



U.S. Department
of Transportation

**Federal Transit
Administration**

Headquarters

1200 New Jersey Avenue, SE
Washington, DC 20590

SENT VIA EMAIL

December 16, 2022

Mr. Matthew H. Nelson
Chair
Department of Public Utilities
Commonwealth of Massachusetts
One South Station
Boston, MA 02110

Subject: Additional Action Required for Corrective Action Plans in Response to Special Directive 22-13

Dear Mr. Nelson,

Thank you and your team for submitting revised Corrective Action Plans (CAPS) for Findings 1,2, and 3 of Special Directive 22-13 to address comments from the Federal Transit Administration (FTA) regarding DPU's previous submittal. The DPU resubmitted these updated CAPs on November 29, 2022, as required.

The FTA's November 4, 2022, correspondence to the DPU required resubmittal of CAPs for Findings 1, 2, and 3, which collectively contain six (6) required actions. In the same letter, FTA approved DPU's CAP to address Finding 4 from SD 22-13, and its three (3) required actions, determining that DPU's proposed approach to Finding 4 adequately addressed FTA's recommended actions.

Additional Action Required for CAPs for Findings 1 through 3

FTA has completed its review of the revised CAPs submitted by DPU for Findings 1, 2, and 3 of SD 22-13. Collectively, these findings require DPU to:

- enhance its technical capacity, resources, training, and enforcement capabilities;
- ensure its organizational and legal independence from MBTA; and
- validate MBTA's fatigue management approach for rail transit officials and maintenance and engineering personnel.

FTA appreciates the additional detail provided by DPU in the November 29, 2022, resubmittal for

Findings 1, 2, and 3. However, further action is necessary for FTA to approve the CAPs.

By no later than Friday, January 6, 2023, DPU must resubmit the CAPs for these three findings to FTA. The additional information that DPU provided in the November 29, 2022, resubmittal **must be incorporated into the attached CAP evaluation matrix**. DPU may add this new information as sub-items to existing action items (i.e., 1.A, 1.B, 1.C, etc.) or may renumber the action items in the CAP to include the new items or incorporate both approaches.

For each new CAP or action item, **DPU should include distinct titles, due dates, name and title of responsible parties, and verification plans, as appropriate.**

FTA also requires **additional information that details the changed due dates or areas where DPU did not fully address FTA's initial requests and comments.**

FTA will track each distinct action item, and their associated submittals, due dates, and responsible parties, to closure. Unless the CAP matrix includes all the critical activities related to DPU's CAPs, FTA cannot monitor implementation progress.

The attached CAP evaluation matrix includes the specific details outlining the additional information required by FTA. While some of these issues have been discussed verbally between FTA and DPU during weekly meetings, the CAP Evaluation Matrix must document and reflect all the activities being undertaken related to the Findings.

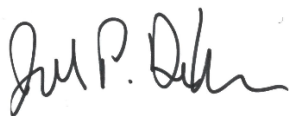
FTA Tracking of DPU Enforcement Procedure and Plans

Special Directive 22-13 requires that DPU revise its Enforcement Procedure, and the submission of DPU's Enforcement Plans for SDs 22-4 through 22-7 are contingent upon FTA approval of that Enforcement Procedure. Therefore, both **the Enforcement Procedure and Enforcement Plans will be tracked exclusively through SD 22-13**. While these remain Required Actions for 22-8, updates to their status will no longer appear on the 22-8 Evaluation Matrix but instead will be tracked on the SD 22-13 Evaluation Matrix.

Conclusion

We appreciate your efforts to enhance DPU's performance and implementation of the SSO program in the Commonwealth of Massachusetts, and we look forward to working with you and your team to address FTA's findings and required actions. Please contact our SMI Coordinator, Erin Powell, by phone at (771) 200-8016 or by email at Erin.Powell@dot.gov with any questions.

Sincerely,



Joe DeLorenzo
Associate Administrator and
Chief Safety Officer
Office of Transit Safety and Oversight

cc: Peter Butler, Regional Administrator, FTA Region 1
Bethany A. Card, Secretary, Executive Office of Energy and Environmental Affairs
Elizabeth Cellucci, Director, Transportation Oversight Division, Massachusetts Department
of Public Utilities

Corrective Action Plan (CAP) Evaluation Matrix
Special Directive 22-13: Department of Public Utilities

Identification Number	Finding and Required Action (issued 8/31/22)	Initial DPU Proposed CAP Items (submitted 10/1/22)	Initial DPU Due Dates (Proposed on 10/1/22)	FTA Review (provided to DPU on 11/4/22)	DPU Response (submitted to FTA on 11/29/22)	FTA Follow-on Review (provided to DPU on 12/16/22)
FTA-22-DPU-CAT5-1.A	<p>Finding 1: DPU does not use its available resources as effectively as it could to support field observations, audits, and inspections of MBTA's rail transit system to identify safety deficiencies and require their immediate resolution.</p> <p>Required Action A: DPU must update its workload assessment to reflect the results of the SMI and address FTA's Special Directives 22-8 and 22-13.</p>	1. DPU Consultant (Vital Assurance) will conduct a workload assessment to include the work generated by Special Directives 22-8 and 22-13 and all associated CAPs	11/20/22	<p>Action Required FTA finds that additional action items are required to ensure creation of a comprehensive workload assessment owned by DPU and the Executive Office of Energy and Environmental Affairs (EEA).</p> <p>This CAP directs the contractor to conduct a workload assessment but does not explain how DPU and EEA are involved in scoping activities for the workload assessment or in clarifying expected outcomes, competencies of DPU staff, training approaches for new staff, and timeframes and priorities for the agency.</p> <p>DPU must identify the resources and support it will receive from the Executive Office of Energy and Environmental Affairs in developing its workload assessment and establishing associated timelines,</p>	<p>DPU and DPU's consultant, Vital Assurance, will meet at least bi-weekly to discuss and develop the scope of the workload assessment or to discuss the status of the assessment.</p> <p>Meetings will take place between the week of December 5, 2022, and May 1, 2023. DPU will work with Vital Assurance to develop the scope and parameters for updating the Workload Assessment to be completed by February 29, 2023.</p> <p>DPU Chair will brief EEA management monthly on the status of the workload assessment, (including staffing levels at Rail Transit, and the status of the Special</p>	<p>Action Required DPU must add the newly proposed actions discussed in the DPU Response column (submitted to FTA on 11/29/22) as new CAP items in the matrix and confirm due dates, responsible parties, by name and title, and verification plans or activities that DPU may complete to confirm implementation of CAP prior to final submissions to FTA.</p> <p>DPU may add this new information as sub-items to existing action items (i.e., 1.A, 1.B, 1.C, etc.) or may renumber the action items in the CAP to include the new items or incorporate both approaches.</p>

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				<p>including identifying options for staffing and resources to address the results of the SMI and FTA’s Special Directives 22-8 and 22-13. Briefings with EEA also should be included.</p> <p>DPU must also provide the parameters provided to DPU’s consultant for the workload assessment. These parameters should at least include the minimum assumptions used to create a baseline of minimum level of effort and how the DPU consultant will assess skills of those existing resources to ensure sufficient coverage in the final assessment.</p> <p>DPU must also update program documents to establish a regular and ad hoc process to update the workload assessment. The regular process should identify a consistent schedule on which the department will update the</p>	<p>Directives and Findings), beginning January 2023.</p> <p>DPU and DPU’s consultant, Vital Assurance, will meet at least bi-weekly to develop the parameters of the assessment, all assumptions, and discuss how Vital Assurance will assess skills of Rail Transit, beginning the week of December 5, 2022.</p> <p>DPU will establish a process that will become part of the Standard Operating Guide. Due May 1, 2023.</p>	<p>In addition, the DPU response must specify that DPU will submit to FTA: the scope and parameters established for the workload assessment, copies of the monthly briefing materials for EEA and briefing calendar, the Rail Transit skills assessment, and the Standard Operating Guide.</p>

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				assessment. The ad hoc process should identify parameters under which the agency will perform an assessment outside of its regular schedule, such as in response to staff turnover.		
		2. DPU will submit a copy of the completed workload assessment to FTA.	12/15/22	Action Item Approved	A Workload Assessment will be submitted to FTA by May 1, 2023.	FTA accepts the extended timeframe for this CAP from 11/20/22 to 5/1/2023.
FTA-22-DPU-CAT5-1.B	Finding 1: DPU does not use its available resources as effectively as it could to support field observations, audits, and inspections of MBTA's rail transit system to identify safety deficiencies and require their immediate resolution.	1. DPU and EEA Human Resources will meet to identify and match resources utilizing the workload assessment.	1/13/22	Action Required DPU and EEA must clarify additional action to ensure the effectiveness and comprehensiveness of this approach for hiring new positions and retaining existing positions. Previous DPU job postings have been challenging to fill. As an action item, to ensure agency ownership, please include briefing EEA leadership on DPU's hiring progress and needs for	DPU Chair will brief EEA senior management monthly on the status of the workload assessment, staffing levels at Rail Transit, and the status of the Special Directives and Findings beginning January 2023. Utilizing the Workload Assessment, EEA Human Resources will develop a recruitment plan to address long- term needs for attracting and hiring staff. The	Action Required DPU must add the newly proposed actions discussed in the DPU Response column (submitted to FTA on 11/29/22) as new CAP items in the matrix and confirm due dates, responsible parties, by name and title, and verification plans or activities that DPU may complete to confirm implementation of CAP

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	<p>Required Action B: DPU must match its resources to those identified in its updated workload assessment.</p>			<p>support to attract and retain applicants.</p> <p>This CAP also must provide evidence of the department’s commitment to addressing the results of the workload assessment, including authority to post/hire additional persons and how this activity will occur through the short and long-term. FTA understands that the key elements related to salary ranges and benefits are not controlled by DPU or EEA Human Resources.</p> <p>Also, DPU should indicate how it will use training and/or mentoring and contracting to address the workload assessment results and ensure effective staffing and technical capacity.</p>	<p>recruitment plan will be due July 2023. HR and Rail Transit will meet biweekly to discuss all hiring and recruitment activities.</p> <p>The Technical Training (“TTP”) Plan will be updated by Vital Assurance. Rail Transit will forward the TTP to HR for additional information regarding onboarding before the TTP is finalized.</p>	<p>prior to final submissions to FTA.</p> <p>DPU may add this new information as sub-items to existing action items (i.e., 1.A, 1.B, 1.C, etc.) or may renumber the action items in the CAP to include the new items or incorporate both approaches.</p> <p>In addition, DPU must include due dates for TTP update or start of bi-weekly meetings with EEA HR.</p>
		<p>2. Human Resources will create additional job descriptions, if needed.</p>	<p>1/27/23</p>	<p>Action Required See discussion above for item #1.</p>	<p>Rail Transit will create additional job descriptions as necessary based on the</p>	<p>Action Required See discussion above for FTA-22-DPU-CAT5-1.B item #1.</p>

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					Workload Assessment and submit these to HR for approval. The frequency of this task is ongoing, and it will be discussed as necessary at biweekly meetings.	
		3. Human Resources will post jobs to fill identified gaps in resources, if needed.	1/30/23	Action Required See discussion above for item #1.	Rail Transit will meet with HR biweekly to discuss postings. The DPU Chair will address the same with EEA Management at a monthly meeting.	Action Required See discussion above for FTA-22-DPU-CAT5-1.B item #1.
		4. DPU to provide monthly updates to FTA on hiring.	Ongoing until 12/31/23	Action Required DPU must develop contingency plans to implement if it is unable to hire resources sufficient to meet its updated workload assessment. DPU should include both obstacles to hiring and contingency plans in briefing for FTA. DPU must also provide monthly updates to EEA leadership.	Monthly staffing update dated November 28, 2022, is attached. The monthly update will be provided at the end of each month to FTA. The frequency of this task is ongoing. Rail Transit will forward the update to EEA HR Director and DPU Chair.	Action Required See discussion above for FTA-22-DPU-CAT5-1.B item #1.

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FTA-22-DPU-CAT5-1.C	<p>Finding 1: DPU does not use its available resources as effectively as it could to support field observations, audits, and inspections of MBTA’s rail transit system to identify safety deficiencies and require their immediate resolution.</p> <p>Required Action C: DPU must update its technical training plan, and, if bringing on new resources, must develop a plan for hiring and training personnel and/or contractors to fill the identified staffing needs.</p>	1. Engage third-party consultant to update technical training plan. DPU will utilize current consultant or issue an RFP.	11/30/22	<p>Action Required</p> <p>Action item is vague and does not identify a single or clear approach, i.e., DPU may take multiple options. DPU must clarify the deliverable for this action item – either a task order for the existing consultant or an RFP.</p> <p>DPU also must clarify whether the agency will have a contractor confirmed by 11/30/22 or have an RFP issued by 11/30/22, as these are not the same.</p> <p>DPU must also create an Action Item to complete updates to the technical training plan (TTP).</p> <p>If the contractor will also be conducting a gap assessment or best practices review, please include that submittal as well.</p>	<p>Vital Assurance, the DPU’s current consultant, will update the Technical Training Plan by 6/1/23.</p> <p>Vital Assurance and DPU will hold three to four working meetings to review the TTP and identify sections of the plan that must be updated. Vital will complete the update by 6/1/23. Rail Transit will forward to HR for additional information on onboarding.</p> <p>Rail Transit will submit the final TTP to FTA on or before July 1, 2023</p>	<p>Action Required</p> <p>DPU must add the newly proposed actions discussed in the DPU Response column (submitted to FTA on 11/29/22) as new CAP items in the matrix and confirm due dates, responsible parties, by name and title, and verification plans or activities that DPU may complete to confirm implementation of CAP prior to final submissions to FTA.</p> <p>DPU may add this new information as sub-items to existing action items (i.e., 1.A, 1.B, 1.C, etc.) or may renumber the action items in the CAP to include the new items or incorporate both approaches.</p>

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				-		In addition, DPU must clarify if additional SOW or tasking needs to be completed for the contractor and must include due dates for working meetings with the contractor to review the TTP.
		2. Consultant to draft a brief process for onboarding newly hired Rail Transit employees.	1/27/23	Action Required DPU must develop additional action items for a plan for hiring and training personnel and/or contractors. This plan should reflect or be tied to a Technical Training Plan (TTP).	Human Resources will include a brief process for onboarding new hires. The process will be integrated into the TTP to be submitted on July 1, 2023.	Action Required See discussion above for FTA-22-DPU-CAT5-1.C item #1. FTA accepts the extended timeframe for action (to July 1, 2023).
		3. Human Resources will execute the recruitment and hiring plan referenced in FTA-22-DPU-CAT5-1.C.	10/20/22	Action Required DPU must clarify whether this deadline is a typo or explain how Human Resources will execute a plan before 10/20/22 for hiring based on a TTP that will not be revised earlier than 11/30/22.	A recruitment plan and hiring may be executed independent of updates to the TTP. However, the recruitment and hiring plan is linked to the completion of the workload assessment.	Action Required Please clarify action item that addresses linkages between TTP and workload assessment.

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FTA-22-DPU-CAT5-1.D	<p>Finding 1: DPU does not use its available resources as effectively as it could to support field observations, audits, and inspections of MBTA's rail transit system to identify safety deficiencies and require their immediate resolution.</p> <p>Required Action D: DPU must review and update its processes and thresholds for using its existing enforcement authority to ensure timely resolution of CAPs or other required actions for safety.</p>	<p>1. Rail Transit in consultation with the Legal Division will revise its existing procedure in the Standard Operating Guide (SOG).</p>	9/30/22	<p>Action Required</p> <p>The provided enforcement procedure states that DPU is designated by FTA. This must be revised to reflect the fact that DPU is designated as the oversight authority for the Commonwealth and that FTA has certified the DPU's oversight program.</p> <p>The revised enforcement procedure clarifies that DPU will use the same general process for enforcement, in every case, beginning with an informal discussion and, if necessary, escalating to a written directive and formal enforcement action resulting from an administrative hearing on the matter consistent with 220 CMR § 1.00. DPU does not have the authority to issue fines or penalties to the MBTA.</p>	<p>DPU will revise the enforcement procedure to include language that DPU is designated as the oversight authority for the Commonwealth and that FTA has certified the DPU's oversight program.</p> <p>DPU will develop the requested flow chart and table by March 10, 2023.</p> <p>The revised SOG enforcement section, flow chart and table will be forwarded to the DPU Commission for its review by March 10, 2023.</p>	<p>Action Required</p> <p>PU must add the newly proposed actions discussed in the DPU Response column (submitted to FTA on 11/29/22) as new CAP items in the matrix and confirm due dates, responsible parties, by name and title, and verification plans or activities that DPU may complete to confirm implementation of CAP prior to final submissions to FTA.</p> <p>DPU may add this new information as sub-items to existing action items (i.e., 1.A, 1.B, 1.C, etc.) or may renumber the action items in the CAP to include the new items or incorporate both approaches.</p>

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FTA-DPU-22-1-4 FTA-DPU-22-2-4 FTA-DPU-22-3-4 FTA-DPU-22-4-4	SD 22-8 Findings 1, 2, 3, & 4 Required Action 4: DPU must provide to FTA a plan for the DPU to utilize its enforcement authority if the MBTA fails to adequately address any approved CAPs. (SDs 22-4, 5, 6, & 7)			The legal disclaimer seems to indicate that the procedure only provides internal guidance and should not be relied upon to create rights or limitations on otherwise lawful litigation prerogatives of DPU. DPU should include development of an escalation flowchart and accountabilities table as part of its SOG, to ensure DPU staff understands which level of the organization is responsible for which action.		In addition, DPU must clarify which items will be submitted to FTA.
		2. Rail Transit will distribute the revised SOG enforcement procedure to the Commission and will submit a copy of the communication to FTA.	9/30/22	Action Required DPU must clarify whether distribution to the Commission allows DPU to carry out the procedure.	Rail Transit will distribute the revised procedure and request the Commission's adoption via email by March 10, 2023.	Action Required DPU must clarify that distribution to the Commission marks the final step and indicate when the procedure will be in effect.
		3. No Enforcement Plans were submitted for the 9	N/A	Action Required	Per FTA letter sent September 9, 2022, this item is due 10 days	N/A

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		CAPs proposed by MBTA for SD 22-4.		DPU must submit Enforcement plans based on the revised Enforcement Procedure addressed in Letter sent to DPU on August 26, 2022, and specific to each of the 9 CAPs proposed by MBTA for SD 22-4.	after FTA approves DPU Enforcement Procedure.	
		4. DPU submitted Enforcement Plans for the 3 CAPs proposed by MBTA for SD 22-5.	7/20/22	Action Required DPU must revise and resubmit Enforcement plans based on the “Inspection and Verification and Evaluation Plans Matrix” sent on September 16, 2022, and the revised Enforcement Procedure addressed in Letter sent to DPU on August 26, 2022.	Per FTA Letter sent September 16, 2022, this item is due 15 days after FTA approves DPU Enforcement Procedure.	N/A
		5. DPU submitted Enforcement Plans for the <u>immediate actions</u> required of MBTA by SD 22-6.	7/15/2022	Action Required The enforcement plan for the SD 22-6 CAPs does not act quickly enough to remedy noncompliance. DPU must resubmit an effective enforcement plan for these CAPs.	Per FTA Letter sent August 26, 2022, this item is due 10 days after FTA approves DPU Enforcement Procedure.	N/A
		6. DPU submitted Enforcement Plans for the 4 CAPs	7/25/22	Action Required DPU must revise and resubmit Enforcement plans based on the “Inspection	Per FTA Letter sent September 16, 2022, this item is due 20 days after FTA approves DPU	N/A

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		proposed by MBTA for SD 22-6.		and Verification and Enforcement Plans Evaluation Matrix” sent September 16, 2022, and the revised Enforcement Procedure addressed in Letter sent to DPU on August 26, 2022.	Enforcement Procedure.	
		7. DPU submitted a plan for enforcement actions should the MBTA fail to successfully implement the immediate actions required by SD 22-7.	7/15/22	Action Required The enforcement plan for the SD 22-7 CAPs does not act quickly enough to remedy noncompliance. DPU must resubmit an effective enforcement plan for these CAPs.	Per FTA Letter sent August 26, 2022, this item is due 10 days after FTA approves DPU Enforcement Procedure.	N/A
		8. DPU submitted Enforcement Plans for the 2 CAPs proposed by MBTA for SD 22-7.	8/9/22	Action Required DPU must revise and resubmit Enforcement plans based on the “Inspection and Verification and Enforcement Plans Evaluation Matrix” sent September 16, 2022, and the revised Enforcement Procedure addressed in Letter sent to DPU on August 26, 2022.	Per FTA Letter sent September 16, 2022, this item is due 20 days after FTA approves DPU Enforcement Procedure	N/A
FTA-22-DPU-CAT5-2	Finding 2: DPU must examine and ensure its	1. The DPU General Counsel (GC) will convene an internal	10/7/22	Action Required	The legal team is analyzing:	Action Required DPU must add the newly proposed

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	<p>organizational and legal independence from the MBTA.</p> <p>Required Action: DPU must complete a legal assessment regarding its organizational independence from MBTA. This assessment must include review of organizational mechanisms, including recusals, limited reporting relationships, and other features that provide legal separation between the two agencies and ensure DPU's independence to take enforcement action against MBTA.</p>	<p>meeting to identify the discrete legal issues for analysis. Rail Transit will send an email to FTA to confirm the meeting occurred.</p>		<p>DPU must communicate the identified "discrete legal issues" to FTA.</p>	<ol style="list-style-type: none"> 1. How the DPU's independence compares to other jurisdictions; 2. Commission structure, appoint and removal process; 3. Reporting and decision-making structure between EEA, GOV, MBTA, and DPU; 4. Application of conflict-of-interest law, whistleblower law, and any other rule or law that may be applicable to determining independence of decision making. 5. Internal reporting and decision-making structure. 	<p>actions discussed in the DPU Response column (submitted to FTA on 11/29/22) as new CAP items in the matrix and confirm due dates, responsible parties, by name and title, and verification plans or activities that DPU may complete to confirm implementation of CAP prior to final submissions to FTA.</p> <p>DPU may add this new information as sub-items to existing action items (i.e., 1.A, 1.B, 1.C, etc.) or may renumber the action items in the CAP to include the new items or incorporate both approaches.</p> <p>In addition, DPU must clarify which items will be submitted to FTA.</p>

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		<p>2. The GC will convene and participate in a small legal team comprised of the General Counsel, one Assistant General Counsel currently working on Rail Transit issues, one Senior Counsel not currently working on Rail Transit issues, and one Counsel from outside the DPU, to make an initial legal assessment of each discrete issue.</p>	10/11/22	<p>Action Required DPU must communicate the results of its “initial legal assessment of each discrete issue” to FTA.</p>	<p>The group was convened on October 11, 2022. Analysis of these matters is on-going. Any initial analysis constitutes on-going attorney work product.</p>	<p>Action Required See FTA-22-DPU-CAT5-2, item #1 above. DPU must clarify which items will be submitted to FTA.</p>
		<p>3. The legal team will present the legal analysis to the Division Director and Commission for additional input and questions. Rail Transit will provide an email to FTA confirming that Actions 1-3 have been completed</p>	10/25/22	<p>Action Required DPU must communicate its legal analysis to FTA.</p>	<p>DPU will provide its final legal analysis as part of the final memorandum to FTA when complete. The legal team anticipates discussing its legal analysis with the Commission and Division Director by December 23, 2022.</p>	<p>Action Required See FTA-22-DPU-CAT5-2, item #1 above. DPU must clarify which items will be submitted to FTA.</p>

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Special Directive 22-13: Department of Public Utilities**

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		4. The legal team will draft a memorandum assessing current organizational independence through changes to reporting relationships, recusal processes or otherwise for Commission review	No Later Than 11/22/22	Action Required DPU must clarify whether this memorandum will identify concerns, propose changes, or both. If it will not do both, DPU must identify the mechanism it will use for both.	The final memorandum will include an assessment of independence and may provide options for changes to enhance independence, if any are identified. If any are identified, the Department will forward a memo to EOEEA and the Governor's Office recommending action.	Action Required See FTA-22-DPU-CAT5-2, item #1 above. DPU must clarify which items will be submitted to FTA.
		5. The GC will meet with the GC at the Secretariat level (Energy and Environmental Affairs) to discuss analysis and options	No Later Than 11/22/22	Action Item Approved	The DPU anticipates completing this item by 1/16/23.	FTA accepts the extended timeframe.
		6. The DPU Chair will present analysis, and any new policies or procedures under consideration at the Secretariat level and, if the options under consideration	No Later Than 11/22/22	Action Item Approved DPU must demonstrate that any legal concerns have been successfully addressed prior to closure of this CAP.	The DPU anticipates completing this item by 1/30/23.	FTA accepts the extended timeframe.

**Corrective Action Plan (CAP) Evaluation Matrix
Special Directive 22-13: Department of Public Utilities**

Identification Number	Finding and Required Action (issued 8/31/22)	Initial DPU Proposed CAP Items (submitted 10/1/22)	Initial DPU Due Dates (Proposed on 10/1/22)	FTA Review (provided to DPU on 11/4/22)	DPU Response (submitted to FTA on 11/29/22)	FTA Follow-on Review (provided to DPU on 12/16/22)
		require legislation, to the Governor' Office.				
		7. DPU will submit a final memorandum to FTA	11/22/22	Action Item Approved DPU must demonstrate that any legal concerns have been successfully addressed prior to closure of this CAP.	The DPU anticipates completing this item by 1/30/23.	FTA accepts the extended timeframe.
		8. DPU will demonstrate any legal concerns identified in the legal memorandum to the FTA have been resolved.				Action Required See FTA-22-DPU-CAT5-2, item #1 above regarding specific action items, due dates, responsible parties and verification plans, as necessary.
FTA-22-DPU-CAT5-3	Finding 3: DPU has not validated MBTA's fatigue management approach for rail transit officials and maintenance and engineering personnel. Required Action:	1. Taking into consideration the number of Rail Transit staff in January 2023, the DPU will determine whether Rail Transit has the staff resources to conduct an assessment of the fatigue management approach at the MBTA	1/29/23	Action Required The required action necessitates that DPU will assess MBTA's fatigue management approach. FTA expects that DPU staff and/or a contractor acting on behalf of a department conduct this assessment. DPU must resubmit this CAP to address the required	Vital Assurance will conduct an assessment of the fatigue management approach at MBTA. Vital Assurance and Rail Transit will meet to discuss the parameters and develop a scope of the assessment of the assessment, and do so by January 30, 2023.	Action Required DPU must add the newly proposed actions discussed in the DPU Response column (submitted to FTA on 11/29/22) as new CAP items in the matrix and confirm due dates, responsible parties, by name and title, and verification plans or activities that

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	<p>DPU must conduct an assessment and determine if additional action is required. If DPU finds that additional action is needed to reduce service hours to ensure the safety of MBTA employees and passengers, then DPU must use its own authority to require this action.</p>			<p>action. In this resubmission, DPU must describe how it will use its own authority to require a reduction in service hours.</p>	<p>Vital Assurance will complete the assessment by April 15, 2023. The final report will be forwarded to the DPU Commission.</p> <p>The fatigue management report will be sent to the MBTA's General Manager, Chief Safety Officer and the MBTA Board by April 28, 2023. Rail Transit will present the conclusions of the report to the Chief Safety Officer by April 28, 2023. Utilizing the conclusions of the fatigue management assessment, the DPU may direct MBTA to create a CAP to amend policies related to hours of service and fatigue management. Per the SOG, DPU will track the CAP, utilize the SOG processes for Inspection and Verification as well as Enforcement Plans. DPU will utilize the</p>	<p>DPU may complete to confirm implementation of CAP prior to final submissions to FTA.</p> <p>DPU may add this new information as sub-items to existing action items (i.e., 1.A, 1.B, 1.C, etc.) or may renumber the action items in the CAP to include the new items or incorporate both approaches.</p> <p>In addition, DPU must clarify which items will be submitted to FTA.</p>

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					Enforcement Procedure as necessary to support completion of the CAP.	
		2. DPU may either determine that Rail Transit will conduct an assessment with internal resources, or that a third-party consultant is needed.	1/29/23	Action Required See response to Finding 3, Action Item 1 above.	Vital Assurance will complete the fatigue management assessment by April 15, 2023.	Action Required See FTA-22-DPU-CAT5-3, item #1 above
		3. If a third-party consultant is needed, DPU will either issue an RFP to procure a third-party consultant or, in the alternative, issue a directive to the MBTA to procure a consultant to assess the fatigue management system.	2/16/23	Action Required See response to Finding 3, Action Item 1 above.	Vital Assurance will conduct the fatigue management assessment.	Action Required See FTA-22-DPU-CAT5-3, item #1 above
		4. If DPU issues a directive to the MBTA, DPU will create a CAP for the MBTA for purposes of tracking the	2/16/23	Action Required See response to Finding 3, Action Item 1 above.	Utilizing the conclusions of the fatigue management assessment, the DPU may direct MBTA to create a CAP to amend policies related to hours	Action Required See FTA-22-DPU-CAT5-3, item #1 above

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		implementation of the directive.			of service and fatigue management. See response above for 1 regarding enforcement.	
		5. Upon issuing a directive to the MBTA or hiring a third-party consultant, DPU will monitor the progress of the assessment until completion.	Ongoing through completion, on or about May 1, 2023	Action Required See response to Finding 3, Action Item 1 above.	Vital Assurance will conduct the fatigue management assessment. Rail Transit staff will monitor progress until completion.	Action Required See FTA-22-DPU-CAT5-5, item #1 above
FTA-22-DPU-CAT5-4.A	Finding 4: DPU has not demonstrated an ability to address safety issues and concerns identified during FTA’s SMI. Required Action A: DPU must adopt FTA’s findings and required actions in Special Directives 22-9 through 22-12.	1. DPU will submit a letter to FTA accepting the FTA’s Final Safety Management Inspection Report and adopting all corrective actions resulting from the report and special directives.	9/30/22	Action Item Approved Submission received.		
FTA-22-DPU-CAT5-4.B	Finding 4: DPU has not demonstrated an ability to address safety issues and	1. The Department will utilize its existing CAP review procedure for reviewing the	9/25/22	Action Item Approved Submission received.		

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	<p>concerns identified during FTA’s SMI.</p> <p>Required Action B: DPU must, in coordination with the FTA, require, review, and approve corrective action plans from MBTA to address FTA’s findings and required actions in Special Directives 22-9, 22-10, 22-11 and 22-12, and oversee the timely implementation and close-out of these CAPs.</p>	<p>corrective action plans that result from the special directive 22-11 and submit the CAP reviews to the FTA.</p>				
		<p>2. The Department will utilize its existing CAP review procedure for reviewing the corrective action plans that result from the special directive 22-9 and submit the CAP reviews to the FTA.</p>	<p>10/5/22</p>	<p>Action Item Approved Submission received.</p>		
		<p>3. The Department will utilize its existing CAP review procedure for reviewing the corrective action plans that result from the special directive 22-10 and submit the CAP reviews to the FTA.</p>	<p>10/20/22</p>	<p>Action Item Approved Submission received.</p>		
		<p>4. The Department will utilize its existing</p>	<p>10/10/22</p>	<p>Action Item Approved Submission received.</p>		

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		CAP review procedure for reviewing the corrective action plans that result from the special directive 22-12 and submit the CAP reviews to the FTA.				
		5. Rail Transit will enter each CAP into its own tracking system as CAPs are reviewed by DPU and provide a list of all CAPs tracked by the DPU to the FTA.	10/28/22	Action Item Approved		
FTA-22-DPU-CAT5-4.C	<p>Finding 4: DPU has not demonstrated an ability to address safety issues and concerns identified during FTA’s SMI.</p> <p>Required Action C: DPU must identify the specific activities that it will undertake to ensure MBTA’s completion</p>	1. Rail Transit will create an Inspection and Verification Plan for Corrective Actions resulting from SD 22-11. The Plan will include the name of the lead staff implementing the I and V Plan.	Date of CAP Approval by FTA and DPU plus 10 days	<p>Action Item Approved</p> <p><u>Note:</u> FTA will review and approve the inspection and verification plan for SD 22-11 and coordinate with DPU regarding its implementation.</p>		
		2. Rail Transit will create an Inspection and Verification Plan	Date of CAP Approval by FTA and	Action Item Approved		

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	of the required actions, a milestone schedule for completion of MBTA's required actions, and the parties at DPU and MBTA responsible for completing the required actions.	for Corrective Actions resulting from SD 22-9. The Plan will include the name of the lead staff implementing the I and V Plan.	DPU plus 10 days	<u>Note:</u> FTA will review and approve the inspection and verification plan for SD 22-9 and coordinate with DPU regarding its implementation.		
		3. Rail Transit will create an Inspection and Verification Plan for Corrective Actions resulting from SD 22-10. The Plan will include the name of the lead staff implementing the I and V Plan.	Date of CAP Approval by FTA and DPU plus 10 days	Action Item Approved <u>Note:</u> FTA will review and approve the inspection and verification plan for SD 22-10 and coordinate with DPU regarding its implementation.		
		4. Rail Transit will create an Inspection and Verification Plan for Corrective Actions resulting from SD 22-12. The Plan will include the name of the lead staff implementing the I and V Plan.	Date of CAP Approval by FTA and DPU plus 10 days	Action Item Approved <u>Note:</u> FTA will review and approve the inspection and verification plan for SD 22-12 and coordinate with DPU regarding its implementation.		