

# UNITED STATES DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration [Special Directive No. 24-6, Notice No. 1] Special Directive Under 49 U.S.C. § 5329 and 49 CFR Part 670 to the Metropolitan Transportation Authority New York City Transit to Address Safety Risk to Rail Transit Roadway Workers

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

**SUMMARY:** FTA issues Special Directive (SD) 24-6 to require the Metropolitan Transportation Authority (MTA) New York City Transit (NYCT) to take action to address an escalating pattern of safety incidents and concerns affecting NYCT transit workers. FTA is issuing this Special Directive because FTA has determined that a combination of unsafe conditions and practices exists such that there is a substantial risk of death or personal injury.

This Special Directive identifies two findings related to NYCT's Roadway Worker Protection (RWP) program. FTA is directing NYCT to take four required actions to address these findings.

**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](mailto:joseph.delorenzo@dot.gov); for legal matters, Ms. Emily Jessup, Attorney Advisor, FTA, telephone 202-366-8907 or [emily.jessup@dot.gov](mailto:emily.jessup@dot.gov).

### SUPPLEMENTARY INFORMATION:

#### Background

FTA administers a national transit safety program to advance safe and reliable transit service throughout the United States. FTA works to monitor and increase transit safety through regulation, policy development, safety event and hazard investigation, data collection and safety risk analysis, statutorily authorized oversight programs, and information sharing.

NYCT is a public-benefit corporation in the State of New York that operates subway, bus, and paratransit public transportation in New York City and its five boroughs – Manhattan, Brooklyn, Queens, the Bronx, and Staten Island. Part of the MTA, NYCT is the busiest and largest transit system in the United States, with a daily ridership in 2023 of approximately 5 million trips.

NYCT's subway system employs nearly 30,000 people; it operates 24 hours a day, 7 days a week over 36 lines with a fleet of more than 6,500 subway cars. The system comprises 472 stations and over 850 miles of track (over 665 miles used in passenger service). In 2023, the subway had a daily ridership of approximately 3.6 million, and an annual ridership of 1.15 billion.

Each day, over 10,000 NYCT transit workers support the maintenance and inspection of NYCT's rail transit infrastructure. These workers routinely access NYCT's tracks (roadway), where they could be struck by trains or equipment, electrocuted, or subject to falls and other accidents. Thousands of other transit workers, including train operators and conductors, car cleaners and inspectors, station agents, and technicians and maintainers in a variety of disciplines also may access the roadway in the performance of their routine duties or during emergencies.

### **NYCT Roadway Worker Protection (RWP) program**

NYCT established an RWP program that includes rules and procedures, training and supervision, communication protocols and technology, and on-track protection to manage the risk of working on the rail transit roadway, including establishing a process for transit workers to access the roadway, requirements for on-track safety, and protections that must be in place when work is performed on the roadway. The RWP program includes work zone controls and flagging rules, which require dedicated transit worker positions, such as flaggers and watchpersons, and tools, such as multi-colored lights and flags, to alert workers on the roadway to the presence of trains and to direct workers to clear the tracks in places of safety so trains can pass safely. Flaggers place flagging devices and lanterns at designated locations and distances from work crews to alert trains to the presence of workers. NYCT workers who must access the roadway to perform work undergo an eight-hour track safety training and refresher training every two years. NYCT workers responsible for establishing on-track safety receive additional training and qualification.

During FTA's June 2024 audit of the New York Public Transportation Safety Board's (PTSB) State Safety Oversight (SSO) program, the agency designated by the State of New York to provide safety oversight for the NYCT rail transit system, FTA identified significant safety deficiencies in NYCT's RWP program. These deficiencies include a failure to respond to RWP-related safety events and near-misses in a manner commensurate with the safety risk associated with roadway access and inadequate safety assurance activities to ensure the RWP program is implemented effectively. Recent safety events, including a worker fatality in November 2023 and a critical worker injury in June 2024, and a significant increase in near-miss events involving transit workers and trains over the last year, reflect a combination of unsafe conditions and practices such that there is a substantial risk of death or personal injury that necessitates action to ensure the safety of transit workers on the NYCT roadway.

### **Finding 1. NYCT Has Not Exercised Safety Risk Management (SRM) Provisions in its Agency Safety Plan to Address Changing Safety Risk to Workers**

On November 29, 2023, a NYCT train struck and fatally injured a NYCT transit worker performing RWP flagging duties for a cleaning crew near the 34th Street-Herald Square Station in Manhattan, NY. This safety event is under investigation by the National Transportation Safety Board (NTSB). On June 6, 2024, a NYCT train struck and critically injured a transit worker near the Hoyt-Schermerhorn Street Station. NTSB is coordinating with PTSB, NYCT, and FTA to determine if further investigation of this safety event is necessary.

In addition to the worker fatality in November 2023 and the critical worker injury in June 2024, NYCT experienced 38 Potential Employee Contact (PEC)<sup>1</sup> near-miss events<sup>2</sup> in Calendar Year (CY) 2023. This number represents a 58 percent increase from 24 PEC events in CY 2022 and a 65 percent increase from 23 PEC events in CY 2021.

Half of the 38 PEC near-miss events in CY 2023 (19 near miss-events) involved one or more transit workers failing to follow established flagging procedures. Other PEC near-miss events involved improper communications and radio use, improper roadway protection set-up, lack of supervision, improper access to the roadway, failure to follow established protocols in communications-based train control (CBTC)<sup>3</sup> territory, and train operator inattention.

In 2014, in response to FTA Safety Advisory 14-1, and in 2019, in response to NTSB Safety Recommendation R-19-034, NYCT conducted a safety risk assessment regarding elements of its RWP program, primarily focused on the evaluation of flagging rules, equipment, and emerging technology for improvements to on-track safety. Since that time, NYCT has not elevated RWP-related concerns through its Safety Risk Management (SRM) process, even though information gathered through its safety performance monitoring and measurement activities as part of its safety assurance process indicates that they agency's current RWP program may be insufficient to manage safety risk commensurate with the agency's recent RWP safety performance such that there is a substantial risk of death or personal injury<sup>4</sup>. With a 58 percent increase in RWP-related near-miss events in a single year, and a worker fatality and critical injury in the last seven months, FTA finds that NYCT has not used the SRM process required by FTA and described in NYCT's Agency Safety Plan to address the changing safety risk to workers on the roadway.

## **Finding 2. NYCT Must Take Additional Action to Ensure Compliance with and Sufficiency of NYCT's RWP Program**

As part of its SSO audit of PTASB in June 2024, FTA reviewed investigation reports and other materials related to 36 NYCT near-miss incidents from CY 2023. This review indicated a clear pattern of rule violations contributing to these near-miss events. The recurring nature of certain rule violations, such as improper flagging and failure to inhibit Automatic Train Operation in CBTC territory, suggests systemic issues that require more comprehensive monitoring of RWP program implementation by NYCT. Information obtained by FTA from safety event and PEC

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<sup>1</sup> Per the 2023 NYCT Department of Subways Agency Safety Plan, page 6-111, PEC near-miss events include, but are not limited to, "all incidents involving potential employee contact with trains while working on the roadbed", violations of the document issued by NYCT to authorize work on the tracks and subway infrastructure, improper flagging, portable trip overruns, and trains passing work areas at excessive speed or failure to sound horn when passing through an established flagging area.

<sup>2</sup> NYCT classifies PEC near-miss events as a subtype of near-miss incidents. FTA uses the term near-miss events consistent with definitions available at 49 CFR § 673.5, the Definitions section of FTA's Public Transportation Agency Safety Plans (PTASP) rule.

<sup>3</sup> CBTC is a train control system that uses communication among rail vehicles, wayside devices, and the rail transit system's control center to manage the movement of vehicles within the rail transit system, including automatic braking when a rail vehicle is traveling at a speed higher than the system is set to accept or to proper vehicle separation.

<sup>4</sup> FTA's PTASP rule establishes requirements for applicable transit agencies, including NYCT, to establish a Safety Management System, including SRM (§ 673.25) and Safety Assurance (§ 673.27).

near-miss investigations also indicates that lack of supervision may contribute to conditions that allow lapses in compliance with procedures that can result in accidents, fatalities, and injuries.

In response to the findings of its investigations, NYCT developed corrective action plans (CAPs) intended to minimize, control, correct, or eliminate risks and hazards. Of the 36 CAPs related to near-miss events reviewed by FTA, 22 CAPs involved issuing safety advisories and 6 involved issuing bulletins – all to remind workers of proper protocols and provide lessons learned. These advisories support communication with transit workers, but do not improve rules, procedures, training, supervision, compliance monitoring, or on-track protection. Responding to repeated RWP near-misses through rules reminders and lessons learned fails to address any factor beyond transit worker awareness and relies on the transit worker to independently review and incorporate information into their job performance. Further, continued RWP-related safety events and near-misses may indicate that these corrective actions are insufficient to prevent recurrence and that the RWP program may benefit from heightened monitoring to identify other factors contributing to ongoing events.

Under the safety performance monitoring and measurement component of Safety Assurance required by the PTASP rule at § 673.27(b)(1), a transit agency must monitor its system for compliance with, and sufficiency of, the transit agency's procedures for operations and maintenance. Monitoring compliance with and the sufficiency of its RWP program is critical for NYCT to identify and address safety concerns in a timely manner. Frequent monitoring also helps ensure that workers are following RWP procedures consistently, maintaining compliance with regulations, allowing for the quick identification of recurring problems or emerging trends that may require immediate attention, and provide opportunities to refine and optimize RWP procedures based on real-time observations and feedback. Such monitoring also increases accountability and generates valuable data that can be analyzed to inform long-term safety strategies and program improvements.

FTA finds that additional monitoring of compliance with and the sufficiency of the RWP program will help NYCT identify and implement more effective mitigations to prevent recurrence of near-miss and other RWP safety events.

**DIRECTIVE AND REQUIRED ACTIONS:**

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

<b>Findings</b>		<b>Tracking #</b>	<b>Required Actions</b>
Finding 1	NYCT Has Not Exercised Safety Risk Management (SRM) Provisions in its	FTA-24-6-001-1	Within 60 days of issuance of this Directive, NYCT must conduct a comprehensive safety risk assessment of its RWP program, including information from recent safety events, and submit to FTA for review and approval.

Findings		Tracking #	Required Actions
	Agency Safety Plan to Address Changing Safety Risk to Workers	FTA-24-6-001-2	Within 30 days FTA’s approval of and based on the results of the safety risk assessment required in FTA-24-6-001-1, NYCT must identify and submit any necessary mitigations and a mitigation monitoring plan to address the results of the safety risk assessment to FTA for review, approval, and implementation monitoring.
Finding 2	NYCT Must Take Additional Action to Ensure Compliance with and Sufficiency of NYCT’s RWP Program	FTA-24-6-002-1	Within 10 days of issuance of this Directive, NYCT must begin weekly internal monitoring of its compliance with and the sufficiency of its RWP program by management/supervision.
		FTA-24-6-002-2	Within 100 days of issuance of this Directive, NYCT must develop a CAP to address the results of weekly internal monitoring activities required in FTA-24-6-002-1 and submit to FTA for review, approval, and implementation monitoring. Within 30 days of FTA’s approval of the CAP, NYCT must begin monthly reporting on its progress to address the CAP to FTA.

In accordance with the timeframes specified above, NYCT must submit the required plans to FTA that demonstrate the specific actions NYCT will take to address the required actions specified in this Special Directive and propose a milestone schedule for completing each activity; identify the responsible parties for each action and their contact information; and the verification strategy for ensuring the completion of required work.

FTA will review and approve (with revisions as necessary) NYCT’s plan(s) and will monitor NYCT’s progress in resolving each finding and required action. FTA will conduct scheduled meetings with NYCT to review its 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), NYCT has 30 calendar days from the date of this Special Directive to petition for reconsideration with the FTA Acting Administrator. The petition must be in writing and signed by the NYCT Accountable Executive or equivalent entity and must include a brief explanation of why NYCT 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 may 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 Acting Administrator, this Special Directive will remain in effect and must be observed pending review of a petition for reconsideration.

Within 90 days of receipt of the petition, the Acting Administrator will provide a written response. In reviewing the petition, the Acting Administrator shall grant relief only where NYCT has clearly articulated an alternative action that will provide, in the Acting Administrator's judgment, a level of safety equivalent to that provided by compliance with this Special Directive. In reviewing any petition for reconsideration, the Acting Administrator shall grant petitions only where NYCT 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 NYCT to use Federal financial assistance to correct safety deficiencies; (2) withholding up to 25 percent of financial assistance under 49 U.S.C. § 5307; and (3) issuing restrictions or prohibitions as necessary and appropriate to address unsafe conditions or practices that present a substantial risk of death or personal injury.

Issued on: August 13, 2024



**Matthew J. Welbes**

Executive Director

Federal Transit Administration

U.S. Department of Transportation