

MEMORANDUM

TO: TPB Technical Committee
FROM: Kanathur Srikanth, Director Department of Transportation Planning
SUBJECT: Background Information on Metro Rail Safety and Oversight and COG's Role
DATE: November 6, 2015

BACKGROUND

Since 1995, Federal regulations have required any state with a fixed rail guideway system that is not regulated by the Federal Railroad Administration (FRA), and which either receives or has applied to receive FTA formula funding for urbanized areas, to develop and maintain a State Safety Oversight (SSO) agency to oversee safety and security practices of these rail transit systems. The Tri-state Oversight Committee (TOC), which was created in 1997, is the SSO agency for the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system. The Federal Transit Administration (FTA) oversees the SSO program.

The TOC is a joint effort of the DC Department of Transportation, the Maryland Department of Transportation and the Virginia Department of Rail & Public Transportation. COG has been the administrative agent for the project since 1999. The TOC is staffed and funded by the three states. The TOC's tasks include investigating hazardous conditions and accidents and conducting reviews of safety and security plans at least on a triennial basis. The TOC, however, has no authority to enforce its findings with fines, civil actions or other penalties. The FTA intended the State Safety Oversight (SSO) program to function as a "cooperative" effort with the transit agencies and as such it was not designed to operate under the traditional regulatory framework of fines and penalties. The TOC works closely with WMATA and has regular visits, discussions and meetings as part of its regular work activities.

MAP-21 CALLS FOR STATE SAFETY OVERSIGHT AGENCIES WITH ENFORCEMENT AUTHORITY

To overcome a long-standing weakness in the SSO program, lack of regulatory, oversight and enforcement authority, that allows corrective action plans to remain open for long periods of time (and for serious safety concerns to go potentially unaddressed) MAP-21 directs States to assume greater responsibility for overseeing the safety of their rail fixed guideway systems.

It requires that each state provide its SSO program and SSO agency with enforcement authority to ensure 1) the safety of each rail transit agency in its program, and 2) the implementation of each agency's Safety Plan. States also must empower their SSO programs with investigative authorities. These requirements will enable States to compel action from the transit agency to address identified deficiencies.

To undertake this enhanced responsibility each state must ensure that its SSO program is managed by an SSO agency with staffing levels and qualifications commensurate with the number, size and complexity of the rail transit agencies in the program and that SSO program staff and contractors receive training and certification through FTA.

FTA will provide grant funding to support the staffing and professional development of SSO programs under its Section 5329 (e) program.

REQUEST TO COG

The FTA determined that since the TOC was not a fully independent and legal entity it would not be eligible to receive the new SSO grant funding till it was reconstituted into an eligible entity. The FTA funds would be made available to any other recipient of FTA funds. Given the tri-state nature of the area served by Metro rail and the jurisdiction of the TOC, COG was approached, earlier this year, by representatives of the FTA and the Transportation Director of the District of Columbia, and the Transportation Secretaries of Maryland and Virginia to serve, on an interim basis, as the designated recipient of FTA SSO funds. COG was asked to fulfill the federal requirements as the designated recipient of federal SSO funds until then TOC is reconstituted as a Metro Safety Commission, an independent legal entity that is MAP 21 compliant.

Pursuant to discussions between the staffs of the FTA, COG and the three state transportation policy staffs and the approval of COG's Board of Directors, a Memorandum of Understanding (MOU) between the three states and COG was executed in April of this year. COG will not serve as the MSC; rather COG will receive FTA SSO funds under 49 U.S.C. Section 5329(e), and will support the states and work with them to stand up the MSC. COG currently serves as the fiscal agent for the TOC providing procurement support to the states. COG will continue this role with the TOC until the MSC established. The MSC, once established, will replace the TOC.

RECENT DEVELOPMENTS RELATED TO TOC OPERATIONS

As part of its ongoing investigation of the L'Enfant Plaza smoke and arcing accident that occurred on January 12, 2015, the National Transportation Safety Board (NTSB) issued an Urgent Safety Recommendation R-15-31 and 32 on September 30, 2015. The NTSB recommendation called for the USDOT to seek Congressional legislative action to classify WMATA as a commuter authority which would authorize the Federal Railroad Administration (FRA) to exercise regulatory oversight of WMATA's rail system instead of the TOC. The NTSB noted the limitations in TOC's authority and resources in providing effective safety oversight as one of the reasons for its recommendation.

In a response letter dated October 9, 2015, the USDOT's Secretary Anthony Foxx disagreed with the NTSB recommendation and stated that through MAP-21, Congress provided the Federal Transit Administration with "greatly enhanced authority" of State Safety Oversight Agencies and allows FTA to assume those same authorities in the absence of an effective State Safety Oversight agency. Under this authority Secretary Foxx directed the FTA to assume leadership of the TOC and directly enforce and investigate the safety oversight of WMATA's Metrorail until the District of Columbia, Maryland and Virginia establish the Metro Safety Commission as a fully functioning MAP-21 compliant SSOA.

The above development notwithstanding TOC operations have continued uninterrupted in recognition of the ongoing and important nature of its daily day to day activities. The FTA has been supportive of the continued work by the TOC while FTA representatives work with the representatives of the TOC and WMATA to finalize the details of the role the FTA will play in the ongoing operations of the TOC. The ongoing work by the TOC member jurisdictions to stand up the MSC also continues albeit with a renewed sense of urgency.

WORK ACTIVITIES TO ESTABLISH AN MSC

COG has continued its work with representatives of the TOC member jurisdictions and has become the official Designated Recipient for the FTA's SSOA program. The MSC-related work activities were transitioned from the TOC Working Group to a MSC Policy Working Group in June 2015. A Work Plan to establish the MSC has been certified by the FTA. A Grant application for federal FY 2013 funds was submitted and has been approved.

The MSC Policy Working Group is developing the annual work program for the federal FY 2013 funds and finalizing updates to a TOC-MSC Transition Action Item list. COG has also been working with the TOC member jurisdictions on the development and execution of programming agreements: Roles and Responsibilities and FTA Sub-grantee.

COG has noted the call for expediency from the three Administrations, the NTSB, the FTA, and others to complete the work needed to stand up the MSC. COG continues to work with the TOC's Executive Committee policy staff to advance the tasks in the Certification Work Plan.

The COG Board of directors is anticipated to receive a briefing on the matter of the safety oversight of WMATA's Metrorail and the status of work to establish the Metro Safety Commission during its monthly meeting on November 12. The TPB has also requested for information on this matter and staff is working with members of the TOC to provide a briefing during the TPB's monthly meeting on November 18th.