

STATEMENT OF SCOPE

Department of Transportation

Rule No.: Trans 10

Relating to: Transit Safety Oversight Program For Rail Fixed Guideway Transportation Systems

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

Pursuant to 49 U.S.C. 5329, the State of Wisconsin Department of Transportation (WisDOT) will assume greater oversight responsibility for the state's rail fixed guideway transportation systems and exercise enforcement authority over the rail transit agencies (RTA) that operate those systems. By 2015 Act 55, the state legislature passed Wis. Stat. s. 85.066, which requires WisDOT to develop and administer a transit safety oversight program that includes greater oversight responsibility and enforcement and investigative authority. WisDOT proposes this rule to interpret Wis. Stat. s. 85.066, including setting forth that WisDOT, the designated state safety oversight (SSO) agency:

1. Has safety oversight responsibility over all of the state's fixed guideway systems;
2. Has investigative and enforcement authority, concerning safety, over all of the state's rail fixed guideway transportation systems;
3. Is legally and financially independent from all state RTAs;
4. Does not employ any individuals who also are employed by a state RTA, or otherwise administer state rail fixed guideway transportation system programs;
5. Adopts and enforces federal and relevant state laws regarding rail fixed guideway transportation system safety;
6. Has authority to review, approve, oversee, and enforce a RTA's safety plan;
7. Will audit every state rail fixed guideway transportation system for compliance with its RTA's safety plan.

Generally, the proposed rule will explain how WisDOT will oversee, investigate, enforce, and audit all safety aspects of rail fixed guideway transportation systems.

The proposed rule will substantially change the way that WisDOT, as the SSO agency, interacts with state rail fixed guideway transportation systems and RTAs. The proposed rule, following Wis. Stat. s. 85.066(2), will establish the SSO agency's enforcement authority over state RTAs, which is a significant change from past oversight responsibility. The proposed rule will not substantially change the way that WisDOT manages the distribution of federal and state funds for local public transit services, or the way that it manages subrecipients.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The proposed rule represents new policies concerning state safety oversight. The following statement outlines the purpose and scope of the proposed rule:

Trans 10: Purpose and scope. The purpose of this chapter is to interpret s. 85.066(2) Wis. Stats., and set forth policies and procedures for implementing the federal public transportation safety program in state rail fixed guideway transportation systems. This program is authorized by Wis. Stat. s. 85.066 and 49 U.S.C. § 5329, as amended. The goal of this program is to make rail fixed guideway transportation systems safer through policy development, hazard investigation, risk analysis, data collection, and effective state oversight.

The following is a summary of the elements of the proposed rule:

I. SSO agency establishment; legal and financial independence:

- A. Establish SSO agency as legal entity of the state;
- B. Ensure SSO agency is legally independent from rail fixed guideways transportation systems;
- C. Ensure SSO agency is financially independent from rail fixed guideway transportation systems;
- D. Ensure SSO agency does not provide public transportation in same area as rail fixed guideway transportation systems;
- E. Ensure SSO agency does not employ any individuals who administer rail fixed guideway transportation system programs.

II. Enforcement authority:

- A. Establish SSO agency oversight responsibility for all aspects of rail fixed guideway transportation system safety, including engineering and construction;
- B. Ensure state adopts and enforces federal and relevant state laws on all aspects of rail fixed guideway transportation system safety;
- C. Ensure state prohibits rail fixed guideway transportation systems from funding the SSO agency;
- D. Establish SSO agency has authority to:
 - 1. Review,
 - 2. Approve,
 - 3. Oversee, and
 - 4. Enforce RTA safety plans.

III. Program implementation activities:

- A. Establish SSO agency investigative and enforcement authority with respect to all aspects of rail fixed guideway transportation system safety, including RTA audits for safety standard compliance;
- B. Establish minimum safety standards that comply with federal public transportation safety plan, and other federal rules;
- C. Ensure SSO agency, at least once triennially, audits RTA compliance with safety plan;
- D. Ensure SSO agency provides annual status report on rail fixed guideway transportation system safety to the governor, FTA and any rail fixed guideway transportation system's board of directors.

IV. Staffing and Qualifications:

- A. Ensure state determines, in consultation with FTA, an appropriate staffing level for the SSO agency commensurate with the number, size and complexity of state rail fixed guideway transportation systems;
- B. Ensure state requires SSO agency employees and other designated personnel are qualified to perform oversight function through appropriate training;
- C. Ensure SSO agency employees and other designated personnel successfully complete FTA's public transportation safety certification program.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

State statutory authority for the proposed rule is provided in s. 85.066(2), Wis. Stats., as follows:

...

(2) PROGRAM AND FUNDING. The department shall develop and administer a transit safety oversight program. Under the program, the department may oversee, enforce, investigate, and audit all safety aspects of rail fixed guideway transportation systems.

Federal statutory authority for the proposed rule is provided in 49 U.S.C. § 5329(e), as follows:

...

(3) In general, in order to obligate funds apportioned under section 5338 to carry out this chapter, effective 3 years after the date on which a final rule under this subsection becomes effective, an eligible State shall have in effect a State safety oversight program approved by the Secretary under which the State -

- (A) assumes responsibility for overseeing rail fixed guideway public transportation safety;
- (B) adopts and enforces Federal and relevant State laws on rail fixed guideway public transportation safety;
- (C) establishes a State safety oversight agency;
- (D) 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;
- (E) 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
- (F) prohibits any public transportation agency from providing funds to the State safety oversight agency or an entity designated by the eligible State as the State safety oversight agency under paragraph (4).

(4) State safety oversight agency -

- (A) In general, each State safety oversight program shall establish a State safety oversight agency that -
 - (i) is financially and legally independent from any public transportation entity that the State safety oversight agency oversees;
 - (ii) does not directly provide public transportation services in an area with a rail fixed guideway public transportation system subject to the requirements of this section;
 - (iii) does not employ any individual who is also responsible for the administration of rail fixed guideway public transportation programs subject to the requirements of this section;
 - (iv) has the authority to review, approve, oversee, and enforce the implementation by the rail fixed guideway public transportation agency of the public transportation agency safety plan required under subsection (d);
 - (v) has investigative and enforcement authority with respect to the safety of rail fixed guideway public transportation systems of the eligible State;
 - (vi) audits, at least once triennially, the compliance of the rail fixed guideway public transportation systems in the eligible State subject to this subsection with the public transportation agency safety plan required under subsection (d); and
 - (vii) provides, at least once annually, a status report on the safety of the rail fixed guideway public transportation systems the State safety oversight agency oversees to-
 - (I) the Federal Transit Administration;
 - (II) the Governor of the eligible State; and
 - (III) the board of directors, or equivalent entity, of any rail fixed guideway public transportation system that the State safety oversight agency oversees.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

WisDOT estimates that it will take approximately 500 hours to develop this rule. This includes the amount of time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. WisDOT use existing staff to develop this rule.

6. List with description of all entities that may be affected by the proposed rule :

The primary subject matter of the proposed rule specifically applies to both the designated SSO agency, WisDOT's Transit Section, and to rail fixed guideway transportation systems, of which Wisconsin currently has two (2): the Kenosha streetcar, which has been in revenue service since 2000; and the Milwaukee streetcar, which is scheduled to begin revenue service in mid-2018. The proposed rule outlines the relationship between the SSO agency and both of the RTAs operating in the state. The FTA is also implicated within the scope of the rule. The FTA controls the grant funds for the SSO program and has the ability to audit both the SSO agency and the RTAs it oversees. The FTA retains the ability to withhold funds from the state, the SSO agency, and the RTAs.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

The proposed rule will adopt into state law many of the features of federal law and regulation that authorize state safety oversight of rail fixed guideway transportation systems. Specifically, federal law under 49 USC § 5329(e) establishes the parameters by which an SSO agency is created or designated, and within which it operates. Federal regulations at 49 CFR Part 659 have been the primary regulatory authority consistent with § 5329; however, Part 659 is being replaced by Part 674, a final rule that became effective in April 2016. Part 674 will supersede Part 659 three years from the effective date of that final rule; therefore, the proposed rule will primarily map to the regulatory language of Part 674.

Part 674 represents a substantial change in what an SSO agency is responsible for in terms of rail fixed guideway transportation system safety oversight. The new framework requires enhanced state responsibility for safety oversight; accordingly, s. 85.066(2) Wis. Stats., established that WisDOT shall develop and administer a transit safety oversight program, the SSO program under federal language, and authorized WisDOT, as the SSO agency, to oversee, enforce, investigate, and audit all safety aspects of all state rail fixed guideway transportation systems. Previously, the SSO agency conducted simple oversight of RTA requirements under 49 CFR Part 659. Under the new framework, an SSO agency must also enforce RTA compliance with its safety plan and new regulatory requirements.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

WisDOT does not anticipate that the proposed rule will have a detrimental impact on participants in WisDOT's public transit aid programs, nor would it have a detrimental impact on small businesses. The proposed rule will not substantially change the way that WisDOT manages the distribution of federal and state funds for local public transit services, or the way that it manages subrecipients.

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