



THE SECRETARY OF TRANSPORTATION

WASHINGTON, DC 20590

February 8, 2016

The Honorable Larry Hogan
Governor of Maryland
100 State Circle
Annapolis, MD 21401

The Honorable Terry McAuliffe
Governor of Virginia
State Capitol
Third Floor
Richmond, VA 23219

The Honorable Muriel Bowser
Mayor of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Governor Hogan, Governor McAuliffe, and Mayor Bowser:

I am writing you in regard to the recent announcement by the Metropolitan Washington Council of Governments (MWCOG), on behalf of your jurisdictions, that you do not expect to pursue final legislative action in 2016 to establish a federally compliant State Safety Oversight Agency (SSOA) to oversee the rail operations of the Washington Metropolitan Area Transit Authority (WMATA).

This news was unexpected and disappointing. The shortcomings of the current Tri-State Oversight Committee, created by a Memorandum of Understanding among your three jurisdictions, are well documented and have led me to order the Federal Transit Administration (FTA) to assume lead safety oversight of WMATA. However, during our meeting last July, I emphasized the importance of the three jurisdictions working urgently to stand up an SSOA that meets the rigorous safety standards under current Federal law. We specifically urged any necessary legislative actions in 2016 and offered technical assistance to your jurisdictions. The jurisdictions had ample time to begin and complete this work.

The FTA's assumption of safety oversight of WMATA is and has always been intended as a temporary measure, meant to allow your jurisdictions to quickly develop a compact for a federally compliant SSOA. The FTA—and indeed our Department—are devoting enormous energy and resources to stand in place of your jurisdictions' responsibilities temporarily.

The Honorable Larry Hogan, Terry McAuliffe, and Muriel Bowser

Our expectation that the jurisdictions will address this matter this year has not changed. We expect that your jurisdictions will move quickly to create a federally compliant SSOA that FTA can approve. Of key importance will be provisions that ensure meaningful and effective enforcement by the SSOA of applicable safety laws, rules, regulations, and directives.

In the meantime, the Fixing America's Surface Transportation (FAST) Act, recently signed into law by President Obama, provides me with a mechanism to incentivize action on serious safety problems. Consistent with that new statutory authority:

- FTA has issued a final determination that the Tri-State Oversight Committee "is incapable of providing adequate safety oversight consistent with the prevention of substantial risk of death or personal injury" (copy enclosed).
- The State of Maryland, the Commonwealth of Virginia, and the District of Columbia will have one year to obtain FTA certification that a new State Safety Oversight (SSO) program is consistent with Federal requirements. Failure to do so may result in the withholding of "up to 5 percent of the amount required to be appropriated for use in a State or an urbanized area in the State under Section 5307" until FTA certifies the new SSO program.

I urge you to maintain your commitment to establish a compliant State Safety Oversight Agency as soon as possible. To that end, I request that you apprise me of the specific actions that you will take in 2016 to make that happen. The riders and workers of WMATA deserve nothing less. If I can provide further information or assistance, please feel free to contact me.

Sincerely,



Anthony R. Foxx

Enclosure

cc: Thomas V. (Mike) Miller, Jr., President, Maryland Senate
J.B. Jennings, Minority Leader, Maryland Senate
Mike Busch, Speaker, Maryland House of Delegates
Nicholaus Kipke, Minority Leader, Maryland House of Delegates
Thomas Norment, Jr., Majority Leader, Virginia State Senate
Dick Saslaw, Minority Leader, Virginia State Senate
William Howell, Speaker, Virginia House of Delegates
David Toscano, Minority Leader, Virginia House of Delegates
Phil Mendelson, Chairman, Council of the District of Columbia



U.S. Department
of Transportation

**Federal Transit
Administration**

Administrator

1200 New Jersey Avenue, SE
Washington, DC 20590

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Dear Governor Hogan, Governor McAuliffe, and Mayor Bowser:

In October 2015, under the authority granted the Federal Transit Administration (FTA) in the Moving Ahead for Progress in the 21st Century Act (MAP-21), FTA assumed a direct safety oversight role of the Washington Metropolitan Area Transit Authority (WMATA). The FTA issued Safety Directive 16-1, which realigns the work that the Tri-State Oversight Committee (TOC) will perform under the direction of FTA and identifies responsibilities FTA has assumed to carry out the State Safety Oversight Program (SSOP) requirements under current federal law.

On December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation (FAST) Act. The FAST Act includes additional authorities for FTA related to oversight of SSOPs. The purpose of this letter is to affirm FTA's role in providing direct safety oversight of WMATA, and to inform you that FTA finds the TOC is incapable of providing adequate safety oversight consistent with the prevention of substantial risk of death or personal injury.

Under 49 U.S.C. § 5329(e)(8), as amended by the FAST Act:

(A) In General.—If the Secretary determines that a State safety oversight program is not being carried out in accordance with this section, has become inadequate to ensure the enforcement of Federal safety regulation, or is incapable of providing adequate safety oversight consistent with the prevention of substantial risk of death, or personal injury, the Secretary shall administer the State safety oversight program until the eligible State develops a State safety oversight program certified by the Secretary in accordance with this subsection.

(B) Temporary Federal Oversight.—In making a determination under subparagraph (A), the Secretary shall—

- (i) transmit to the eligible State and affected recipient or recipients, a written explanation of the determination or subsequent finding, including any intention to withhold funding under this section, the amount of funds proposed to be withheld, and if applicable, a formal notice of a withdrawal of State safety oversight program approval; and
- (ii) require the State to submit a State safety oversight program or modification for certification by the Secretary that meets the requirements of this subsection.

The TOC is incapable of providing adequate safety oversight of WMATA

In response to concerns regarding WMATA's safety performance, in March and April of 2015, FTA conducted an organization-wide Safety Management Inspection (SMI) of the WMATA rail and bus systems. As a result of this SMI, FTA issued Safety Directive 15-1 to WMATA that identified 78 corrective actions to be implemented for Metrorail and 13 corrective actions to be implemented for Metrobus.

On September 30, 2015, in response to the January 12, 2015, smoke and arcing incident at the L'Enfant Plaza station, in which one person was killed and 86 were injured, the National Transportation Safety Board (NTSB) issued urgent recommendation R-15-31 to the U.S. Department of Transportation to seek statutory authority to authorize the Federal Railroad Administration to exercise regulatory oversight of WMATA. This urgent recommendation was due to the "continued failure of the Tri-State Oversight Committee (TOC) to provide effective safety oversight of the Washington Metropolitan Area Transportation Authority."

The results of FTA's Safety Management Inspection, coupled with the NTSB recommendation, prompted the Secretary of Transportation to direct FTA to exercise its authority to directly oversee WMATA's safety and administer the TOC's State Safety Oversight Program.

As part of FTA's direct safety oversight of WMATA, we reviewed the TOC's open safety findings for WMATA. We found that the TOC had issued 217 safety findings to WMATA since 2008 that remained open, meaning they had not been addressed adequately by WMATA. On December 15, 2015, FTA issued Safety Directive 16-2 to WMATA, requiring WMATA to address the TOC's open findings.

Pursuant to 49 U.S.C. § 5329(e)(8), FTA finds that the inability of the TOC to enforce its findings demonstrates that it remains incapable of providing adequate safety oversight consistent with prevention of substantial risk of death or personal injury, and thus FTA will continue to administer the State safety oversight program over WMATA.

FTA's administration of the SSOP is temporary

In accordance with 49 U.S.C. § 5329(e)(8)(B) and consistent with prior correspondence, FTA's provision of safety oversight for WMATA is temporary. The FTA will continue the safety oversight role only until the State of Maryland, the Commonwealth of Virginia, and the District of Columbia establish a State Safety Oversight Agency capable of carrying out a State Safety Oversight Program that is compliant with current Federal law. Pursuant to 49 U.S.C. § 5329(e)(8)(B)(ii), the three jurisdictions must submit a State Safety Oversight Program for certification to FTA that meets Federal requirements.

Failure to Correct

Please be advised that if the jurisdictions fail to submit a State Safety Oversight Program, or if FTA determines that a submitted program is not sufficient to meet Federal requirements for certification, 49 U.S.C. § 5329(e)(8)(C) provides FTA a variety of remedies:

- (i) withhold funds available under paragraph (6) [grants to States to develop or carry out SSOPs] in an amount determined by the Secretary;
- (ii) beginning 1 year after the date of the determination, withhold not more than 5 percent of the amount required to be appropriated for use in a State or an urbanized area in the State under section 5307, until the State safety oversight program or modification has been certified; and
- (iii) use any other authorities authorized under this chapter considered necessary and appropriate.

Given FTA's determination that the TOC's State Safety Oversight Program is inadequate, the State of Maryland, the Commonwealth of Virginia, and the District of Columbia must receive FTA certification of a new State Safety Oversight Program – which includes creation of a new State Safety Oversight Agency compliant with Federal requirements – within one year from today's determination. If the State of Maryland, the Commonwealth of Virginia, and the District of Columbia fail to do so by February 9, 2017, FTA is prepared to withhold 5307 formula funds and take other appropriate action, as set forth above.

Conclusion

The FTA has provided and will continue to provide technical assistance to the jurisdictions as they work to develop a new State Safety Oversight Agency, the Metropolitan Safety Commission (MSC). I look forward to your continued efforts to establish the MSC expeditiously.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Therese W. McMillan", with a stylized flourish at the end.

Therese W. McMillan
Acting Administrator

cc: Leif Dormsjo, Director, District of Columbia Department of Transportation
Pete Rahn, Secretary, Maryland Department of Transportation
Aubrey Layne Secretary, Virginia Department of Transportation
Chuck Bean, Executive Director, Metropolitan Washington Council of Governments