

UNITED STATES DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Special Directive No. 22-8, Notice No. 1]

**Special Directive Under 49 U.S.C. § 5329 and 49 CFR Parts 670 and 674
Required Actions to Address Findings from the Safety Management Inspection
Conducted at the Massachusetts Bay Transportation Authority**

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

SUMMARY: FTA issues Special Directive 22-8 to require the Massachusetts Department of Public Utilities (DPU) to oversee the implementation of the four Special Directives issued to the Massachusetts Bay Transportation Authority (MBTA) that address immediate safety issues based on interim findings made during FTA's ongoing Safety Management Inspection (SMI) of the MBTA. This Special Directive requires the DPU to take actions to oversee MBTA's corrective actions to address the pattern of safety incidents and interim safety findings concerning deferred track maintenance, uncontrolled train movements, management of the Operations Control Center (OCC), and lapsed training certifications of safety-sensitive rail personnel at the MBTA.

FOR FURTHER INFORMATION CONTACT: For program matters, Mr. Joseph DeLorenzo, Associate Administrator for Transit Safety and Oversight and Chief Safety Officer, telephone (202)-366-1783 or joseph.delorenzo@dot.gov; for legal matters, Ms. Emily Jessup, Attorney Advisor, FTA, telephone 202-366-8907 or emily.jessup@dot.gov.

SUPPLEMENTARY INFORMATION:

The DPU is the State Safety Oversight Agency designated by the Commonwealth of Massachusetts pursuant to 49 CFR § 673.13 and last certified in 2018 by FTA as the agency responsible for overseeing rail fixed guideway safety in the Commonwealth of Massachusetts. As set forth in Section 12(a) of Title XXII, Chapter 159 of the Massachusetts General Laws, the DPU has the power to supervise and regulate the transportation or carriage of persons or property, or both, by railroads, street railways, electric railroads, and trackless trolleys between points within the Commonwealth of Massachusetts. In exercise of its oversight authority, DPU can take actions including, but not limited to, review of Corrective Action Plans (CAPs) submitted by MBTA, oversight of MBTA's implementation of corrective actions, issuance of Orders, or the undertaking of any other action or enforcement proceeding authorized under State law, including judicial actions authorized under Sections 16 and 40 of Title XXII, Chapter 159 of the Massachusetts General Laws.

The MBTA is a division of the Massachusetts Department of Transportation (MassDOT),

providing heavy rail (subway), bus, commuter rail, ferry, and paratransit service to eastern Massachusetts and parts of Rhode Island. While MBTA has recently embarked on a significant program of capital improvements, the agency faces challenges in maintaining its aging infrastructure in a state of good repair and managing the ongoing operations of its complex equipment and systems. These challenges require greater focus, assessment, and resource prioritization, at all levels of MBTA to ensure that the system remains safe for both passengers and workers. Because of the MBTA's ongoing critical safety challenges, FTA undertook a Safety Management Inspection (SMI) that commenced in April 2022. The SMI is focused both on MBTA's rail transit operations and maintenance programs and on DPU's effectiveness and role as State Safety Oversight Agency.

This Special Directive to the DPU is based on several areas of concern. In October 2019, FTA conducted an audit of DPU's SSO program, issuing 16 findings of non-compliance, of which nine have been closed. The DPU submitted Corrective Action Plans (CAPs) to FTA to address the seven findings that remain open. The fact that those seven findings remain open gives rise to concerns regarding the DPU's ability to effectively oversee the MBTA's compliance with its own practices and procedures. The seven unresolved findings include procedures for addressing roadway worker protection, track maintenance, identification and analysis of hazards, investigations and root-cause analysis of accidents, and the MBTA's development of CAPs. In a letter dated March 14, 2022, FTA directed DPU to submit revised CAPs to address the seven open findings, which they submitted on April 25, 2022.

Despite these and other actions that the DPU has taken since October 2019 to address FTA's audit findings, it must exercise more robust oversight authority given MBTA's ongoing safety events and compliance issues with its own safety procedures.

The DPU is responsible for tracking an increasing number of CAPs that address safety-critical concerns at the MBTA. The number of CAPs has expanded from 4 in 2019, to 12 in 2020, to 42 in 2021. FTA is concerned that the DPU has not effectively utilized its existing regulatory and statutory enforcement authority to ensure the timely resolution and closure of these CAPs.

This Special Directive identifies immediate actions that DPU must take to provide effective safety oversight of MBTA's rail transit operations to ensure the safety of the MBTA's riders and employees. Consistent with 49 CFR Part 674, FTA will monitor the adequacy of the DPU's oversight activities and ensure that the MBTA is implementing safety-critical required actions to address FTA's immediate safety concerns.

In addition, FTA will provide technical assistance to the DPU as it initiates appropriate actions to ensure timely progress towards exercising effective oversight of the MBTA as the transit agency meets the requirements outlined in the four Special Directives issued today.

DIRECTIVE AND REQUIRED ACTIONS:

In accordance with 49 U.S.C. § 5329 and 49 CFR Part 670, FTA directs DPU to take the following actions:

1. Take immediate action pursuant to Section 150.07(7) of Title 220 of the Code of Massachusetts Regulations to ensure the MBTA’s timely implementation of FTA Special Directives 22-4, 22-5, 22-6, and 22-7. These actions include, but are not limited to, review of Corrective Action Plans submitted by MBTA, oversight of MBTA’s implementation of corrective actions, issuance of Orders, or undertaking any other action or enforcement proceeding authorized under State law, including judicial actions authorized under Sections 16 and 40 of Title XXII, Chapter 159 of the Massachusetts General Laws.

2. Fully address FTA’s open non-compliant audit findings of DPU’s Program.

The DPU must identify the specific activities that it will undertake to ensure the MBTA’s completion of the required actions, a milestone schedule for completion of the MBTA’s required actions, and the parties at the DPU and MBTA responsible for completing the required actions. In addition, the DPU must develop and submit a Corrective Action Plan to FTA to address how it intends to ensure the MBTA’s completion of the required actions.

FTA will review and approve (with revisions as necessary) DPU’s Corrective Action Plan and will monitor the DPU’s progress in addressing each finding and required action.

FTA will conduct weekly meetings with DPU to review the MBTA’s weekly progress reports and the DPU’s progress in effectively exercising its oversight responsibilities until such time as FTA determines that these meetings are no longer needed or may be conducted with less frequency.

Beyond the required actions described above, FTA makes the following findings and directs the DPU to take the following specific actions:

FINDINGS AND REQUIRED ACTIONS			
Finding		Required Actions	
Finding 1	The DPU has not ensured that the MBTA maintains its track.	FTA-DPU-22-001	For each of the nine findings FTA issued to the MBTA in Special Directive 22-4 Related to Track Maintenance: <ul style="list-style-type: none"> • The DPU must independently review and assess the CAPs received by the MBTA. The DPU must provide documentation to FTA that demonstrates how the DPU assessed and determined the CAP was sufficient to address the finding. • The DPU must identify any existing findings and associated CAPs the

	<p>DPU has already issued to the MBTA and must ensure that these findings and CAPs are deconflicted from the new findings issued due to FTA Special Directive 22-4. FTA’s findings and subsequently approved CAPs supersede any prior inconsistent CAPs from the DPU.</p> <ul style="list-style-type: none"> • The DPU must provide to FTA an inspection and verification plan that outlines the processes and procedures the DPU will utilize to close each CAP. • The DPU must provide to FTA a plan for the DPU to utilize its enforcement authority if MBTA fails to adequately address any approved CAPs. • The DPU must attend the meetings FTA will hold with MBTA as a result of Special Directive 22-4.
<p>Finding 2 The DPU has not ensured that the MBTA has sufficient policies and procedures to address unintended train movements.</p>	<p>FTA-DPU-22-002 For each of the three findings FTA issued to the MBTA in Special Directive 22-5 Related to Unintended Train Movements:</p> <ul style="list-style-type: none"> • The DPU must independently review and assess the CAPs received by the MBTA. The DPU must provide documentation to FTA that demonstrates how the DPU assessed and determined the CAP was sufficient to address the finding. • The DPU must identify any existing findings and associated CAPs the DPU has already issued to the MBTA and must ensure that these findings and CAPs are deconflicted from the new findings issued due to FTA Special Directive 22-5. FTA’s findings and subsequently approved CAPs supersede any prior inconsistent CAPs from the

	<p>DPU.</p> <ul style="list-style-type: none"> • The DPU must provide to FTA an inspection and verification plan that outlines the processes and procedures the DPU will utilize to close each CAP. • The DPU must provide to FTA a plan for the DPU to utilize its enforcement authority if MBTA fails to adequately address any approved CAPs. • The DPU must attend the bi-weekly meetings FTA will hold with MBTA as a result of Special Directive 22-5.
<p>Finding 3 The DPU has not ensured that the MBTA has sufficient policies and procedures related to the Operations Control Center.</p>	<p>FTA-DPU-22-003 For each of the seven findings FTA issued to the MBTA in Special Directive 22-6 Related to Operations Control Center:</p> <ul style="list-style-type: none"> • The DPU must independently review and assess the CAPs or other documentation received by the MBTA, as required based on the finding and action. The DPU must provide documentation to FTA that demonstrates how the DPU assessed and determined the CAP or documentation was sufficient to address the finding. • The DPU must identify any existing findings and associated CAPs the DPU has already issued to the MBTA and must ensure that these findings and CAPs are deconflicted from the new findings issued due to FTA Special Directive 22-6. FTA’s findings and subsequently approved CAPs supersede any prior inconsistent CAPs from the DPU. • The DPU must provide to FTA an inspection and verification plan that outlines the processes

	<p>and procedures the DPU will utilize to close each CAP.</p> <ul style="list-style-type: none"> • The DPU must provide to FTA a plan for the DPU to utilize its enforcement authority if MBTA fails to adequately address any approved CAPs. • The DPU must attend the meetings FTA will hold with MBTA as a result of Special Directive 22-6.
<p>Finding 4 The DPU has not ensured that the MBTA has sufficient policies and procedures related to lapsed certifications.</p>	<p>FTA-DPU-22-004 For each of the three findings FTA issued to the MBTA in Special Directive 22-7 Related to Lapsed Certifications:</p> <ul style="list-style-type: none"> • The DPU must independently review and assess the CAPs or other documentation received by the MBTA, as required based on the finding and action. The DPU must provide documentation to FTA that demonstrates how the DPU assessed and determined the CAP or documentation was sufficient to address the finding. • The DPU must identify any existing findings and associated CAPs the DPU has already issued to the MBTA and must ensure that these findings and CAPs are deconflicted from the new findings issued due to FTA Special Directive 22-7. FTA’s findings and subsequently approved CAPs supersede any prior inconsistent CAPs from the DPU. • The DPU must provide to FTA an inspection and verification plan that outlines the processes and procedures the DPU will utilize to close each CAP. • The DPU must provide to FTA a plan for the DPU to utilize its enforcement authority if MBTA

	<p>fails to adequately address any approved CAPs.</p> <ul style="list-style-type: none"> • The DPU must attend the meetings FTA will hold with MBTA as a result of Special Directive 22-7.
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Thirty (30) days after the date of this Special Directive, DPU must submit Corrective Action Plans to FTA that demonstrates the specific actions the DPU will take to address actions specified in this Special Directive and if necessary, a milestone schedule for completing each activity; the responsible parties for action and their contact information; and the verification strategy for ensuring the completion of required work.

FTA will review and approve (with revisions as necessary) DPU’s CAPs and will monitor the - DPU’s progress in resolving each finding and required action.

FTA will continue to conduct weekly meetings with DPU to review its progress until such time as FTA determines that these meetings are no longer needed or may be conducted with less frequency.

PETITION FOR RECONSIDERATION

As set forth in 49 CFR § 670.27(d), the DPU has thirty (30) calendar days from the date of this Special Directive to petition for reconsideration with the FTA Administrator. The petition must be in writing and signed by the Chair of the DPU and must include a brief explanation of why the DPU believes the Special Directive should not apply to it or why compliance with the Special Directive is not possible, is not practicable, is unreasonable, or is not in the public interest. In addition, the petition must include relevant information regarding the factual basis upon which the Special Directive was issued, information in response to any alleged violation or in mitigation thereof, recommend alternative means of compliance for consideration, and any other information deemed appropriate. Unless explicitly stayed or modified by the Administrator, this Special Directive will remain in effect and must be observed pending review of a petition for reconsideration.

Within ninety (90) days of receipt of the petition, the Administrator will provide a written response. In reviewing the petition, the Administrator shall grant relief only where the DPU has clearly articulated an alternative action that will provide, in the Administrator's judgment, a level of safety equivalent to that provided by compliance with this Special Directive. In reviewing any petition for reconsideration, the Administrator shall grant petitions only where the DPU has clearly articulated legal or material facts not in evidence at the time of this Special Directive.

ENFORCEMENT

Violation of this Special Directive or the terms of any written plan adopted pursuant to this Special Directive in accordance with FTA's authorities under 49 U.S.C. § 5329 may result in a

determination by FTA that the DPU's State Safety Oversight Program does not meet the requirements of 49 U.S.C. § 5329(e), and attendant financial penalties, including: (1) withholding SSO formula grant funds from the DPU; (2) withholding up to five percent of Massachusetts' Urbanized Area Formula Funding authorized under 49 U.S.C. § 5307; or (3) requiring MBTA to spend up to one hundred percent of Federal funding under 49 U.S.C. Chapter 53 only for safety-related improvements until the DPU's SSO Program can be certified.

Issued on: June 15, 2022



Veronica Vanterpool
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Federal Transit Administration
U.S. Department of Transportation