



# MAP-21: Public Transportation Safety

08.09.2012 | By **Fredric W. Kessler, Geoffrey S. Yarema**

The recently enacted MAP-21 legislation (see our E-Alert series) includes a number of provisions that significantly affect the future of public transit and its funding. Among the most noteworthy is Section 20021, entitled Public Transportation Safety, which amends 49 U.S.C. § 5329 to provide for a more comprehensive and uniform national safety program for all modes of public transportation.

## Overview

The new law provides for the formulation of a national safety plan by the Secretary of Transportation ("Secretary") and the establishment by the states of individual state safety plans and the designation of state safety agencies to oversee the implementation of those plans.

Specifically, the provisions grant authority to the Secretary:

- to create a national safety plan for all modes of public transportation that receive Federal transit funding;
- to set as part of this national safety plan minimum safety performance standards for all rolling stock used in public transportation that is not otherwise regulated; and
- to establish also as part of this national safety plan a national safety certification training program for Federal and state employees or other designated employees who conduct safety audits and examinations of public transportation systems as well as employees of public transportation agencies directly responsible for safety oversight.

In addition, the law:

- directs all recipients of Federal transit funding to establish and have certified by the Secretary a comprehensive safety plan based on specific criteria;
- requires states with rail fixed guideway systems to have a safety oversight program, approved by the Secretary, which among other elements establishes a state safety oversight agency to review, approve and enforce implementation of transit agency safety plans and provide annual safety reports to the Federal Transit Administration; and

- grants authority to the Secretary, among other enforcement measures, to withhold Federal funding or require up to 100 percent of Federal funds to be used for corrective action in the event that a state oversight agency is found to be noncompliant with the requirements of the new law.

### **National Public Transportation Safety Plan**

The objective of the national safety plan to be established by the Secretary is "to improve the safety of all public transportation systems" that receive Federal transit funding. The plan shall include:

- safety performance criteria for all modes of public transportation;
- minimum safety performance standards for public transportation vehicles that do not apply to rolling stock otherwise regulated, and that take into account recommendations of the National Transportation Safety Board and recommendations and best practices developed by the public transportation sector; and
- a public transportation safety certification training program, for which the Secretary is to establish interim rules within 90 days after enactment of MAP-21 to be in effect until the effective date of the final rule to implement this requirement.

### **Public Transportation Agency Plan**

Under the new law, effective 1 year after the effective date of a final rule to be issued by the Secretary to carry out the requirement for a public transportation agency plan, each entity receiving Federal transit funding ("recipient") or state shall certify that it has established a comprehensive agency safety plan. This plan is to include at a minimum:

- a requirement that the board of directors or similar entity of the recipient approve the agency safety plan and any updates;
- methods for identifying and evaluating safety risks throughout the recipient's system;
- strategies to minimize exposure of the public, personnel and property to hazards and unsafe conditions;
- a process for conducting an annual review and update of the safety plan;
- performance targets as set forth in the national safety plan established by the Secretary;
- assignment of a trained safety officer who reports to the top executive of the recipient; and
- a comprehensive safety training program for operations personnel and personnel directly responsible for the recipient's safety.

Existing system safety plans are to remain in effect until the new plans are in place.

### **State Rail Transit Safety Oversight Program**

The new law directs each state that has a rail fixed guideway public transportation system either in place or in the engineering or construction phase, which is not otherwise subject to regulation by the Federal Railroad Administration, to have in effect a state safety oversight program approved by the Secretary. In order for a state to obligate Federal transit funds, it must have this program in place 3 years after the date on which a final rule implementing this requirement is effective.

Under its oversight program, the state shall:

- assume responsibility for overseeing rail fixed guideway public transportation safety;

- adopt and enforce relevant Federal and state laws;
- establish a state safety oversight agency;
- determine, in consultation with the Secretary, appropriate staffing for the safety oversight agency;
- require oversight agency employees who are responsible for rail fixed guideway safety to be qualified through training, including the training established as part of the national safety plan; and
- prohibit any funding of the state safety oversight agency by a state public transportation agency.

In establishing a state safety oversight agency, the state shall provide that the agency:

- is financially and legally independent from any public transportation entity that the agency oversees;
- does not provide public transportation services in areas served by a rail fixed guideway to be overseen by this agency, nor employ any individual responsible for the administration of a rail fixed guideway subject to the agency's oversight;
- is granted the authority to review, approve, oversee and enforce implementation by the rail fixed guideway public transportation agency of the state safety plan also required by the new law;
- has investigative and enforcement authority with respect to the safety of the systems under its jurisdiction; and
- is required to audit, at least once triennially, the compliance of the rail fixed guideway systems with the state safety plan.

The Secretary may grant waivers from these requirements for smaller rail fixed guideway systems. Also, authority is granted to states to enter into agreements with other states to ensure compliance with these requirements where a rail fixed guideway system operates in more than one state.

**Federal Funding.** The new law further provides that the Secretary shall make available grants to states to carry out state safety oversight programs, which can be used for operational and administrative expenses, including employee training. Funds are to be apportioned taking into account the size and scope of the rail fixed guideways being overseen by the state. The Federal share shall be 80 percent, and the non-Federal share cannot be funded by Federal grants or any funds received from a public transportation agency or any revenues earned by such agency.

**Certification by the Secretary.** No later than 1 year after the date of enactment of MAP-21, the Secretary shall determine whether each state safety oversight program meets the requirements outlined in the new law. The Secretary has the authority to approve or disapprove each plan. If a plan is disapproved, the Secretary will so communicate to the state or agency involved and allow for modification and resubmittal of the plan. If the Secretary determines that there has been a failure to modify the plan sufficiently, such failure shall be communicated to the state or agency involved and the Secretary may withhold funds until corrective action is taken or may require that 100 percent of Federal transit funds provided to the rail fixed guideway be made available only for safety-related improvements until the state safety oversight program has been approved.

Also as part of the Secretary's ongoing oversight of the state safety oversight programs, the Secretary shall issue regulations as needed to implement the requirements of the new law. In addition, the Secretary is required to audit each state safety oversight program at least once triennially, and report to Congress before July 1 of each year concerning the approval process for the state safety oversight programs and the amount of funds apportioned to each state for the establishment and implementation of these programs.

## **Enforcement**

The Secretary is given comprehensive authority to ensure that the new public transportation safety programs are being implemented as envisioned. In particular, the new law grants the Secretary broad audit, inspection and investigative authority with respect to the operations, equipment and facilities of public transportation systems. This authority includes accident investigations and inspection of relevant records. The Secretary is also given broad authority to take action to correct deficiencies, including the issuance of directives and reports and the requirement for more state reporting and oversight. In addition, as already discussed in connection with the state safety oversight programs, the Secretary may withhold Federal transit funds until corrective action is taken, or require that all funds obligated to a state are to be used by that state for corrective action.

## **Summary**

The public transportation safety provisions in MAP-21 represent a significant shift in the regulation of public transportation safety to a program with more centralized oversight at the Federal level. The criteria of the national safety plan established by the Secretary provides the framework for the rest of the program, which includes the requirement for public transportation agency plans, and the creation of a specific state safety oversight program where a rail fixed guideway system that is not otherwise regulated exists. The Secretary ensures compliance with the requirements for state safety plans and the broader directives of the new law through expanded enforcement powers, including safety plan approval, follow-up auditing, the issuance of directives concerning needed corrective action, and the withholding of funds to ensure that corrective action is taken. The magnitude of the change brought about by the new law will mean significant regulatory activity over the next few years at the Department of Transportation to establish and implement the new program and heightened activity at the state level to establish the required programs and ensure continued compliance with the law.