

**ITEM 10 - Notice**  
December 16, 2015

**Metrorail Safety Oversight:  
Current Practice and Planned Changes**

**Staff**

**Recommendation:** Receive briefing  
***NOTE: This item was originally scheduled for the November 18 meeting, but was postponed due to a fire alarm.***

**Issues:** None

**Background:** Federal regulations required states with a Fixed-rail guideway system not regulated by the Federal Railroad Administration, and which receives 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), created in 1997, is the SSO agency for the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system. 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. The board will be briefed on the work activities of member jurisdictions to reconstitute the TOC into a legally and financially independent State Safety Oversight Agency, currently known as the Metro Safety Commission (MSC), as required by MAP-21.





## MEMORANDUM

**TO:** Transportation Planning Board  
**FROM:** Kanathur Srikanth, Director Department of Transportation Planning  
**SUBJECT:** Background Information on Metro Rail Safety and Oversight and COG's Role  
**DATE:** November 12, 2015

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### 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-MSO 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 18<sup>th</sup>.





# Overview – TOC's Transition to the MSC

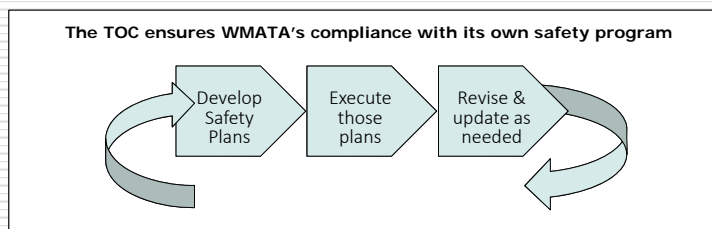
November 18, 2015

## Agenda

- TOC Background
- MAP-21
- Progress to-date
- Interstate Compact
- Q&A

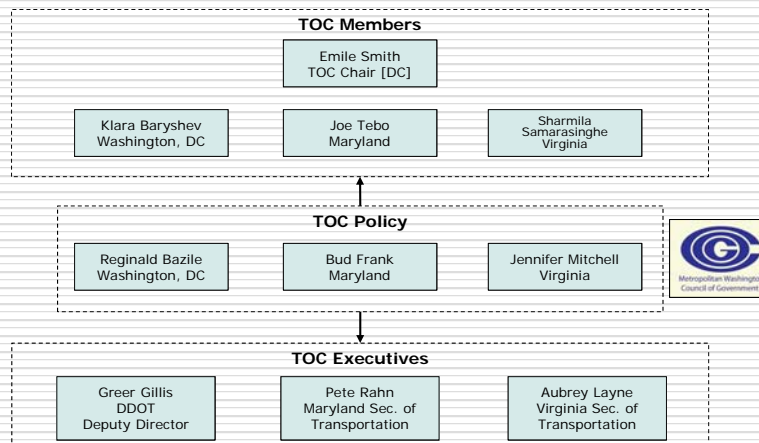
# Tri-State Oversight Committee [TOC]

- State Safety Oversight [SSO] agency for Metro Rail
- Established by a 1997 MOU among DC, MD, and VA



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# TOC Organization

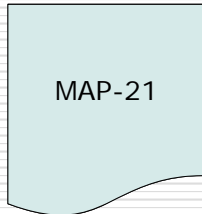


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# In 2012, MAP-21 set new standards for SSOs

2012 Surface Transportation Funding Bill



- New standards for State Safety Oversight agencies [SSOs]
  - Legal entity
  - Fully independent
  - Staff qualifications and training
  - Enforcement authority

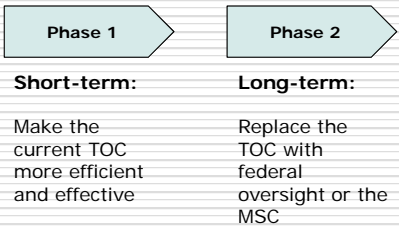
DC, MD, and VA have committed to replacing the TOC with the Metro Safety Commission [MSC]



# Plans to improve Metro safety oversight



The White Paper proposes WMATA rail safety oversight improvements in two distinct phases



# Improving the current TOC – Progress since 2010

Phase 1

## Selected improvements to the TOC

- Appointment of full-time TOC staff in all three jurisdictions
- Establishment of the TOC Policy team
- Extended term for the TOC Chairman; from one year to two years
- Increased funding for consulting support
- 2010 TOC-WMATA MOU
- Strengthening TOC SOPs beyond 49 CFR Part 659 requirements
  - Accident/incidents
  - Corrective Action Plans [CAPs]
  - Triennial Reviews
  - Safety Certifications



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# Direct FTA oversight of WMATA

FTA leadership of day-to-day WMATA safety oversight



- US DoT Secretary Foxx announced on October 9, 2015
- DC, MD, and VA welcome partnership in promoting WMATA safety
  - Primary focus on CAPs & accidents/incidents
- The FTA experience will inform the TOC/MSO transition
  - Staffing
  - Enforcement authority



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## Detailed plans to replace the TOC were developed in 2014

- Following passage of MAP-21, the TOC, like most SSOs was declared as non-compliant
- DC, MD, and VA prepared a Certification Work Plan [CWP]
  - Approved by the FTA in August 2014
- The effort to replace the TOC with a fully compliant Metro Safety Commission [MSC] is underway



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## Replacing the TOC with the MSC – selected actions

Phase 2

### Selected actions - Replacing the TOC with the MSC

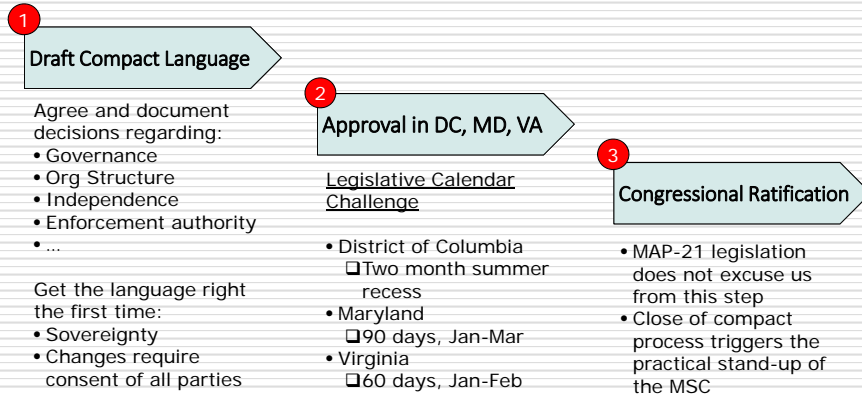
- Approved Certification Work Plan [CWP]
- Appointed COG as designated recipient of FTA grant funds
  - Designation letters signed by transport executives in DC, MD, and VA
  - COG MOU signed April 2015
- Secured \$1.6M in FTA grant funding
- Began researching org structure of SSOs and other organizations
- Drafting enabling legislation



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# DC, MD, and VA face a unique challenge in replacing the TOC

## Ratification of an MSC interstate compact



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## Q&A

### TRI-STATE OVERSIGHT COMMITTEE



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