



NATIONAL TRANSPORTATION SAFETY BOARD  
**Investigative Hearing**

Washington Metropolitan Area Transit Authority Metrorail train 302 that encountered heavy smoke in the tunnel between the L'Enfant Plaza Station and the Potomac River Bridge on January 12, 2015

<b>GROUP</b>	<b>F</b>
<b>EXHIBIT</b>	
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Agency / Organization

Federal Transit Administration

Title

**FTA GAP Analysis for the TOC with  
Attachments, October 2013**



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

Headquarters

1200 New Jersey Ave. S.E.  
Washington, DC 20590

October 1, 2013

**SENT VIA EMAIL**

Sean T. Connaughton  
Secretary  
Commonwealth of Virginia  
1111 East Board Street  
Richmond, VA 23219

Carl Jackson  
Associate Director  
District Department of  
Transportation  
55 M Street, SE  
Washington, DC 20003

James T. Smith  
Secretary  
Maryland Department of  
Transportation  
7201 Corporate Center Drive  
Hanover, MD 21076

**Subject: SSO Program Pre-Certification Submittal for the Tri-State Region**

Dear Mssrs. Connaughton, Jackson and Smith:

As discussed during your September 26, 2013 teleconference call with Administrator Rogoff, the recent enactment of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) signals a fundamental shift in the way States and the Federal Transit Administration (FTA) will work together to ensure the safety of public transportation riders across the nation. As you know, MAP-21 requires that each State with a rail fixed-guideway transit system (rail transit system) establish a State Safety Oversight (SSO) agency that:

- is legally and financially independent of the rail transit systems it oversees;
- has adequate authority to oversee those systems, including the enforcement of each rail transit system's safety plan; and
- has adequate resources to hire an appropriate staffing level to carry out these responsibilities.

During our call, the Administrator indicated that the Tri-State Oversight Committee (TOC) would not be able to participate in FTA's SSO grant program due to its inability to meet the above criteria. In addition, the Administrator discussed the need for a new approach by the Tri-State Region to identify an independent legal entity of a State or multiple States to be duly authorized to require and enforce safety provisions for the Washington Metropolitan Area Transit Authority (WMATA).

I fully recognize that the new requirements of MAP-21 present a near-term challenge for your agencies and your collective efforts to oversee WMATA. I am committed to work with you as you scope your SSO program and identify an appropriate SSO agency. I believe the October meeting you tentatively scheduled with the Administrator will be an excellent start to this

process. Once an appropriate SSO agency is identified we can then work with you to prepare a formula grant application to help you develop and implement a compliant SSO program.

Additionally, recall that MAP-21 authorizes a total of approximately \$44 million in Fiscal Year (FY) 2013 and FY2014 to help states meet the law's rigorous requirements and to hire and train staff. The law allows FTA to issue grants for up to 80 percent of the reasonable costs of an SSO program. In May 2013, FTA proposed an estimated \$1.6 million in FY 2013 funding for the Tri-State Region's SSO program for WMATA.

In closing, I encourage your SSO program points-of-contact to work closely with my staff in the Office of Safety and Oversight as you develop and re-submit your SSO program pre-certification package. Please instruct them to contact Frank Frey, Acting Director for the Office of Safety Review, (202) 493-0130 or [REDACTED], and provide a timeframe for your re-submittal.

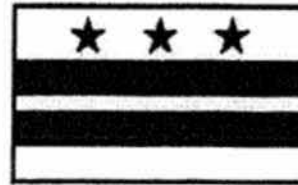
I look forward to our continued partnership for safety.

Sincerely,

[REDACTED]

Thomas Littleton  
Associate Administrator  
for Safety and Oversight

cc: Brigid Hynes-Cherin, Regional Administrator, FTA Region 3  
Anthony Tarone, Director, Office of Program Management & Oversight, FTA Region 3  
Robert Kanzler, Regional Engineer, FTA Region 3  
Brian Glenn, Program Manager, FTA Washington DC Metropolitan Office  
Klara Baryshev, Chair, Tri-State Oversight Committee  
Sharmila Samarasinghe, Vice Chair, Tri-State Oversight Committee  
Bud Frank, Member, Tri-State Oversight Committee  
Governor Robert McDonnell of the Commonwealth of Virginia  
Governor Martin O'Malley of the State of Maryland  
Mayor Vincent Gray of the District of Columbia  
Terry Bellamy, Director, District Department of Transportation



Mr. Thomas Littleton

Security and Oversight

October 17, 2013

**Subject: Response to FTA Associate Administrator Littleton's Letter Concerning SSO Program Pre-Certification Submittal for the Tri-State Oversight Committee**

Dear Mr. Littleton:

The Secretaries of Transportation for Virginia and Maryland and the Associate Director of the District Department of Transportation would like to thank the FTA for its efforts in assisting the TOC to be compliant with the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) framework. We appreciate FTA's feedback and look forward to working with your agency to assure continued effective oversight for the safe and secure operation of the Washington Metropolitan Area Transit Authority's (WMATA) Metrorail system.

Over the last four years, the TOC has worked diligently to develop a structure that enables it to execute an effective SSO program. Each of the three member jurisdictions has appointed at least one full-time and one part-time staff member dedicated to TOC oversight functions. Each of the three member jurisdictions has also dramatically increased the amount of resources, human and financial, available to the TOC. Additionally, the three TOC jurisdictions created the TOC Executive Committee, comprised of the Secretaries of Transportation for Virginia and Maryland and the Associate Director of the District Department of Transportation. The TOC Executive Committee is engaged in the SSO program, reviews significant issues of concern, and actively provides policy direction for the TOC. Involvement in the TOC extends all the way to the highest executive levels of each jurisdiction; the Governors of Virginia and Maryland and the Mayor of the District of Columbia all provide input regarding policy matters pertaining to the safe and secure operation of Metrorail.

The TOC has also implemented a Memorandum of Understanding (MOU) between WMATA and the TOC member agencies that increases TOC's efficiency and strengthens its authority to respond to safety and security concerns. This MOU also clearly

communicates roles and responsibilities for safety notification, hazard management, accident investigations, and other activities with WMATA. The TOC has frequent meetings internally, with its Executive Committee, and with WMATA personnel. The TOC meets with WMATA personnel on an almost daily basis to address hazards, safety issues, capital projects, TOC and WMATA audits, accidents, incidents, and corrective actions. All of these advances have resulted in a very robust and effective SSO program.

In response to your September 26, 2013, letter regarding TOC's SSO Program Pre-Certification Submittal, we are offering some further information, outlined below, regarding TOC's structure and funding and would appreciate further feedback on FTA's finding of non-compliance for the TOC, relative to the three criteria outlined for SSO agency compliance with MAP-21. The criteria state that an SSO agency:

- is legally and financially independent of the rail transit systems it oversees;

The TOC currently is an organization that is legally and financially independent of WMATA. The TOC has authority under its MOU among the District of Columbia, the Commonwealth of Virginia, and the State of Maryland to perform SSO functions over Metrorail under the auspices of 49 CFR Part 659. WMATA is governed by a separate interstate compact between the three jurisdictions.

Additionally, Virginia, Maryland, and the District of Columbia all directly provide financial resources to the TOC such that the funding is expressly dedicated to TOC executing its SSO responsibilities over Metrorail. The TOC receives no funds directly from WMATA. The three jurisdictions use separate mechanisms to fund WMATA; TOC and WMATA funding is in no way comingled.

- has adequate authority to oversee those systems, including the enforcement of each rail transit system's safety plan

The MOU among the District of Columbia, Virginia, and Maryland and FTA's designation of TOC as WMATA's SSO agency grants the TOC the authority to perform SSO functions over Metrorail. The TOC's Program Standards & Procedures (PSP) is the basis for TOC's SSO responsibilities over Metrorail and includes provisions for enforcement of WMATA's System Safety Program Plan. Additionally, a separate MOU between TOC and WMATA promulgates TOC's authority as the SSO agency for WMATA and grants the District of Columbia, Virginia, and Maryland the authority to withhold funding from WMATA as an enforcement mechanism. The TOC's SSO program over Metrorail is independent of any authority from WMATA.

- has adequate resources to hire an appropriate staffing level to carry out these responsibilities.

Mr. Thomas Littleton  
October 17, 2013


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As stated above, the TOC is comprised of a full-time representative from each of Virginia, Maryland, and the District of Columbia, as well as an additional part-time representative from each of the respective jurisdictions. TOC Executive Committee members from each jurisdiction also regularly participate in TOC activities, especially regarding policy direction for the TOC. Virginia, Maryland, and the District of Columbia have all substantially increased their financial resources available to the TOC in the past four years, resulting in the present-day staffing levels of Virginia, Maryland, and District of Columbia personnel, as well as substantially increased, everyday technical and project support from the TOC's contractor. These increased levels of human and financial resources have resulted in the TOC administering an effective and robust SSO program over Metrorail.


Given our current operating structure, we welcome feedback from FTA on where specifically we are deficient relative to MAP-21 and how we can reach compliance. We support meeting FTA's objectives for fixed-guideway transit safety and having the TOC be compliant with the MAP-21 framework in both the short and long terms. Pursuant to your letter, we are eager for the opportunity to meet with FTA staff to discuss TOC pre-certification for compliance with MAP-21. As both the FTA and our respective jurisdictions share the goal of ensuring the safe operation of Metrorail, we welcome the opportunity to discuss the necessary steps to make sure that the oversight program for the Metrorail system continues to be as robust and effective as possible.

Thank you and we look forward to your response.

Sincerely,

 Date 10/24/2013  
Hon. Sean T. Connaughton  
Secretary of Transportation, Commonwealth of Virginia

 Date 10/25/13  
Hon. James T. Smith  
Secretary of Transportation, State of Maryland

 Date 10/23/2013  
Hon. Carl Jackson  
Associate Director, District Department of Transportation

Mr. Thomas Littleton  
October 17, 2013

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cc: Brigid Hynes-Cherin, Regional Administrator, FTA Region 3  
Anthony Tarone, Director, Office of Program Management & Oversight, FTA  
Region 3  
Robert Kanzler, Regional Engineer, FTA Region 3  
Brian Glenn, Program Manager, FTA Washington, DC Metropolitan Office  
Klara Baryshev, Chair, Tri-State Oversight Committee  
Sharmila Samarasinghe, Vice Chair, Tri-State Oversight Committee  
Bud Frank, Member, Tri-State Oversight Committee  
Governor Robert McDonnell of the Commonwealth of Virginia  
Governor Martin O'Malley of the State of Maryland  
Mayor Vincent Gray of the District of Columbia

## MEMORANDUM – MEETING WITH TOC EXECUTIVE COMMITTEE

TO: Peter Rogoff, FTA Administrator  
FROM: Thomas Littleton, Associate Administrator, TSO  
DATE: Monday, December 16, 2013—10:00am to 1:00pm at FTA Headquarters  
RE: Next Steps for TOC to Address MAP-21 Requirements

### MEETING OVERVIEW

- TOC’s Executive Committee requested this meeting to follow-up on their September 26 teleconference call with the Administrator, as well as FTA’s SSO pre-certification submittal correspondence from October 1 and the TOC Executive Committee’s response letter of October 17, and FTA’s December 11 teleconference with the TOC membership.
- The meeting will be attended by the TOC Executive Committee, including Sean Connaughton, VA Secretary of Transportation, James. T. Smith, MD Secretary of Transportation, Thelma Drake, VA DRPT Director, Carl Jackson, DDOT Associate Director, as well as the TOC Chair, Klara Baryshev, and the other TOC members.

### TOPIC OF MEETING AND TALKING POINTS

- TOC is a committee created by MOU between DDOT, VDOT/VDRPT and MDOT to provide safety oversight for WMATA. Since 2010, TOC has been overseen and directed by an Executive Committee. (See Attachment 1)
- As a committee, TOC is not a legal entity of one or more States as required in MAP-21:
  - TOC cannot hire staff, promulgate and enforce regulations, or independently execute an oversight program.
  - TOC does not take independent action but requires approval of each jurisdictional member. These members (DDOT, VDOT/DRPT and MDOT) have legal and financial connections with WMATA.
  - TOC’s MOU with WMATA (which is limited and enforced through arbitration) is NOT equivalent to regulatory and enforcement authority.
- During a teleconference call with FTA staff on December 11, 2013, FTA explained that:
  - TOC does not pass muster as a “State agency” as required in 5329(e)(3)(C)
  - FTA had expected to see a proposal with the Metro Safety Commission (MSC) concept from TOC’s April 2010 White Paper
  - FTA outlined three options for the jurisdictions to re-configure their oversight approach: create a new agency by interstate compact, designate one of three jurisdictions to provide oversight, or create an oversight program framework approved by the DOT Secretary. (See Attachment 2)

### NOTABLE BACKGROUND

- Please see Attachment 1 and Attachment 2

### FOR MORE INFORMATION CONTACT:

- Thomas Littleton at [REDACTED]



## **Attachment 1: Structural Limitations of TOC as the SSO Agency for WMATA**

Since 2000, the Federal Transit Administration (FTA) has raised concerns about the effectiveness of the Tri-State Oversight Committee (TOC) as a legal and organizational model for overseeing the Washington Metropolitan Area Transit Authority (WMATA).

- TOC is a committee created by Memorandum of Understanding (MOU) between the Virginia Department of Rail and Public Transportation (VDRPT), the Maryland Department of Transportation (MDOT), and the District of Columbia Department of Transportation (DCDOT).
- Beyond the MOU, TOC has no enabling legislation, administrative code, or set of regulations that each jurisdiction has adopted to enforce safety provisions for WMATA.
- As a committee created by MOU, TOC is not a legal agency of any State, but a “working group” responsible for implementing FTA’s existing SSO program requirements (49 CFR Part 659).
- As a committee, not a legal agency of a State, TOC cannot hire staff, establish qualifications or training requirements, promulgate or enforce legislation or regulations, issue contracts, or take independent action.
- As specified in the MOU, each jurisdiction (VDRPT, MDOT, and DCDOT) contributes one full-time and one part-time staff member to serve on TOC. The jurisdictions appoint these members based on their own preferences and considerations. As a result, TOC has no uniform standards or qualifications for its members and no standard terms for employees.
- TOC members are not managed and directed by TOC but by their home jurisdictions. As a result, they can be moved or directed to support other safety or oversight activities in the home jurisdictions. For example, FTA SSO audits have found that Maryland DOT and DCDOT both move their TOC members around to support other oversight programs (MDOT’s program for MTA) or agency safety obligations (engineering and construction of DC Streetcar).
- The TOC Chair position rotates every two years from jurisdiction to jurisdiction. This continual change in leadership exacerbates challenges for both TOC staff and WMATA in maintaining continuity and building expertise.
- TOC’s members report up through the management and decision-making structures of the three separate jurisdictions. This situation makes it difficult for TOC members in the field to take expedient or independent action and to build

consensus with each other regarding safety issues at WMATA. Findings, concerns and approvals sometimes must move up all three jurisdictions' management structures and back down to staff before any action can be taken.

- The three jurisdictions, VDRPT, MDOT, and DCDOT, all have their own funding and political relationships with WMATA, the counties serviced by WMATA, the WMATA Board, and with each other.
  - Terry Bellamy, the Director of DCDOT, serves as a member on the WMATA Board.
  - All three jurisdictions have joint projects with WMATA. All three jurisdictions provide subsidies and funding to WMATA.
  - These relationships complicate the ability of TOC to act as an independent advocate for safety.

FTA SSO audit reports in 2000, 2003, 2005, 2007, 2009/2010 and 2012, as well as the NTSB accident investigation report for the 2009 Fort Totten collision, all raise issues regarding TOC's inability to get WMATA to address outstanding corrective action plans, to conduct internal audits and assessments, and to identify and assess hazards. TOC's structural challenges, which limit the committee's control over its own members, decisions, or actions, make it difficult for the committee to provide effective oversight.

In response to FTA's March 4, 2010 audit report, which was expedited at the request of U.S. Senator Barbara Mikulski and adopted by the NTSB in their Final Accident Investigation Report for the June 22, 2009 Fort Totten Collision, the three jurisdictions examined the challenges to TOC's effectiveness.

### **White Paper and Metro Safety Commission**

In 2010, in response to FTA's SSO audit report and NTSB findings, DC Mayor Adrian Fenty, Maryland Governor Martin O'Malley, and Virginia Governor Robert McDonnell issued a White Paper that proposed a two-phased approach to improving TOC. See:

- <http://www.tristateoversight.org/pdf/program/Tri-state%20Oversight%20Committee%20-%20WMATA%20Oversight%20-%20White%20Paper.pdf>, and
- <http://www.tristateoversight.org/pdf/program/WMATA%20Transit%20Safety%20Oversight%20White%20Paper%20FAQ.pdf>.

PHASE ONE called for the creation of a strengthened Interim TOC Oversight Program; and PHASE TWO called for either **Federal oversight of WMATA's safety oversight functions** (if Congress required it) OR **legal creation of a Metro Safety Commission**.

Since April 2010, elements of PHASE ONE have been implemented, including creation of the TOC Executive Committee (VA and MD Secretaries of Transportation and DDOT Director) to meet quarterly to coordinate safety issues and TOC Quarterly Briefings of the WMATA Board of Directors. Jurisdictional members assigned to TOC and contractor resources have also increased.

For PHASE TWO, in the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Congress did not provide FTA with clear authority to oversee WMATA. Therefore, it would seem that the Metro Safety Commission is the next step forward.

***While the three jurisdictions did not mention this approach in their September 6, 2013 submittal as part of the SSO Pre-Certification process, it is FTA's expectation that the three jurisdictions remain committed to the creation of the Metro Safety Commission, as a proposal to address findings from FTA's March 4, 2010 audit report.***

- **Metro Safety Commission (MSC) Concept:**
  - The MSC is an independent Metro Safety Commission to oversee WMATA safety created by multi-state compact or other legal means and to address FTA SSO audit findings.
    - Here is how it was described (Pages 6-7 of White Paper):
      - The MSC would consist of three members and three alternates – one member and one alternate representing each jurisdiction appointed by the jurisdiction's Governors or Mayor. The MSC would provide for the safety oversight of the WMATA Metro Rail system, having the power to conduct and enforce the safety oversight of Metro, sue and be sued, and hire and fire staff.
      - In this way, the MSC would ensure that all issues identified, from policy to staff-level, are no longer facilitated and processed by the three jurisdictions individually.
      - The MSC, under its legal authority, would promulgate its own policies, rules, and regulations that dictate staff-level decisions and ensure that the MSC can effectively respond to critical oversight issues in a timely manner.
      - The MSC, Director, and MSC staff should be completely independent from WMATA, the WMATA Board of Directors, and the jurisdictions' transportation agencies. In order to avoid real or perceived conflicts of interest, it is essential that the appointed MSC members, Director, and staff be fully independent from the transit agency they oversee and those transportation agencies that may be perceived to hold financial or political influence over them

## Attachment 2: TCC Legal Options Brief

Issue One: Certification of a State Safety Oversight Program for a Multi-State Rail Transit System (49 U.S.C. 5329(e)(5))

*Precept: An SSOA must a creature of State law. Specifically, it must be a State agency of sufficient legal stature that it can "...enforce Federal and relevant State law" on rail transit safety (quoting subsection 5329(e)(3)(B); it must be "financially and legally independent" of any rail transit system that it oversees (quoting subsection 5329(e)(4)(A)(i)); it must have "authority to review, approve, oversee, and enforce" the Transit Agency Safety Plan required by the future rulemaking under Section 5329(d) (quoting subsection 5329(e)(4)(A)(iv)); and it must have "investigative and enforcement authority" with respect to the safety of the rail transit systems it oversees (quoting subsection 5329(e)(4)(a)(V)).*

Option One: Create an Interstate Compact

- Requires an Act of Congress
- Local precedents: WMATA, MWAA

Option Two: The three jurisdictions agree that an SSOA from one of the three jurisdictions will serve as the SSOA for the multi-state rail system

- Could be transacted through an MOA, MOU, or similar arrangement
- Would likely mean the designated SSOA would apply the same safety standards it already applies to the other rail transit systems it oversees

Option Three: The three jurisdictions agree upon "uniform safety standards and enforcement procedures" as part of a new State Safety Oversight Program approved by the USDOT Secretary (quoting subsection 5329(e)(5)(B))

- Not clear from the face of the statute, but would still seem to require that the oversight be conducted by a creature of State law from one of the three jurisdictions
- Could be transacted through an MOA, MOU, or similar arrangement, but the "uniform safety standards and enforcement procedures" could be difficult to develop and negotiate to everyone's satisfaction



February 26, 2014

Anthony Foxx  
US Department of Transportation  
1200 New Jersey Ave, SE  
Washington, DC 20590

Dear Secretary Foxx:

Today, we, the Chief Executives for the State of Maryland, the Commonwealth of Virginia, and the District of Columbia, took action by authorizing our transportation executives to move forward with the transition to what will ultimately lead to the establishment of an independent State Safety Oversight (SSO) entity for WMATA in conformance with MAP-21 and the *White Paper on Optimizing State Safety Oversight of the WMATA Metro Rail System* that we announced on April 20, 2010.

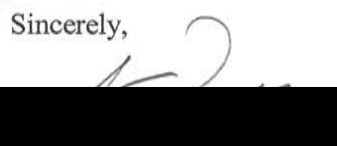
As you know, following the 2009 Red Line accident near the Fort Totten Metro Rail station and the *White Paper*, we made sweeping changes in the way system safety and security was overseen by the WMATA SSO, the Tri-State Oversight Committee (TOC). We have sought to make the TOC as robust as possible in the short-term to strengthen safety on the WMATA Metro Rail system. This included establishing a TOC Executive Committee, providing the TOC Chair with additional authority, additional financial and technical support, and requiring monthly reporting and interaction with WMATA and jurisdictional leadership. Our transportation executives also executed a Memorandum of Understanding (MOU) with WMATA on December 29, 2010, formalizing the duties, roles, and responsibilities of WMATA and the TOC so that the TOC could effectively carry out its oversight duties transparently, independently, and with adequate authority. The MOU also addressed recommendations by Congress, the Federal Transit Administration (FTA), National Transportation Safety Board (NTSB), and the public.

We are hereby directing our transportation executives to create a Metro Safety Commission (MSC), an independent organization that would assume the responsibilities of the TOC, using the *White Paper* as a guide. Because safety is a high priority for the region, it is imperative that we act now with the resources we currently have available to us.


There will be a need for a transition period wherein transportation staff will determine how the MSC will be legally-established and which jurisdiction or entity will receive federal funding available for the development and implementation of the MSC. Pending the necessary legislative actions of the two states and the District of Columbia, the MSC could be up and running in as soon as 24 months.

We ask that you direct any questions or clarifications to our departmental executives. We look forward to continuing our work together on a safe, performance-driven WMATA system that continues to support the needs of the citizens of the capital region.

Sincerely,

  
Martin O'Malley  
Governor of Maryland

  
Vincent Gray  
Mayor of the District of Columbia

  
Terry McAuliffe  
Governor of Virginia