

UNITED STATES DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Special Directive No. 22-11, Notice No. 1]

**Special Directive Under 49 U.S.C. § 5329 and 49 CFR Part 670
Required Actions to Address Findings from the Federal Transit Administration Safety
Management Inspection Conducted at the Massachusetts Bay Transportation Authority
Related to the Effectiveness of Safety Communication**

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

SUMMARY: FTA issues Special Directive 22-11 to require the Massachusetts Bay Transportation Authority (MBTA) to address findings documented in FTA's Safety Management Inspection (SMI) report released on August 31, 2022. Conducted between April 14 and June 30, 2022, FTA's SMI reviewed the MBTA rail transit system management, operations, and maintenance programs. This Special Directive identifies three findings requiring action that the MBTA must take to improve MBTA's management of its safety committee process, employee safety reporting program, and safety promotion activities.

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:

MBTA is a division of the Massachusetts Department of Transportation (MassDOT), providing heavy rail (subway), light rail, 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 systemic 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 the organization, to ensure that the system remains safe for both passengers and workers. Under FTA's State Safety Oversight (SSO) Rule, the Massachusetts Department of Public Utilities (DPU) was certified in 2018 as the State Safety Oversight Agency charged with providing Federally required safety oversight of the MBTA rail transit system.

FTA conducted a SMI of the MBTA rail transit system management, operations, and maintenance programs, between April 14 and June 30, 2022. MBTA's rail transit system includes the Red, Orange, Blue, and Green Lines and the Mattapan Trolley. FTA's SMI did not include the commuter rail system, which is under the jurisdiction of the Federal Railroad Administration, or MBTA's bus transit system.

FTA performed this SMI to address an escalating pattern of safety incidents and concerns on the MBTA's rail transit system, including rates and numbers of derailments, collisions, and passenger and employee injury events significantly exceeding industry average and peer-based assessments. FTA's

SMI also addressed deficiencies FTA identified in the SSO program administered by the DPU, which limit its ability to provide effective safety oversight for the MBTA.

FTA published the SMI report on 08/31/2022. In the report, FTA issued a total of 20 findings to the MBTA across the following four (4) categories:

1. Category 1 – Managing the impact of operations, maintenance, and capital project requirements on the existing workforce
2. Category 2 – Prioritization of safety management information
3. Category 3 – Effectiveness of safety communication
4. Category 4 – Operating conditions and policies, procedures, and training

This Special Directive addresses Category 3 and is based on FTA’s determination that there is a lack of routine, consistent, and meaningful communication regarding safety issues across departments and with frontline workers.

Safety Committee Follow Up

In its Agency Safety Plan and supporting procedures, MBTA documented a structure of safety committees and groups to facilitate information sharing of safety topics. During interviews, FTA was able to confirm that committee and group meetings are convened as scheduled. FTA obtained detailed anecdotal information of the items discussed during the meetings, but learned that safety information from these meetings (that may include presentations, safety data, and analysis) is not formally recorded, either by the Safety Department or by other committee function. MBTA could not provide documentation of safety issues raised and discussed, nor records of safety decisions or actions. MBTA also could not provide documentation to demonstrate a formal process for managing the outcomes of these discussions.

MBTA has established local safety committees, which are smaller workforce groups based on work location, as a primary forum to receive safety information from frontline personnel. These forums provide an avenue for workers to share, and the agency to obtain, information on the safety performance of the agency in the field. During interviews and records review, FTA learned that:

- local safety committee meetings often do not have frontline representation (FTA confirmed this with Safety Department officials and Local 589 union members and union leadership),
- staffing shortages prevent frontline employee participation because they are scheduled for work during meetings,
- there is no demonstrated accountability of the Safety Department representative to document or report out the information discussed during the meetings,
- frontline personnel provide information to supervisors who serve as their proxies, but there is no requirement for employee safety concerns to be documented or acted upon by supervisors.

Given FTA’s findings related to shortcomings in safety data prioritization and presentation (Special Directive 22-10), FTA finds that the absence of outcome documentation from local safety committee

meetings can lead to:

- subsequent actions that are left to interpretation and individual departmental prioritization,
- absence of clearly assigned departmental responsibilities regarding implementation and monitoring of actions, and
- undefined timeframes for actions.

Employee Safety Reporting Program

In 2019, MBTA established its Employee Safety Reporting Program (ESRP). MBTA’s Agency Safety Plan states that “MBTA’s voluntary, confidential, non-punitive employee reporting program allows for the submission of information related to observed hazards, sole-source safety events, or inadvertent errors without an associated legal or administrative requirement to report. Reported information should be used solely to support the enhancement of safety. and “Voluntary reporting is non-punitive because it affords protection to reporters, thereby ensuring the continued availability of such information to support continuous improvements in safety performance.”

FTA observed, and MBTA officials agreed, that the MBTA’s ESRP is in actual practice largely limited to the Safety Hotline. FTA analyzed the Safety Hotline log and noted that many of the reports are anonymous which may indicate a weakness in the program as MBTA is unable to follow up with workers on reported concerns. The 20 to 25 Safety Hotline reports per month for an organization of the size of MBTA may indicate a reluctance or skepticism in the safety reporting environment.

Frontline employees have the option to report safety concerns verbally to supervisors who must then elevate the report to the Safety Department. However, there is no established procedure nor controls that ensure that all reports verbally submitted to supervisors are elevated through the system. FTA finds that this creates the probability for loss of potentially valuable safety information and results in under-reporting.

FTA reviewed the Safety Hotline log and found that only a small percentage of reports are about safety concerns and most reports do not rise above the level of individual location “housekeeping” issues or complaints. MBTA indicated that it has conducted ESRP training and consistently promotes the program; however, FTA did not see evidence (neither during discussions with employees nor through a review of the Safety Hotline log) that frontline employees have clarity or instruction on what to report and, most importantly, what not to report through the safety hotline. This potentially generates a situation where the Safety Hotline log contains many reports, but those reports contain scarce actionable safety information. The large number of reports make it difficult to isolate actionable safety information.

DIRECTIVE AND REQUIRED ACTIONS:

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

Category 3: Effectiveness of Safety Communication

Findings		Tracking #	Required Actions
Finding 1	MBTA has not established explicit and formal provisions to ensure safety information from safety committee results in a consistent outcome of documented, prioritized, and actionable safety information.	FTA-22-MBTA-CAT3-1.A	<p>MBTA must develop and describe, in the organization's SMS documentation, instructions regarding the conduct, recording, communication and follow up of the outcome consensus decisions specific for each of the following meetings - taking into consideration the nature (strategic or tactical) of each meeting:</p> <ul style="list-style-type: none"> • Operations and Safety Biweekly call (currently every other Friday) • Operations and Safety weekly meeting (currently on Wednesdays) • Executive Safety Committee (ESC) • Safety Management Review Committee (SMRC) • Safety Management Working Groups (SMWGs) • Data Analysis Group (DAG) • Local Safety Committee Meetings • Joint Labor/Management Safety Committee (required by Bipartisan Infrastructure Law)
		FTA-22-MBTA-CAT3-1.B	In support of the above, MBTA must develop and describe, in the organization's SMS documentation, a formal mechanism and associated guidelines to ensure that the meetings are consistent in the identification and analyses of safety concerns and hazards; prioritization of safety risks; implementation of corrective actions; and safety risk mitigation effectiveness monitoring.
Finding 2	MBTA has not documented explicit and formal provisions to ensure the participation of frontline	FTA-22-MBTA-CAT3-2.A	MBTA must develop explicit and formal guidelines for the expected role and contribution of frontline employees to the local safety committee meetings.

Category 3: Effectiveness of Safety Communication

Findings		Tracking #	Required Actions
	employees in local safety committees as part of their job responsibilities in relation to the agency's SMS.	FTA-22-MBTA-CAT3-2.B	MBTA must develop instructions for the conduct of the meetings, including explicit departmental accountabilities for meeting outcome information capture, communication and follow up.
Finding 3	MBTA management has not effectively communicated clear direction to frontline employees on what to report and what not to report through the Safety Hotline.	FTA-22- MBTA-CAT3-3.A	MBTA must expedite the development of an effective ESRP as a fundamental source of safety information for hazard identification and safety performance monitoring.
		FTA-22-MBTA-CAT3-3.B	As part of the development of an effective ESRP, MBTA must provide explicit direction to frontline employees on what to report and what not to report through the ESRP (including the safety hotline).
		FTA-22-MBTA-CAT3-3.C	As part of the development of an effective ESRP, MBTA must provide refresher training to stakeholder personnel on the role of employee safety reporting within SMS and the crucial contribution managers and supervisors play in the development of an effective safety reporting context.

Twenty (20) calendar days after the date of this Special Directive, MBTA must submit a corrective action plan(s) to FTA that identifies the specific actions that will be performed to address required action specified in this Special Directive; the milestone schedule for completing corrective action; the responsible parties for action and their contact information; and the verification strategy for ensuring the completion of required work.

FTA, in consultation with DPU, will review and approve (with revisions as necessary) MBTA's corrective action plan(s) and will monitor the agency's progress in resolving each finding and required action.

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

PETITIONS FOR RELIEF OR RECONSIDERATION

As set forth in 49 CFR § 670.27(d), the MBTA 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 MBTA and must include a brief explanation of why the MBTA 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 MBTA 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 MBTA has clearly articulated legal or material facts not in evidence at the time of this Special Directive.

ENFORCEMENT

FTA may take enforcement action for any 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, including but not limited to (1) directing MBTA to use Federal financial assistance to correct safety deficiencies; (2) withholding up to 25 percent of financial assistance to MBTA under 49 U.S.C. § 5307; and (3) issuing restrictions or prohibitions (*e.g.*, mandatory speed restrictions, shutdown of a rail line, or complete system shutdown) as necessary and appropriate to address unsafe conditions or practices that present a substantial risk of death or personal injury.

Issued on: August 31, 2022



Veronica Vanterpool

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