
Office of Inspector General

Audit Report

IMPROVEMENTS IN FTA'S SAFETY OVERSIGHT POLICIES AND PROCEDURES COULD STRENGTHEN PROGRAM IMPLEMENTATION AND ADDRESS PERSISTENT CHALLENGES

Federal Transit Administration

Report Number: ST-2017-004

Date Issued: November 2, 2016





Memorandum

U.S. Department of
Transportation
Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** Improvements in FTA's Safety
Oversight Policies and Procedures Could
Strengthen Program Implementation and
Address Persistent Challenges
Federal Transit Administration
Report Number ST-2017-004

Date: November 2, 2016

From: Barry J. DeWeese
Assistant Inspector General for
Surface Transportation Audits

Reply to
Attn. of: JA-30

To: Acting Federal Transit Administrator

The Federal Transit Administration (FTA) has a critical and evolving role in the safety of the Nation's rail transit systems. Under the State Safety Oversight (SSO) program created in 1991,¹ FTA oversees SSO agencies (SSOA) that monitor the safety of rail transit agencies. In 2012, we identified actions for FTA to take if it were granted enhanced rail transit safety oversight and enforcement authority as well as challenges it could face.² Shortly thereafter, the Moving Ahead for Progress in the 21st Century Act (MAP-21)³ enhanced FTA's safety authority, including allowing it to assume SSO responsibilities in the absence of an effective SSOA.⁴

Recent incidents have demonstrated weaknesses in the safety performance and oversight of some rail transit systems. For example, in January 2015, a Washington Metropolitan Area Transit Authority (WMATA) Metrorail train was involved in a serious incident in which 1 passenger died, and 91 people were injured. The National Transportation Safety Board (NTSB) subsequently

¹ Section 3029 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. No. 102-240.

² *Challenges to Improving Oversight of Rail Transit Safety and Implementing An Enhanced Federal Role* (OIG Report Number MH-2012-048), Jan. 31, 2012. OIG reports are available on our Web site: <https://www.oig.dot.gov/>.

³ Pub. L. No. 112-141, § 20021 (2012).

⁴ Public transportation systems are subject to the Secretary's authority to oversee the safety of those systems, in accordance with 49 U.S.C. § 5329, particularly subsections (f) and (g). Pursuant to 49 C.F.R. § 1.91(a), the Secretary's authority to carry out 49 U.S.C. § 5329 is delegated to the Federal Transit Administrator.

determined that the Tri-State Oversight Committee (TOC),⁵ the SSOA that monitored Metrorail, lacked sufficient resources, technical capacity, and enforcement authority to carry out its safety oversight responsibilities. NTSB recommended that the Department seek congressional action to specifically allow the Federal Railroad Administration (FRA) to assume regulatory oversight of WMATA Metrorail. In October 2015, the Secretary of Transportation directed FTA to assume direct safety oversight for Metrorail until the District of Columbia, Maryland, and Virginia establish a fully functioning and capable SSOA.

Based on our previous work, we determined FTA may face significant challenges in carrying out its enhanced rail transit safety oversight and enforcement authority. Accordingly, we initiated this audit to assess FTA's actions to assume and relinquish direct safety oversight of a rail transit agency. As part of our review, we are also providing an update on FTA's progress toward addressing the challenges to enhanced safety oversight we identified in 2012. Our review did not assess which Operating Administration—FTA or FRA—was better suited to assume direct safety oversight of WMATA.⁶

We conducted our work in accordance with generally accepted Government auditing standards. We identified criteria including laws, regulations, FTA guidance, the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* (Green Book), and our prior work. We reviewed documentation and interviewed officials from FTA, WMATA, SSOAs, American Association of State Highway and Transportation Officials (AASHTO), and the American Public Transportation Association (APTA). Exhibit A further details our scope and methodology.

RESULTS IN BRIEF

FTA has actions underway to develop policies and procedures to guide its assumption and relinquishment of direct safety oversight but lacks milestones for finalization. Specifically, FTA is now executing a plan with milestones for a contractor to provide draft policies and procedures to FTA. However, because that plan is only for the contractor's deliverables, it does not include internal milestones for FTA to review and finalize the policies and procedures. Although FTA officials indicated that the Agency will begin the finalization process after the contractor delivers the draft procedures, it has not established any milestones

⁵ The District of Columbia, the State of Maryland, and the Commonwealth of Virginia established the Tri-State Oversight Committee by a memorandum of understanding in 1997.

⁶ In July 2016, Congress requested that GAO examine a number of issues related to DOT rail safety oversight, including whether FRA would be better positioned and more effective at performing safety oversight over WMATA than FTA.

for doing so. GAO recommends that Federal agencies have policies and procedures to guide internal processes, provide internal and external communications, and help agencies ensure their actions are in compliance with Federal laws and regulations. As a result, FTA increases the risk of not being able to meet its direct safety oversight goals. Moreover, despite education and outreach efforts by FTA staff, the transit industry remains concerned about the lack of clarity on when and how FTA will use its direct safety oversight authority.

FTA took action in three areas that we identified in 2012 as critical to addressing challenges to implementing enhanced safety oversight authority, but it has not fully resolved them. First, FTA created a baseline staffing plan and established the Office of Transit Safety and Oversight (TSO) in 2013. However, FTA has faced challenges in acquiring and retaining resources, such as sufficient staff, to meet TSO program needs. FTA officials attributed this to factors such as a small pool of transit safety talent with fierce hiring competition. Second, while FTA has identified safety data gaps, it has not made significant progress on developing a data-driven, risk-based oversight system to identify and mitigate safety risks. According to FTA officials, several factors limited progress, including FTA's lack of authority to protect safety data from public disclosure and use in litigation and limited data analytics capabilities. A November 2015 safety data report identified that FTA lacked a standardized methodology for prioritizing activities for its required SSOA audits,⁷ and we found FTA did not complete these audits in a timely manner.⁸ Finally, FTA has established safety criteria and standards. However, the criteria are limited, because they are based on existing data that do not cover safety critical issues, such as stop signal overruns, hours of service, and medical fitness for duty. Furthermore, the standards are voluntary, which diminishes their effectiveness as an oversight tool. FTA's slow progress in these areas limits its ability to maximize its safety oversight resources and proactively identify and mitigate safety risks.

We are making a series of recommendations to strengthen FTA's ability to assume and relinquish direct safety oversight and to improve FTA's rail transit safety oversight overall.

⁷ FTA, *TSO Safety Data Requirements Document and Information Strategy—Summary Report*, Nov. 3, 2015.

⁸ In 2006, GAO recommended that FTA perform SSOA audits on a triennial basis, and FTA agreed to do so. MAP-21, passed in 2012 (49 U.S.C 5329 (e)(9)(B)), required FTA to perform SSOA audits on a triennial basis. We analyzed FTA's last two SSOA audit cycles and found that 20 of 28 SSOAs were not audited within the 3-year timeframe. Cycle 4 ran from 2010 through 2012, and cycle 5 ran from 2013 through 2016, which already exceeded 3 years.

BACKGROUND

In July 2012, MAP-21 increased FTA's safety authority and directed the Agency to establish a comprehensive Public Transportation Safety Program (PTSP),⁹ under which FTA continues to rely on SSOAs to monitor transit systems' safety operations. MAP-21 also required that, within 3 years of the effective date of a final SSO Program rule,¹⁰ each eligible State have in place an SSO Program certified by FTA. MAP-21 laid out conditions for certification, including SSOA requirements. Most SSOAs have until April 2019 to reach compliance with the SSO Program rule and have developed certification work plans (CWP) to serve as roadmaps in reaching that goal. FTA approves the CWPs and reviews them with SSOAs on a quarterly basis, or as needed, to monitor progress.

In December 2015, the Fixing America's Surface Transportation (FAST) Act¹¹ further codified FTA's enhanced safety oversight authority. The FAST Act explicitly allows FTA to temporarily administer an SSO Program (i.e., assume direct safety oversight of a rail transit agency) if FTA determines the program is (1) not being carried out in accordance with statutory requirements, (2) inadequate to ensure enforcement of Federal safety regulations, or (3) incapable of providing adequate safety oversight to prevent a substantial risk of death or personal injury. The act allows FTA to withhold SSO funds from the State until FTA certifies that the SSO Program is fully compliant.

In July 2013, FTA established the TSO to administer the national transit safety program to advance the provision of safe, reliable, and equitable transit service. TSO has three permanent offices—Office of System Safety, Office of Safety Review, and Office of Program Oversight (which is not safety related). In October 2015, TSO also created the temporary Office of WMATA Safety Oversight. FTA obtained safety expertise and resources for the office through employees detailed from FTA and other DOT Operating Administrations—such as FRA, the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), and the National Highway Traffic Safety Administration—and contractors. See exhibit B for TSO's organizational chart.

During our audit, in May 2016, NTSB reported that the probable cause of the electrical arcing and smoke accident at WMATA's L'Enfant Plaza Station in

⁹ The PTSP is comprised of five elements—(1) a National Public Transportation Safety Plan; (2) a training and certification program for Federal, State, and local transportation agency employees with safety oversight responsibilities; (3) public transportation agency safety plans; (4) a strengthened SSO Program; and (5) a new framework for Federal enforcement and investigative authorities to directly oversee public transportation safety.

¹⁰ FTA issued the final SSO Program rule (49 C.F.R. Part 674) on March 16, 2016, with an effective date of April 15, 2016.

¹¹ Pub. L. No. 114-94, § 3013 (2015).

January 2015 was a prolonged short circuit that consumed power system components and resulted from ineffective inspection and maintenance practices. NTSB reported that the ineffective practices had persisted due to (1) the failure of WMATA’s senior management to proactively assess and mitigate foreseeable safety risks and (2) inadequate safety oversight by the TOC and FTA.¹² See exhibit C for a detailed timeline of FTA safety oversight events and WMATA safety incidents.

FTA HAS ACTIONS UNDERWAY TO DEVELOP POLICIES AND PROCEDURES FOR DIRECT SAFETY OVERSIGHT BUT LACKS MILESTONES FOR FINALIZATION

FTA has not established milestones to finalize policies and procedures for assuming direct safety oversight of a rail transit agency and relinquishing that responsibility back to an SSOA. FTA is working with a contractor to implement a plan with milestones for drafting policies and procedures, after which FTA officials told us the Agency will begin its internal review and finalization process. Without finalized policies and procedures in place, FTA cannot reasonably ensure that it will meet its direct safety oversight goals.

FTA Has Not Established Milestones To Finalize Policies and Procedures for Assuming Direct Safety Oversight of a Rail Transit Agency

During our audit, FTA developed and began to execute a plan for a contractor to draft policies and procedures with criteria and decision-making processes for assuming direct safety oversight of a rail transit agency. However, because the plan was developed to establish milestones for the contractor to deliver draft policies and procedures to FTA, it did not include internal milestones for FTA to review and finalize the policies and procedures. Although FTA officials indicated that the Agency will begin the finalization process after the contractor delivers the draft procedures, it has not established any milestones for doing so. GAO’s Green Book recommends that Federal agencies have policies and procedures to guide internal processes, provide internal and external communications, and help agencies ensure their actions are in compliance with Federal laws and regulations.¹³ TSO staff have conducted education and outreach efforts, but in the absence of finalized policies that have been communicated to stakeholders, the industry—including the SSOA, AASHTO, and APTA officials we interviewed—

¹² NTSB, *WMATA L’Enfant Plaza Station Electrical Arcing and Smoke Accident Report Synopsis* (May 3, 2016).

¹³ In accordance with GAO’s Green Book, an agency’s management establishes control activities through policies and procedures to meet agency objectives, including the requirements of applicable laws and regulations. Furthermore, under the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A), agency actions may not be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law....”

remains concerned about when and how FTA will use its direct safety oversight authority.

MAP-21 defined SSOA requirements and gave broad safety oversight authorities to the Secretary. The FAST Act explicitly gave the Secretary authority to assume direct safety oversight of a rail transit agency in the absence of an effective SSOA.¹⁴ MAP-21 and the FAST Act both authorized the Secretary to withhold funds or require that they be used to correct safety deficiencies based on a “pattern or practice of serious safety violations,” and FTA officials indicated that would be the basis for taking on direct safety oversight. The Agency defined a “pattern or practice” as two or more findings by FTA of a recipient’s noncompliance with the PTSP’s¹⁵ requirements and regulations, but did not establish clear criteria in other areas. Specifically, FTA has not defined what constitutes a “serious safety violation” or tracked instances of such violations to identify a pattern. Other DOT Operating Administrations have taken on similar issues. For example, in January 2014, FMCSA issued a rule with criteria for identifying patterns of violations in the trucking industry.¹⁶

When we began our review, FTA officials told us the Agency would not develop policies and procedures with conditions to trigger direct safety oversight of a rail transit agency, because they envisioned a number of potential situations that could prompt use of the authority, with FTA and Department officials making decisions on a case-by-case basis. The officials also noted that the need for effective and efficient safety oversight is heightened by the poor “state of good repair” in the transit system overall, with an estimated \$86 billion maintenance backlog nationwide that is growing by \$2.5 billion per year.¹⁷

During our audit, FTA recognized the need for defined criteria, policies, and procedures for assuming direct safety oversight. The Agency subsequently developed a plan with milestones for a contractor to draft criteria and decision-making processes. After this process is completed, FTA officials stated, the Agency will have a framework to develop the policies and procedures. However, its plan does not include a milestone for finalizing the policies and procedures.

With regard to its direct safety oversight of the WMATA rail system, FTA issued several safety directives and drafted an Oversight Surveillance Plan and a General

¹⁴ 49 U.S.C. § 5329(e)(8).

¹⁵ 49 U.S.C. § 5329.

¹⁶ 49 C.F.R. Parts 385 and 386.

¹⁷ Transit asset management is a business model that uses asset conditions to guide the optimal prioritization of funding. State of good repair is a condition in which a capital asset can operate at a full performance level. A capital asset is in a state of good repair when it performs its designed function, does not pose a known unacceptable safety risk, and its lifecycle investments have been met or recovered.

Manual to define responsibilities, requirements, processes, and activities. Nevertheless, FTA has yet to finalize these policies and procedures as well. These documents remain in draft form while FTA considers stakeholder comments and conducts its direct safety oversight role. The lack of finalized guidance has caused significant frustration and some confusion at WMATA and the TOC about their respective roles and responsibilities. For example, according to WMATA officials, it was unclear whether FTA or the TOC should perform triennial audits. WMATA officials perceived that a lack of coordination between FTA and the TOC on some reviews led to duplication of effort, and a TOC official said coordination issues delayed important fieldwork. FTA officials told us that TSO plans to document lessons learned from its WMATA Metrorail oversight experience and create a “how-to manual” for its enhanced safety oversight function to ease future use of this authority.

Without finalized policies and procedures in place, FTA is at risk of not fully meeting its direct safety oversight goals and objectives, clarifying its plans for industry stakeholders, or establishing its oversight decisions as nonarbitrary actions.

FTA Has Not Established Milestones To Finalize Policies and Procedures for Transferring Direct Safety Oversight Back to SSOAs

According to FTA Safety Directive 16-1,¹⁸ the Agency will use statutorily defined criteria¹⁹ to determine when it can relinquish direct safety oversight back to an SSOA, but it has not developed a process, policies, or procedures for transferring those responsibilities. FTA’s plan calls for the contractor to draft policies and procedures after those for assuming oversight are drafted. Since the plan focused on contractor deliverables, it did not include milestones for FTA’s internal review process to finalize the policies and procedures, and FTA has not established a timeline for completing that process.

FTA will begin to relinquish direct safety oversight of WMATA Metrorail once Washington, DC, Maryland, and Virginia establish a legally compliant and certified SSOA. In May 2014, FTA approved a CWP to serve as a roadmap for the three jurisdictions to establish a compliant SSOA—the Metrorail Safety Commission (MSC)—by 2019. However, in February 2016, FTA used its FAST Act authority to direct the three jurisdictions to establish a compliant SSO Program by February 2017 or risk FTA withholding funds. As a result, in March 2016, FTA informed the TOC that the prior approval of the CWP was “no

¹⁸ FTA Safety Directive 16-1, *Safety Oversight for the Washington Metropolitan Area Transit Authority Metrorail System* (Oct. 26, 2015).

¹⁹ 49 U.S.C. § 5329(e).

longer in effect,” because it was not sufficient to meet the new 1-year timeframe. Although the jurisdictions have subsequently submitted several revised CWPs, the plans have not included milestones that would meet the February 2017 deadline. As a result, FTA officials explained that they will continue to monitor the ongoing process, but they will not formally approve a CWP that does not meet the deadline.

FTA’s urgency to develop policies and procedures for relinquishing direct safety oversight of WMATA Metrorail was minimal when the transition to the legally compliant SSOA was years away. However, now that FTA has directed the three jurisdictions to complete the transition by early 2017, which is less than 1 year away, developing and finalizing these policies and procedures is more time-sensitive.

FTA HAS TAKEN ACTIONS BUT FACES CHALLENGES IN ONGOING EFFORTS TO IMPLEMENT ENHANCED SAFETY OVERSIGHT AUTHORITY

FTA took actions in three areas that we identified in 2012 as critical to addressing challenges to implementing enhanced safety oversight authority. Specifically, FTA created a baseline staffing plan and established the TSO in 2013, identified gaps in safety data, and established safety criteria and voluntary standards for rail transit. However, FTA continues to face challenges in (1) addressing its safety oversight personnel and resource needs; (2) establishing a data-driven, risk-based oversight system to identify and mitigate safety risks; and (3) establishing robust safety performance criteria and enforceable standards.

FTA Assessed Staffing Needs but Faces Challenges in Acquiring and Retaining Safety Oversight Personnel and Resources

In 2012, we reported that under an expanded role, FTA would need to consider the organizational placement of its safety function and its resource and personnel needs to carry out that function. In 2013, FTA created a baseline staffing plan and established the TSO. FTA faced a similar staffing issue when it took on direct safety oversight for WMATA Metrorail in October 2015. FTA created a new office for WMATA Metrorail oversight, undertook a comprehensive analysis that identified staffing needs for carrying out the oversight, and developed and implemented a plan to meet those needs through detailed employees and contractors.

However, the Agency has faced challenges with acquiring and retaining resources to meet its safety oversight program needs, which FTA officials attributed to several factors, including a small pool of transit safety talent; fierce hiring

competition between FTA, SSOAs, and transit agencies; the temporary nature of assuming direct safety oversight; and administrative issues, such as Federal hiring practices. As a result, FTA officials reported difficulty balancing FTA's usual safety oversight workload with the resource-intensive direct safety oversight of WMATA Metrorail and expressed concern about TSO staff burnout and stress. Industry stakeholders also cited concerns about the timeliness of FTA's communications and guidance, which they attributed to inadequate FTA safety oversight resources.

FTA Identified Safety Data Gaps but Has Not Established a Data-Driven, Risk-Based Oversight System

Although FTA has identified safety data gaps, it has not made significant progress on resolving the data challenges we identified in 2012. We reported that developing a data-driven, risk-based oversight system to identify and mitigate safety risks would help maximize limited oversight resources and that the basic safety incident data collected in the National Transit Database (NTD)²⁰—such as fatalities, injuries, and property damage—were insufficient for FTA to effectively oversee transit safety nationally. In response, FTA stated it would address data challenges by completing the first two phases of its data management assessment, cataloguing NTD data gaps, and working with an advisory committee to identify data needs.

Yet in November 2015, an FTA contractor completed a report on a conceptual future transit safety data system that showed that FTA still lacks sufficient safety data to effectively identify and mitigate safety risks. Today, FTA continues to rely principally on NTD data, whose limitations are well known to Agency officials and were documented in our 2012 report. For example, FTA officials told us that the NTD data are limited in scope, detail, and timeliness. Additionally, FTA's contractor found NTD data satisfied only 40 to 50 percent of FTA's safety data needs and are not sufficient to determine causes and contributing factors of events. Currently, when FTA determines that it needs additional information—typically in response to a safety incident—it manually collects the information, primarily through its investigators and through safety advisories requesting that SSOAs and the industry submit data.

FTA officials attributed the lack of progress in developing a data-driven, risk-based oversight system to several factors:

²⁰ FTA's primary source of safety data is the National Transit Database (NTD). Congress established the NTD as the primary source of information and statistics on transit systems in the United States. NTD data are used to apportion FTA funds annually to transit agencies in urbanized areas.

- **Ongoing deliberations about data needs.** The officials said that within FTA, staff continues to discuss data requirements, including the scope of data needed and the best place to house the data (within the NTD or in a new database). The Agency reported in May 2016 that it asked the Transit Advisory Committee for Safety (TRACS)²¹ to help define the functional requirements and data elements of a comprehensive safety data collection and analysis framework. TRACS plans to research the data other industries collect and evaluate what types of data should be collected and by whom for rail and bus transit.
- **Lack of authority to protect safety data from public disclosure and use in litigation.** Officials noted a reluctance to consistently collect more robust safety data due to widespread FTA and transit industry concerns about public disclosure of safety data provided to FTA and its potential use in private litigation. FTA has twice sought data protection legislation that was not enacted. Other DOT Operating Administrations have received congressional support to address similar issues. For example, by statute, FAA can withhold voluntarily provided safety- or security-related information if the FAA Administrator finds that the disclosure would inhibit further voluntary provision of that type of information to FAA, that the receipt of that type of information helps fulfill the Administrator's safety and security responsibilities, and withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities.²² In addition, Congress authorized FRA to issue a rule to prevent data from the railroad safety risk reduction program from being used in litigation, if such a rule was found to be in the public interest.²³ After studying the issue, FRA began the rulemaking process.²⁴ Similarly, FTA is currently undergoing a data protection assessment directed by the FAST Act and will report its findings to Congress in May 2017.
- **Recent diversion of resources to WMATA Metrorail oversight.** According to FTA officials, once they assumed direct safety oversight for WMATA Metrorail, other work was put on hold, including action to address the gaps identified in the 2015 data report.
- **Limited data analytics capabilities.** Though FTA recently procured an analytics database, it has not yet deployed it for safety oversight. As a result

²¹ TRACS is a Federal advisory committee comprised of transit representatives from across the country that was chartered in 2009 by the Secretary of Transportation to advise the FTA on public transportation safety matters.

²² 49 U.S.C. § 40123.

²³ 49 U.S.C. § 20119(a)-(b).

²⁴ 77 Fed. Reg. 55372 (Sept. 7, 2012).

the Agency's ability to analyze the safety data the Agency collects to identify trends and risks is limited. Furthermore, FTA has only one safety data analyst to perform routine data verification and analysis work and uses contractor support for additional safety data analysis. FTA requested an additional safety data analyst in its fiscal year 2017 budget request.

FTA's 2015 data report also highlighted challenges within its existing SSOA audit process, including the lack of a standardized methodology for prioritizing activities. We found that FTA has not consistently performed SSOA audits on a triennial basis, even though this frequency was recommended by GAO in 2006 and required by MAP-21.²⁵ Based on our analysis of FTA's last 2 SSOA audit cycles,²⁶ FTA did not audit 20 of 28 SSOAs requiring audits within 3 years and did not audit 8 of them for 4 or more years. For example, the Colorado SSOA was audited in 2009 and again in 2015. Furthermore, although FTA performed a special safety and maintenance audit of WMATA in 2012, it did not audit the TOC—the SSOA for WMATA Metrorail—for a period of about 5 years from 2010 to 2015. FTA officials cited the need to coordinate the SSOA audit schedule with other planned FTA reviews of rail transit agencies and to wait until SSOAs complete their own 3-year audit cycles as reasons it had not conducted audits every 3 years.

Because FTA has not developed a data-driven, risk-based oversight system, it has not maximized its limited safety oversight resources and continues to be reactive rather than proactive in identifying and mitigating safety risks.

FTA Established Safety Performance Criteria and Standards, but the Criteria Are Limited and the Standards Are Voluntary

In 2012, we reported that deploying enhanced oversight authority would require FTA to establish criteria and guidance for assessing and enforcing compliance with safety standards. FTA established safety performance criteria and standards, but the criteria are limited and the standards are voluntary and therefore unenforceable. To meet MAP-21 and FAST Act provisions,²⁷ in February 2016, FTA issued and requested comments on its first National Public Transportation Safety Plan (National Safety Plan), a guidance document that establishes safety

²⁵ 49 U.S.C. 5329 (e)(9)(B).

²⁶ Cycle 4 ran from 2010 through 2012, and cycle 5 ran from 2013 through 2016, which is itself more than 3 years.

²⁷ MAP-21 required FTA to issue a National Safety Plan that included safety performance criteria for all modes of public transportation and minimum safety performance standards for public transportation vehicles used in revenue operations that are not otherwise regulated by any other Federal agency. The FAST Act added a provision requiring FTA to include in the National Safety Plan minimum safety standards to ensure the safe operation of public transportation systems that are not related to vehicle performance standards.

performance criteria (measures)²⁸ for all modes of public transportation and proposes voluntary minimum safety standards for vehicles and operations. Under a notice of proposed rulemaking (NPRM), FTA would require transit agencies to set performance targets in Agency Safety Plans, based on National Safety Plan performance criteria, within 1 year after the final rule, and self-certify that their plans comply with this requirement. FTA officials said they will ensure that transit agencies establish performance targets through its grantee triennial review process.²⁹

The safety performance criteria in the proposed National Safety Plan are limited, because they are based on data currently collected in the NTD, which have known limitations. For example, in 2012, we reported that those data are insufficient to oversee transit safety at a national level. During this audit, FTA officials said the data do not cover safety critical issues, such as stop signal overruns, hours of service, and medical fitness for duty. As a result, the criteria are not sufficient to maximize the Agency's safety oversight resources by targeting them in a data-driven manner. Despite the known limitations, the proposed National Safety Plan states that FTA based the selected criteria on current NTD data in order to capture the broad and varied nature of public transportation. Additionally, the categories of measures selected—fatalities, injuries, safety events, and system reliability—are intended to provide a “state of the industry,” high-level measure and focus transit agencies on developing specific and measurable targets relevant to their operations. FTA officials and industry stakeholders expressed concern that collecting more robust information may open transit agencies to litigation.

FTA officials said the Agency plans to periodically update the National Safety Plan but does not yet have a plan with milestones for developing and documenting the process. Additionally, FTA indicated that it may issue a rulemaking on minimum safety performance standards for public transportation vehicles used in revenue operations, but it does not have a planned timeframe for doing so. FTA officials stated additional standards will be informed by a FAST Act-required review and evaluation of transit safety standards and protocols, which is to be completed in December 2016.³⁰

²⁸ The proposed National Safety Plan stated that safety performance criteria are “categories of measures.” The Plan explained that Section 5329(b) requires the establishment of safety performance criteria, where other sections use the term performance measures. To maintain consistency and measurability, the Plan states the criteria are performance measures toward which transit agencies’ performance will be measured and targets will be set. It also noted that, for purposes of this Plan, FTA interpreted “criteria” and “standard” to have the same meaning.

²⁹ Grantee triennial reviews examine grantee performance and adherence to current FTA requirements and policies, and are separate and distinct from SSOA triennial audits.

³⁰ Pub. L. No. 114–94, § 3020 (2015).

NTSB staff told us they were concerned about FTA's lack of minimum standards, which could affect its ability to provide safety oversight. While FTA subsequently established voluntary standards to address the challenges that we and NTSB have identified, the fact that they are optional makes them unenforceable, which diminishes their effectiveness as an oversight tool.

CONCLUSION

While rail transit is relatively safe, catastrophic incidents, such as the January 2015 WMATA incident, raise significant concerns about the effectiveness of rail transit safety oversight. FTA has taken steps to begin developing policies and procedures to assume and relinquish direct safety oversight, but lacks firm milestones for completion. Moreover, slow progress in implementing a data-driven, risk-based oversight system; limited safety performance criteria; and unenforceable safety standards further hinder the Agency's ability to provide proactive safety oversight. Unless FTA addresses these challenges, it may be unable to meet the Federal transit safety goals and objectives that are central to its enhanced safety oversight authority.

RECOMMENDATIONS

To enhance FTA's ability to assume and relinquish direct safety oversight and to improve FTA's rail transit safety oversight overall, we recommend the Federal Transit Administrator:

1. Finalize and issue policies and procedures for assuming direct safety oversight authority, including criteria and decision-making processes, and communicate the policies and procedures within the Agency.
2. Communicate the policies and procedures for assuming direct safety oversight to the rail transit industry.
3. Finalize and issue policies and procedures for relinquishing oversight authority to ensure an efficient transition of responsibilities back to the SSOA and communicate the policies and procedures within the Agency.
4. Communicate the policies and procedures for relinquishing direct safety oversight to the rail transit industry.
5. Finalize a plan with milestones to create a data-driven, risk-based safety oversight system.
6. Update FTA's methodology to meet the triennial SSOA audit requirement for all SSOAs.

7. Finalize a plan with milestones for periodically updating the National Safety Plan.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FTA with our draft report on September 12, 2016, and received its technical comments on October 12, 2016, which we incorporated as appropriate. FTA provided its formal management response on October 19, 2016, which is included as an appendix to this report. FTA concurred with all seven recommendations and provided appropriate actions and completion dates. Accordingly, we consider the recommendations resolved but open pending the completion of the planned actions.

We appreciate the courtesies and cooperation of FTA representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Kerry R. Barras, Program Director, at (817) 978-3318.

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cc: DOT Audit Liaison, M-1
FTA Audit Liaison, TBP-30

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted our work from December 2015 through September 2016 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Our audit objective was to assess FTA's actions to assume and relinquish direct safety oversight of a rail transit agency. As part of our review, we are providing an update on FTA's progress toward addressing the challenges to enhanced safety oversight we identified in 2012.

We reviewed applicable laws, regulations, guidance, and GAO's *Standards for Internal Control in the Federal Government*. Based on this criteria, we developed structured audit plans to guide our work. To conduct our work, we analyzed DOT and FTA documentation, including letters, safety data reports prepared for FTA, safety directives, safety advisories, and other oversight documents. We reviewed FTA SSOA audit letters and reports and analyzed the timeliness of FTA's triennial SSOA audits. We interviewed FTA Headquarters officials and staff in Washington, DC, as well as transit industry stakeholders from APTA, AASHTO, SSOAs, NTSB, and WMATA. We compared the results of our review to the criteria to assess the adequacy of FTA's actions to assume and relinquish direct safety oversight of rail transit agencies and to provide an update on FTA's progress toward addressing the challenges to enhanced safety oversight we identified in 2012.

EXHIBIT B. FTA’S OFFICE OF TRANSIT SAFETY AND OVERSIGHT ORGANIZATIONAL CHART

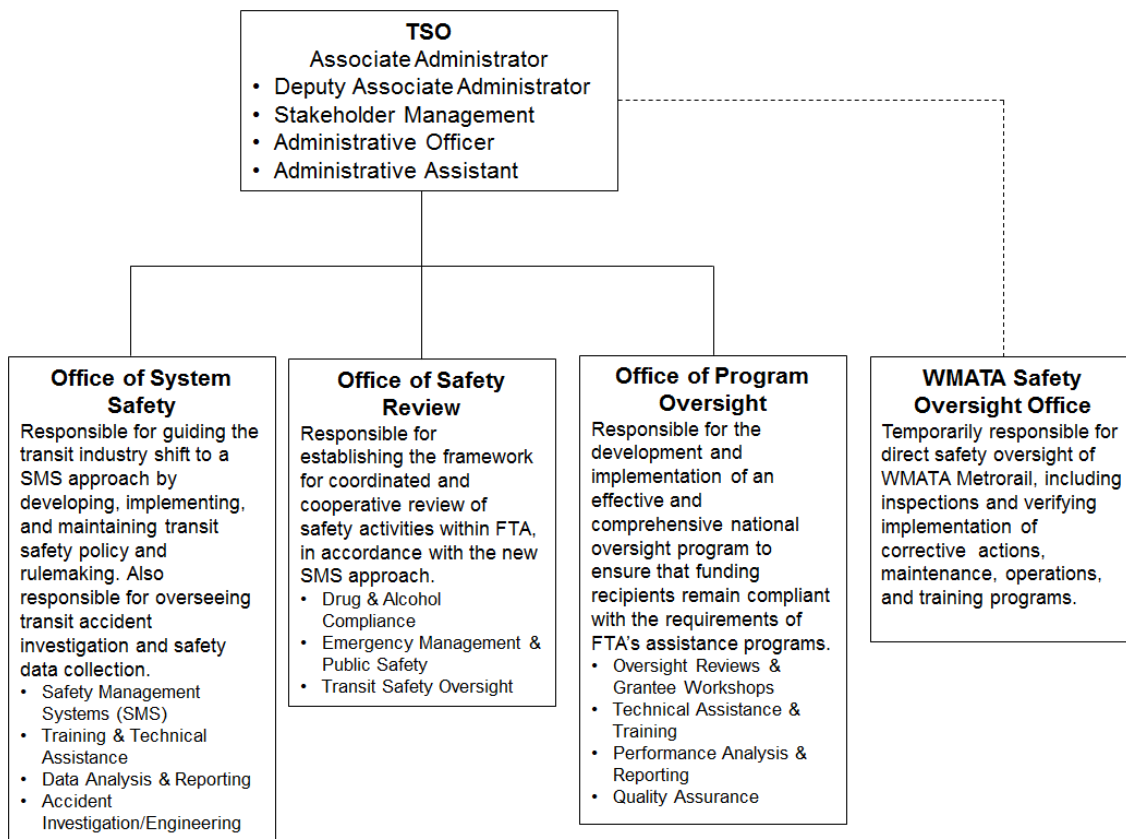


Exhibit B. FTA’s Office of Transit Safety and Oversight Organizational Chart

EXHIBIT C. TIMELINE OF FTA SAFETY OVERSIGHT EVENTS AND WMATA SAFETY INCIDENTS

Date	Event
December 1991	The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) created an SSO program for rail fixed guideway transit safety. ISTEA authorized FTA to withhold funding from any State that did not comply with the statutory mandates and directed FTA to promulgate rules for that purpose.
December 27, 1995	FTA promulgated a final SSO program rule, effective January 1, 1997, to give States time to comply.
March 7, 1997	The TOC, the SSOA for WMATA Metrorail, was created with a MOU between Maryland, Virginia, and the District of Columbia (DC).
November 30, 2006	A WMATA Blue Line train struck and killed two employees inspecting a rapid rail track in Alexandria, VA.
January 7, 2007	A WMATA Green Line train derailed near the Mt. Vernon Square Station in DC, injuring 23 people and causing \$3.8 million in damage.
June 22, 2009	Two WMATA Red Line trains collided near the Fort Totten Station, killing the driver of the second train and 8 passengers, injuring 52 passengers, and causing \$12 million in damage.
March 4, 2010	FTA's audit of the safety program implemented by WMATA and overseen by the TOC identified 11 findings for the TOC and 10 for WMATA.
April 20, 2010	DC, Maryland, and Virginia presented a White Paper in response to FTA's March 2010 audit to outline a plan for strengthening the TOC's roles, authorities, and responsibilities; it proposed creating a Metro Safety Commission that would have authority to conduct and enforce safety oversight of WMATA.
July 6, 2012	MAP-21 directed FTA to establish a comprehensive PTSP to strengthen the safety performance of the public transportation industry.
July 2013	TSO was established to administer a national transit safety program and a program compliance process to advance the provision of a safe, reliable, and equitable transit service.
October 3, 2013	FTA published a consolidated Advanced Notice of Proposed Rulemaking (ANPRM) to seek comments on the National Public Transportation Safety Plan, Public Transportation Agency Safety Plan, Public Transportation Safety Certification Training Program, and Transit Asset Management provisions authorized by MAP-21.
April 30, 2014	FTA issued proposed interim provisions for the Public Transportation Safety Certification Training Program required by MAP-21, which included some required coursework for SSOA staff who conduct audits and examinations of public transportation systems.
January 12, 2015	A WMATA Metrorail Yellow Line train stopped in a tunnel after encountering heavy smoke near the L'Enfant Plaza Station. As a result of this incident, 1 passenger died and 91 people were injured.

February 27, 2015	FTA published the SSO Notice of Proposed Rulemaking (NPRM) with request for comments on proposed rules to replace the regulations for SSO of rail fixed guideway public transportation systems that had been in place for the past 20 years and significantly strengthen the program to prevent and mitigate accidents and incidents.
June 17, 2015	FTA released a TOC audit report with 11 findings.
June 17, 2015	FTA issued a WMATA Safety Management Inspection (SMI) report and accompanying Safety Directive 15-1 to require WMATA to address the SMI findings.
August 14, 2015	FTA published the PTSP NPRM with request for comments to carry out the MAP-21 mandate to establish a comprehensive PTSP.
September 23, 2015	FTA withheld \$15 million in fiscal year 2015 Passenger Rail Improvement and Investment Act grant funds from WMATA and then directed it to use the funds to address specific SMI corrective actions.
September 30, 2015	NTSB recommended that the DOT Secretary address the TOC's failure to provide effective safety oversight of WMATA by seeking congressional action to specifically allow FRA to assume oversight of Metrorail.
October 9, 2015	The Secretary determined that FTA would assume safety oversight for Metrorail until DC, Maryland, and Virginia have established a fully functioning and capable SSOA.
October 26, 2015	FTA issued Safety Directive 16-1, which outlines how the Agency will exercise leadership over the TOC as part of its direct safety oversight of the WMATA rail system. It realigns the TOC's work and identifies the responsibilities FTA will assume to accomplish SSOP requirements. This action is temporary until Virginia, Maryland, and DC replace the TOC with a new SSOA that is fully compliant with 49 U.S.C. §5329(e).
December 4, 2015	The Fixing America's Surface Transportation (FAST) Act became law. The FAST Act gives FTA explicit authority to assume temporary direct safety oversight in the absence of an effective SSOA.
February 5, 2016	FTA released the proposed National Public Transportation Safety Plan (National Plan) for public review and comment. The plan sets forth four safety performance criteria: fatalities, injuries, safety events, and system reliability.
February 5, 2016	FTA published the Public Transportation Agency Safety Plan (Agency Plan) NPRM with requests for comment. The Agency Plan will require transit agencies to set performance targets based on National Plan criteria.
February 8, 2016	The Secretary and FTA Acting Administrator sent letters to the three jurisdictions that created WMATA, invoking a FAST Act provision and determining that the TOC is "incapable of providing adequate safety oversight consistent with the prevention of substantial risk or death or personal injury." The letters gave the 3 jurisdictions 1 year to develop a FTA-certified SSOP or risk losing up to 5 percent of Section 5307 funds.
March 22, 2016	FTA instructed WMATA to set aside \$20 million in Federal financial assistance as contingency for safety-related projects.
March 23, 2016	FTA sent a letter to the TOC Chair stating the CWP approval granted in May 2014 was "no longer in effect" for the reasons listed in Safety Directive 16-1 and the FTA Acting Administrator's February 8, 2016, letter.

Exhibit C. Timeline of FTA Safety Oversight Events and WMATA Safety Incidents

April 15, 2016	SSO final rule took effect. States, SSOAs, and rail transit agencies have up to 3 years from the effective date to achieve compliance.
May 3, 2016	NTSB released a synopsis of its investigation into WMATA's January 12, 2015, accident. NTSB determined that FTA's actions were not sufficient to close its prior recommendations to reclassify WMATA as a commuter rail and shift oversight authority to FRA; the recommendations remain "Open—Unacceptable Response." NTSB found that despite its FAST Act authority, FTA "still lacks sufficient authority, expertise, and resources to assume temporary, direct safety oversight of rail transit agencies."
August 11, 2016	FTA published the final PTSP rule, with an effective date of September 12, 2016.

EXHIBIT D. MAJOR CONTRIBUTORS TO THIS REPORT

Name	Title
Kerry R. Barras	Program Director
Tiffany Mostert	Project Manager
Emily Norton	Senior Analyst
Henning Thiel	Senior Analyst
Forrest Schmidt	Analyst
Andrea Nossaman	Senior Writer-Editor
Jane Lusaka	Writer-Editor
Seth Kaufman	Senior Counsel

APPENDIX. AGENCY COMMENTS



U.S. Department of Transportation
Federal Transit Administration

Memorandum

Subject: INFORMATION: Management Comments – Office of Inspector General (OIG) Draft Report – Improvements In FTA’s Safety Oversight Policies and Procedures Could Strengthen Program Implementation and Address Persistent Challenges Date: October 19, 2016

From: Carolyn Flowers
Acting Administrator
Federal Transit Administration *Carolyn Flowers* Reply to
Attn. of: Natalie Wowk
202-366-2514

To: Barry DeWeese
Assistant Inspector General for Surface Transportation Audits

The findings and recommendations in the Office of the Inspector General (OIG) draft report support the efforts of the Federal Transit Administration (FTA) to develop a comprehensive program of policy, regulations, and technical assistance to improve the safety of public transportation. Also, the report recognizes that FTA has established a new Office of Safety and Oversight, and taken actions in response to the OIG audit issued in 2012. Further, the report acknowledges FTA’s current initiative to set criteria and protocols for taking direct safety oversight of a rail fixed guideway public transportation agency system, and turning that oversight back to a State Safety Oversight program.

The OIG conducted this audit during a period of rapid change, with FTA assuming its responsibilities for direct safety oversight of WMATA while conducting several industry-wide rulemakings through public notice-and-comment. One of the keystones of FTA’s strategy for safety regulation, the Public Transportation Safety Program (PTSP) rule, was in the midst of promulgation during the OIG review. In August 2016, between the start of the OIG audit and the issuance of this draft report, FTA issued the final PTSP rule, which sets the substantive and procedural framework for FTA to monitor, oversee, and enforce transit safety. Industry concerns regarding lack of clarity in policies and procedures are being addressed through FTA’s PTSP rule and other rulemaking.

Finally, it is important to note that FTA’s explicit authority to exercise direct safety oversight of a transit agency was effective upon enactment of the FAST Act. While written procedures to accompany statutory authority are often helpful, such work products will be the result of experiential knowledge, which cannot be generated until that experience is substantially more complete.

Based upon our review of the draft OIG report, we concur with all seven recommendations as written. FTA plans to complete recommendations 1, 2, and 4 by July 30, 2017; recommendation 3 by June 30, 2018; and recommendations 5, 6, and 7 by December 31, 2017.

We appreciate this opportunity to comment on the OIG draft report. Please contact Natalie Wowk, Audit Liaison, at (202) 366-2514, with any questions.