



National Transportation Safety Board

Washington, DC 20594

Safety Recommendation

Date: September 30, 2015

In reply refer to: R-15-31 and -32 (Urgent)

The Honorable Anthony Foxx
Secretary of Transportation
US Department of Transportation
Washington, DC 20590

The National Transportation Safety Board (NTSB) urges the US Department of Transportation (DOT) to take action on the urgent safety recommendations issued in this letter. These recommendations address the continued failure of the Tri-State Oversight Committee (TOC) to provide effective safety oversight of the Washington Metropolitan Area Transit Authority (WMATA). These recommendations are derived from our ongoing investigation of the WMATA Metrorail smoke and arcing accident at the L'Enfant Plaza station on January 12, 2015, and from other events indicating inadequate oversight of WMATA. Facts supporting these recommendations are discussed below.

Background

On Monday, January 12, 2015, about 3:15 p.m. eastern standard time, WMATA Metrorail Yellow Line train 302 stopped after encountering an accumulation of heavy smoke while traveling southbound in a tunnel between the L'Enfant Plaza station and the Potomac River bridge in the District of Columbia.

About 400 passengers were on board the six-car passenger train at the time of the accident. Some passengers self-evacuated from the train, while others were assisted by emergency responders. The smoke originated from an arcing event near the third rail about 2,000 feet south of the L'Enfant Plaza station. Smoke filled the L'Enfant Plaza station causing an evacuation of the station. District of Columbia Fire and Emergency Management Services reported that 86 people were treated and transported from the scene; another 9 passengers self-transported to medical facilities. There was one passenger fatality.

On Tuesday, June 23, 2015, the NTSB convened a 2-day investigative hearing to gather additional factual information for the ongoing investigation of the accident. The investigative hearing focused on the following areas:

- State of WMATA's infrastructure
- Emergency response efforts
- WMATA's organizational culture
- Federal Transit Administration (FTA) and TOC efforts for public transportation safety

Rail Transit Operations

Rail transit operations are an inherently local activity, and the FTA has limited responsibility for the safety of rail transit operations. In the Intermodal Surface Transportation Efficiency Act of 1991, Congress directed the FTA to establish the State Safety Oversight (SSO) program; this program went into effect in 1997. Under this program, states are responsible for the safety of the rail fixed guideway systems within their borders. Each state is required to establish a state safety oversight agency (SSOA) that sets requirements for rail transit safety and monitors the performance of rail transit agencies in accordance with those requirements. The FTA established minimum requirements for the safety programs that the state agencies implement and oversees the efforts of the state agencies in carrying out the programs.

Since the establishment of the SSO program, the NTSB has investigated serious accidents involving rail transit systems; several of these accidents involved WMATA.¹ Many of the accident investigations identified inadequate oversight and regulation. In general, the NTSB investigations of WMATA found that although safety program plans were in place, they were not effectively implemented and overseen. In the NTSB's investigation of the June 22, 2009, WMATA accident near the Fort Totten station, we called for increased regulatory oversight of rail transit properties and recommended that the DOT seek the authority to provide safety oversight of rail fixed guideway transportation systems, including the ability to promulgate and enforce safety regulations and minimum requirements governing operations, track and equipment, and signal train control systems.

On July 6, 2012, the President signed into law the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, with an effective date of October 2, 2012. MAP-21 made a number of fundamental changes to the statutes that authorize the federal transit programs in Title 49 *United States Code (USC)* Chapter 53. The Public Transportation Safety Program requires the Secretary of Transportation to create and implement a national public transportation safety plan to improve the safety of all public transportation systems that receive funding from the FTA. The statute requires the contents of this plan to include the following:

1. Safety performance criteria for all modes of public transportation
2. Definition of the term "state of good repair"
3. Minimum safety performance standards for public transportation vehicles used in revenue operations that
 - a. do not apply to rolling stock otherwise regulated by the Secretary or any other federal agency
 - b. to the extent practicable, take into consideration
 - i. relevant recommendations of the National Transportation Safety Board
 - ii. recommendations of, and best practices standards developed by, the public transportation industry

¹ See, for example, NTSB accident reports: RAR-82-06, RAR-96-04, RAR-06-01, RAR-07-03, RAR-10-02, RAR-12-04, RAB-08-01, RAB-08-02, RAB-12-04, RAB-12-05, and DCA15FR004 preliminary report *Washington Metropolitan Area Transit Authority Arcing/Smoke Event with Passenger Evacuation, L'Enfant Plaza Station, Washington, DC, January 12, 2015.*

4. A public transportation safety certification training program

The FTA is still in the process of implementing the requirements of MAP-21. During the NTSB's June 23–24, 2015, investigative hearing into the WMATA L'Enfant Plaza accident, the FTA Associate Administrator for Transit Safety and Oversight was questioned about the implementation of the requirements of MAP-21. The Associate Administrator testified that the FTA's current rulemaking would include the elements stated above; however, he provided no specific timeline for completion of the rulemaking.²

Until the rail transit safety rulemaking called for by MAP-21 is complete, Title 49 *Code of Federal Regulations (CFR)* Part 659 (Rail Fixed Guideway Systems; State Safety Oversight) remains in effect, and SSOAs will continue using this regulation to conduct safety oversight. Although the FTA is responsible for overseeing the work of the SSOAs and for partially funding rail transit agencies through grants, it has a very small staff to regulate, audit, investigate, and administer the SSO program.

There are 32 SSOAs overseeing 50 rail transit systems.³ The level of expertise within each SSOA, the methods used to assure safety, and the agencies' resources vary and are not necessarily commensurate with the amount of rail transit activity for which each agency is responsible. Of the 50 rail transit systems, 3 operate in multiple states and cross state boundaries:

- WMATA – District of Columbia, Maryland, and Virginia
- Port Authority Transit Corporation (PATCO) – Pennsylvania and New Jersey
- Metro Transit-St. Louis (MetroLink) – Missouri and Illinois

The three SSOAs for transit agencies that operate across state boundaries face the challenges of managing oversight authorities and responsibilities among different jurisdictions under separate bureaucracies. A 2006 report by the Government Accountability Office stated that although the oversight programs of MetroLink and PATCO appeared to be working well, WMATA's oversight program "experienced difficulty obtaining funding, responding to FTA information requests, and ensuring audit findings are addressed."⁴

WMATA

WMATA is unique in that it is the only rail transit agency in the country with an SSOA made up of representatives from three jurisdictions (Maryland, Virginia, and the District of Columbia); it is the Tri-State Oversight Committee (TOC). The TOC was established in 1997 by a memorandum of understanding (MOU) between the Virginia Department of Rail and Public

² We note that the August 2015 *Report on DOT Significant Rulemakings* states that the FTA rulemaking on the Public Transportation Safety Program indicates that a draft notice of proposed rulemaking (NPRM) had not yet been sent to the Office of Management and Budget and projects the publication date of the NPRM to be October 21, 2015.

³ Federal Transit Administration, *State Safety Oversight (SSO) Program Annual Report for 2005* (Washington, DC: US Department of Transportation, Federal Transit Administration, 2005). http://www.fta.dot.gov/TSO/12537_12950.htm, accessed August 31, 2015.

⁴ Government Accountability Office, *RAIL TRANSIT: Additional Federal Leadership Would Enhance FTA's State Safety Oversight* (Washington, DC: Government Accountability Office, 2006). <http://www.gao.gov/products/GAO-06-821>, accessed August 31, 2015.

Transportation (VDRPT) and the Departments of Transportation of Maryland (MDOT) and the District of Columbia (DCDOT). Amended in 2008 and again in 2010, the MOU specifies that the TOC be composed of six representatives, two from each of those agencies. The secretaries of transportation for the State of Maryland and the Commonwealth of Virginia and the director of transportation for the District of Columbia select their respective members. The MOU specifies that TOC members must select a chair and a vice chair who serve in those capacities for 2 years. At the end of the 2-year term, the vice chair becomes the chair, and a new vice chair is selected by the TOC members.

As the designated SSOA for WMATA, the TOC is required to develop and adopt a System Safety Program Standard, a document that establishes the relationship between the oversight agency and the rail transit agency and that specifies the requirements that the rail transit agency must follow.⁵ The program standard must include requirements for safety practices to reduce the likelihood of unintentional events that may lead to death, injury, or property damage and security practices to reduce intentional wrongful or criminal acts or terrorist activities. The TOC does not conduct independent inspections of equipment, infrastructure, or operations as part of its safety oversight activities.⁶ The TOC has no regulatory or enforcement authority, such as the ability to initiate or levy civil penalties. It must rely on WMATA to respond appropriately and in a timely manner to any safety concern, finding, or recommendation the TOC makes.

Under the requirements of MAP-21, the FTA must certify oversight agencies, and, as a result of certification, an SSOA can receive federal grant money. To gain certification, an SSOA must show the FTA that it is financially independent of the rail transit system it oversees, it has adequate authority to oversee those systems, and it has adequate resources to hire appropriate staff. In 2013, the TOC received notification from the FTA that it did not meet MAP-21 certification requirements. Until the TOC is certified, it is not eligible for FTA SSOA funding grants. The FTA's concerns with the TOC focused on the TOC's effectiveness as a legal organizational model for overseeing WMATA. The following is a summary of issues cited by the FTA that led to the TOC's not receiving certification:⁷

1. The TOC is a committee created by MOU between the VDRPT, MDOT, and DCDOT.
2. Beyond the MOU, the TOC has no enabling legislation, administrative code, or set of regulations that each jurisdiction has adopted to enforce safety provisions for WMATA.
3. As a committee created by MOU, the TOC is not a legal agency of any state but it is a "working group" responsible for implementing the FTA's existing SSO program requirements (49 *CFR* Part 659).
4. As a committee, not a legal agency of a state, the TOC cannot hire staff, establish qualifications or training requirements, promulgate or enforce legislation or regulations, issue contracts, or take independent action.
5. As specified in the MOU, each jurisdiction (VDRPT, MDOT, and DCDOT) contributes one full-time and one part-time staff member to serve on the TOC. The jurisdictions appoint these members based on their own preferences and considerations. As a result,

⁵ Title 49 *CFR* 659.15, System Safety Program Standard.

⁶ TOC Program Standards and Procedures, Exhibit F3, January, 2011. NTSB Docket, DCA15FR004.

⁷ FTA GAP Analysis for the TOC with Attachments, Exhibit F1, October 2013. NTSB Docket, DCA15FR004.

the TOC has no uniform standards or qualifications for its members and no standard terms for employees.

6. TOC members are not managed and directed by the TOC but instead by their home jurisdictions. As a result, they can be moved or directed to support other safety or oversight activities in those home jurisdictions. For example, FTA SSO audits have found that MDOT and DCDOT both move their TOC members around to support other oversight programs (MDOT's program for the Maryland Transportation Administration) or agency safety obligations (engineering and construction of the DC Streetcar program).
7. The TOC chair position rotates every 2 years from jurisdiction to jurisdiction. This continual change in leadership exacerbates challenges for both TOC staff and WMATA in maintaining continuity and building expertise.
8. The TOC's members report up through the management and decision-making structures of the three separate jurisdictions. This situation makes it difficult for TOC members in the field to take expedient or independent action and to build consensus with each other regarding safety issues at WMATA. Findings, concerns, and approvals sometimes must move up the management structures of all three jurisdictions and back down to staff before any action can be taken.
9. All three jurisdictions have their own funding and political relationships with WMATA, with the counties serviced by WMATA, with the WMATA Board, and with each other.
 - a. The director of DCDOT serves as a member of the WMATA Board
 - b. All three jurisdictions have joint projects with WMATA
 - c. All three jurisdictions provide subsidies and funding to WMATA

In a February 26, 2014, letter to the Secretary of Transportation, Governor McAuliffe (Virginia), then Governor O'Malley (Maryland), and then Mayor Grey of the District of Columbia authorized what they described as an actionable step to establish an independent state oversight agency that would conform to MAP-21. In doing so they proposed the Metro Safety Commission (MSC), an independent organization that would assume the responsibilities of the TOC. The letter offers no detail, but it references a White Paper, *Optimizing State Safety Oversight of the WMATA Metro Rail System*, prepared by their respective jurisdictions.

The White Paper includes a discussion of the inherent barriers that the structure and function of the TOC pose for effective implementation of the SSO program.⁸ The paper describes the different jurisdictions' ideal SSO program for the oversight of WMATA and proposes actions necessary to achieve that ideal. It proposes to carry out this effort in two phases, acknowledging the time-consuming procedures and negotiations that would be required. Phase one is the creation of a strengthened Interim TOC Oversight Program, and phase two is either the legal creation of an MSC or federal oversight of WMATA's safety oversight functions.⁹

⁸ Tri-State Oversight Committee Oversight Program White Paper, *Optimizing State Safety Oversight of the WMATA Metro Rail System* (The District of Columbia, Maryland, and Virginia: 2010).

⁹ MAP-21 does not provide for direct federal safety oversight, and this alternative approach will not be pursued.

The White Paper proposes specific board membership, director, staff, facility, and funding requirements for the MSC. It includes discussion of the need for legal independence and authority for the MSC to conduct and enforce safety oversight of WMATA. However, the paper includes no details about establishing legal authority in a way that overcomes the multijurisdiction problems faced by the current TOC. Finally, it concedes that phase two will entail actions that will “consume years” to create. In the paper, the authors admit other challenges such as resources; legislation at the local, state, and federal levels; and budgetary constraints of all three jurisdictions that may further limit progress in achieving a robust safety oversight program. According to the TOC chairman, the earliest the MSC would come into existence is 2019.¹⁰

Discussion

The NTSB is concerned about the ongoing challenges to effective safety oversight of WMATA. The TOC’s current approach to assuring safety of WMATA consists of audits, reviewing required WMATA safety plans, following up on reported accidents and incidents, and corrective action plans developed in response to audit findings or accident investigations. MAP-21 was enacted to create a national public transportation safety plan to improve safety of all public modes of transportation. It calls for an increased level of independent oversight of rail transit agencies. MAP-21 requires the establishment of safety performance criteria and performance standards, which serve as the foundation of a safety management system (SMS). The FTA Associate Administrator testified during the NTSB investigative hearing on the L’Enfant Plaza accident that MAP-21 is very similar to the current 49 *CFR* Part 659, stating, “It just has a higher bar of what’s required for the state safety oversight agencies.”

Testimony given at the investigative hearing demonstrated that although both the TOC and WMATA have made progress since the 2009 Fort Totten accident, significant safety, oversight, and organizational issues still exist in both agencies. The TOC has only three full-time employees, and each employee is paid by and accountable to a different jurisdiction: Maryland, Virginia, or the District of Columbia. The TOC has no offices; the TOC staff participates in audits but has not conducted a single investigation into any accident or incident, because all investigations have been delegated to WMATA; and the TOC has no enforcement authority.¹¹

FTA enforcement authority will not change significantly under MAP-21. Because the FTA’s safety authority primarily relies on SSOAs, it does not wield the same regulatory enforcement tools to compel safety compliance that are available to other agencies such as the Federal Railroad Administration (FRA). The FTA envisions using an SMS approach to implement the National Public Transportation Safety Plan that systemically and proactively identifies the factors that contribute to unsafe events and prevents or minimizes the likelihood of their occurrence.¹² The NTSB agrees that an SMS is a critical component of assuring organizational safety, and we look forward to increased oversight under MAP-21. However, neither MAP-21 nor 49 *CFR* Part 659 provides regulatory enforcement tools to compel compliance that are available to other agencies such as the FRA. Title 49 *CFR* Part 659 provides no authority for the FTA to conduct inspections of rail transit agencies, and although MAP-21 does include some additional authorities for the FTA, the only FTA enforcement tool is to

¹⁰ TOC Plan for Transition to MSC, Exhibit F14, March 9, 2015, NTSB Docket, DCA15FR004.

¹¹ Title 49 *CFR* Part 659 authorizes an SSOA to delegate accident investigations to the transit agency.

¹² *Federal Register* 78, no. 192 (October 3, 2013): 61254.

withhold funds or require funds to be spent to correct a safety deficiency.¹³ According to the FTA,

safety oversight reviews would focus on the overall safety performance of an entire organization and effective implementation of the methods for identifying and evaluating safety risks and to mitigate exposure to those risks, instead of relying solely on strict compliance with regulatory requirements or technical standards.¹⁴

The infrastructure complexities of WMATA's system are comparable to those of commuter rail systems that are currently regulated by the FRA. The FRA exercises jurisdiction over all commuter services, as defined in 45 *USC* Section 1104(4), as provided by "commuter author[ities]" specifically enumerated in 45 *USC* 1104(3), including the Port Authority Trans-Hudson Corporation (PATH).¹⁵

PATH operates a 13.8-mile rapid transit system between New Jersey and New York. About one-half of the track is below ground level. Over 1,248 train movements per day carry about 244,000 passengers 5 days per week. Four major terminals and nine intermediate stations serve the closed system. PATH has 10 different speed limits ranging from 8 mph to 55 mph; the average speed over the system is about 20 mph. The FRA's authority to regulate this system is derived from 45 *USC* Section 1104(3), which means PATH is subject to FRA safety enforcement and oversight. PATH is a rail transit system similar to WMATA.

The FRA has established and developed robust inspection, oversight, regulatory, and enforcement authority and conducts regular safety compliance inspections of railroads. Title 49 *CFR* Part 209 describes the procedures used by the FRA in its enforcement of federal railroad safety statutes and regulations. According to appendix A to Part 209, those statutes include the Federal Railroad Safety Act of 1970 and a group of statutes enacted before 1970 referred to as the "older safety statutes." Other statutes include the Rail Safety Improvement Act of 1988, which raised the maximum civil penalties available under railroad safety laws and made individuals liable for willful violations of those laws.

The FRA administers and enforces the federal laws and related regulations designed to promote safety on railroads and exercises jurisdiction over all areas of railroad safety, such as track maintenance, inspection standards, equipment standards, and operating practices. It also administers and enforces regulations enacted under railroad safety legislation for locomotives, signals, safety appliances, power brakes, hours of service, transportation of explosives and other dangerous articles, and the reporting and investigation of railroad accidents. Railroad and related industry equipment, facilities, and records are inspected, and required reports are reviewed.

¹³ A proposed rule to establish a framework for the US Department of Transportation's authority, delegated to the FTA administrator, to monitor, oversee, and enforce safety in public transportation is at *Federal Register* 80, no. 157 (August 14, 2015): 48794.

¹⁴ *Federal Register* 78, no. 192 (October 3, 2013): 61255.

¹⁵ Title 45 *USC* Section 1104(3) designates the following entities as "commuter author[ities]": Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, and any entity created by one or more such agencies for the purpose of operating, or contracting for the operation of, commuter service.

The FRA issues and enforces railroad safety regulations, administers railroad financial assistance programs, conducts research and development in support of improved railroad safety and national rail transportation policy, provides for the rehabilitation of Northeast Corridor rail passenger service, and consolidates government support of rail transportation activities. FRA inspectors document noncompliance on inspection reports. The FRA has several tools available when inspectors find that railroads are noncompliant with applicable regulations. It can issue civil penalties, individual liability penalties, compliance orders, and emergency orders. In contrast, the FTA and the TOC do not have such tools.

The FRA fulfills its mission through safety compliance inspections, audits, and accident investigations. Annually the FRA develops a National Inspection Plan (NIP).¹⁶ The NIP is intended to reduce accidents by providing guidance to each FRA regional office on how inspectors in each of the five FRA disciplines—track, operating practices, motive power and equipment, signal and train control, and hazardous materials—should divide their work by railroad and state. Under this approach, the FRA uses data models to focus its inspectors' efforts in places deemed likely to have safety problems. The FRA headquarters uses accident, inspection, and other data to specify, by inspection discipline, numeric goals for the level of inspection activity to allocate to each railroad, by state. FRA regional administrators may adjust these goals for their respective regions based on local knowledge and emerging issues to allow regions to respond to new and/or unexpected events such as major accidents. The FRA monitors how the regions are meeting their inspection goals on an annual basis, and the regions are required to submit reports on any missed NIP goals. Furthermore, the FRA investigates all safety complaints from individuals, state and federal agencies, and railroads and their employees.

The FRA enforces the federal railroad safety regulations and laws with about 400 federal safety inspectors whose efforts are supplemented by about 165 state inspectors from states that participate in the FRA's State Inspection Program. Both Maryland and Virginia participate in the FRA's program. The state programs are important supplements to the NIP established by the FRA. The state inspectors coordinate with federal inspectors while monitoring the safety practices of each railroad company operating in the states. State inspectors are certified by the FRA. As states participating in the FRA state program, Maryland employs three FRA-qualified inspectors and Virginia employs six FRA-qualified inspectors. The role of the FRA-qualified inspectors is to inspect operating practices, motive power and equipment, and track and structures.

Another recent event illustrates the value that FRA oversight could bring to WMATA. On August 6, 2015, WMATA Metrorail train 412, a nonrevenue employee train, derailed on approach to the D02 (Smithsonian) Interlocking on track 2. Three of the six cars in the consist derailed. The derailed cars had not reached the switch points of the interlocking. WMATA's investigation into the derailment revealed that on July 9, 2015, a WMATA track geometry vehicle performed track measurement inspections on the Orange line of the Metrorail system through the area where the train derailed. This inspection identified a gage defect of 58.09 inches at chain marker D2-22+41 between the Federal Triangle station and the Smithsonian station, the

¹⁶ The new National Rail Safety Action Plan was developed in response to a 2004 DOT Office of the Inspector General recommendation that the FRA develop a comprehensive program to use available data to focus inspection activities.

area where train 412 derailed. This gage exceeded WMATA's maximum gage standard of 57.75 inches, a condition often referred to as wide gage.

Track gage is the spacing of the rails measured between the inner faces of the load-bearing rails. Wide gage impedes the wheel-rail interface, and derailment is likely. WMATA policy requires immediately removing the track from service because of wide gage, as identified on July 9, 2015, until repairs are completed.¹⁷ WMATA confirmed both the wide gage at the subsequent point of derailment and that this out-of-service track condition remained between July 9, 2015, and the August 6, 2015, derailment. For 27 days this gage defect remained in the track while WMATA continued to run revenue service trains over the track, with no reduction in speed or other mitigation.

FRA inspectors enforce the requirements set forth as Track Safety Standards in 49 *CFR* Part 213 in addition to operating practices and equipment safety standards for railroad operations. Track gage must be maintained within prescribed limits, or the track must be removed from service or the maximum track speed must be reduced.

Crosstie and wide gage defects are the second leading cause of derailments across the nation's railroads. The identification of track geometry defects during routine inspections is complex. Track geometry test vehicles using computerized tools enhance track inspections. FRA inspectors conduct ride-alongs on railroad-operated geometry cars. FRA inspectors monitor the data collected and observe remedial actions taken when defective conditions are identified. The FRA also operates its own geometry test vehicles under the Automated Track Inspection Program (ATIP). On an ATIP survey, an FRA inspector has the authority to stop the vehicle and objectively verify the defective conditions measured.

The role of FRA inspectors may vary depending on operational requirements. The FRA model includes data integrity oversight. Additionally, assurance of proper protection and remedial action are included. In many circumstances, after verification, the FRA may recommend a civil penalty assessment on the railroad if it is determined that the defective condition put railroad employees or the general public at risk.

With FRA oversight in place, the wide gage noted on July 9, 2015, would have required the track to be removed from service. Operations could have continued only after a designated person determined that operations could safely continue. Any operation also would be subject to limiting conditions specified by such person and at a maximum speed of 15 mph for a period of no longer than 30 days.¹⁸

Under the current safety oversight structure, the TOC does not have the authority to levy penalties or stop Metrorail revenue service for a track gage problem such as the one that existed for 27 days near the Smithsonian station and resulted in the derailment. Further, the only FTA enforcement action allowed under MAP-21 is withholding funds or directing funds to correct safety conditions.

¹⁷ WMATA 1000 Track Maintenance and Inspection Manual.

¹⁸ Title 49 *CFR* Part 213.

Conclusion

Regulatory assurance of compliance with standards and direct inspection and enforcement authority provides an increased measure of safety across all modes of transportation. The TOC currently does not have the authority, the expertise, or the resources to provide assurance of compliance. The TOC does not have a standardized set of regulations to draw upon. The TOC cannot issue civil penalties, individual liability penalties, compliance orders, or emergency orders nor can it conduct independent inspections.

The NTSB has initiated 11 investigations on the WMATA rail system over the past 33 years. In total, these accidents and incidents have resulted in 18 fatalities. Many of the NTSB investigations determined that WMATA's inadequate management of its operation contributed to the events, and based on the repeated and ongoing deficiencies identified during its investigations of accidents and incidents involving WMATA, the NTSB concludes that the TOC cannot perform effective safety oversight of the WMATA rail system. Based on testimony from representatives of the TOC and the FTA during the NTSB's June 23, 2015, investigative hearing on the January 12, 2015, WMATA Metrorail accident, the NTSB further concludes that neither the regulatory changes the FTA can make as a result of MAP-21 nor the proposed creation of a Metro Safety Commission will likely resolve the deficiencies identified in safety oversight of WMATA.

The FRA has an established state inspection program whereby states can participate in regulatory oversight. The District of Columbia, the State of Maryland, and the Commonwealth of Virginia, through the FRA's state inspection program, could remain involved in safety oversight of WMATA.

Without adequate oversight, accidents and incidents will continue to place the riders of the WMATA system at risk. The NTSB therefore proposes that the DOT seek the authorization under 45 *USC* Section 1104 to classify WMATA as a commuter authority, thus placing WMATA under the regulatory authority of the FRA.

The Congress is currently working on a surface transportation bill to reauthorize the DOT's surface transportation administrations, including the FRA and the FTA. This provides an opportunity to revise 45 *USC* Section 1104(3) to list WMATA as a commuter authority, thus placing WMATA under FRA regulatory oversight.

Therefore, the NTSB makes the following urgent safety recommendations to the US Department of Transportation:

Seek an amendment to Title 45 *United States Code* Section 1104(3) to list the Washington Metropolitan Area Transit Authority as a commuter authority, thus authorizing the Federal Railroad Administration to exercise regulatory oversight of the Washington Metropolitan Area Transit Authority's rail system.
(R-15-31) (Urgent)

After Title 45 *United States Code* Section 1104(3) is amended to include the Washington Metropolitan Area Transit Authority, direct the Administrator of the Federal Railroad Administration to develop and implement a plan to transition the oversight of the Washington Metropolitan Area Transit Authority's rail system to the Federal Railroad Administration within 6 months. (R-15-32) (Urgent)

Chairman HART, Vice Chairman DINH-ZARR, and Members SUMWALT and WEENER concurred in these recommendations.

We are vitally interested in these recommendations because they are designed to prevent accidents and save lives. We would appreciate receiving a response from you within 30 days detailing the actions you have taken or intend to take to implement them. When replying, please refer to the safety recommendations by number. We encourage you to submit your response electronically to correspondence@ntsb.gov.

[Original Signed]

By: Christopher A. Hart,
Chairman