurisdiction of the federal railroad administration.

(9) “Rail fixed guideway transportation system” has the meaning given in s. 85.066(1), Stats., and refers to the same systems as “rail fixed guideway public transportation system” in Trans 10.02(6).

(10) “RTA” means rail transit agency, and is any person that provides services on a rail fixed guideway transportation system.

(11) “SSO” means state safety oversight of rail fixed guideway transportation systems.

(12) “SSPP” means system safety program plan, the agency safety plan developed and adopted by an RTA as required under 49 CFR Part 659.

Trans 10.04 Transit safety oversight program.

(1) DESIGNATION OF OVERSIGHT AGENCY. The department is the designated SSO agency for the state, and shall develop and administer the transit safety oversight program for rail fixed guideway transportation systems in the state.

(2) REQUIREMENTS OF OVERSIGHT AGENCY. Unless relieved of such requirement by FTA waiver, the department shall ensure that:

(a) The department shall be financially and legally independent from any public transportation agency under the department’s oversight under this chapter.

1. The department shall prohibit any public transportation agency in the state from providing funds to the department.

2. The department may not directly provide public transportation services in an area with a rail fixed guideway transportation system under the department's oversight.

(b) The department shall have the ability to determine the appropriate staffing level, commensurate with the number, size, and complexity of the rail fixed guideway transportation systems in the state.

(c) The department may not employ any individual who:

1. Is also responsible for administering a rail fixed guideway transportation system under the department's oversight.

2. Provides services to a rail fixed guideway transportation system under the department's oversight.

3. Is a contractor also providing services to a rail fixed guideway transportation system under the department's oversight.

(d) The department shall determine whether employees and other personnel of the department responsible for the oversight of rail fixed guideway transportation systems are qualified to perform their functions by ensuring compliance with requirements of the public transportation safety certification training program, as applicable.

(3) AUTHORITY OF OVERSIGHT AGENCY. The department shall review, approve, oversee, and enforce an RTA's safety plan for a rail fixed guideway transportation system under the department's oversight.

(a) The department shall review and approve an RTA's safety plan for every rail fixed guideway transportation system under the department's oversight by ensuring that the agency safety plan meets federal requirements.

(b) The department shall oversee and enforce the execution of an agency safety plan by ordering a CAP or by any other means, as necessary or appropriate.

(c) At least once every three years, the department shall audit an RTA's compliance with its agency safety plan.

(d) The department shall have investigative and enforcement authority with respect to the safety of all rail fixed guideway transportation systems under the department's oversight.

(e) The department shall have the authority to enforce minimum standards for the safety of rail fixed guideway transportation systems under the department's oversight.

(f) The department shall have the authority to conduct, or cause to be conducted, inspections, audits, and investigations for accidents, incidents, or occurrences on a rail fixed guideway transportation system under the department's oversight.

Trans 10.05 SSO program standard.

The department shall adopt and distribute a written SSO program standard, consistent with the national public transportation safety plan. The SSO program standard shall identify the processes and procedures that govern the activities of the department, and identify the processes and procedures an RTA must have in place to comply with the program standard.

SECTION 2: EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

(END OF RULE TEXT)