

**UNITED STATES DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**[Special Directive No. 24-7, Notice No. 1]**

**Special Directive Under 49 U.S.C. § 5329 and 49 CFR Part 670  
to the New York State Department of Transportation, Public Transportation Safety Board  
to Enhance Oversight of Roadway Worker Protection on the New York City Transit  
Subway System**

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

**SUMMARY:** FTA issues Special Directive (SD) 24-7 to require the New York Public Transportation Safety Board (PTSB) to perform additional oversight activities to address an escalating pattern of safety incidents and concerns affecting transit workers at the Metropolitan Transportation Authority (MTA) New York City Transit (NYCT). FTA is issuing this Special Directive because FTA has determined that unsafe condition exists at NYCT such that there is a substantial risk of death or personal injury for which PTSB must enhance its required oversight.

This Special Directive identifies three findings related to PTSB's oversight of NYCT's Roadway Worker Protection (RWP) program. FTA finds that PTSB's SSO program can improve its oversight of NYCT corrective actions designed to address RWP-related safety concerns, including independent reviews for effectiveness and implementation, independent RWP auditing and inspections, and RWP training to ensure NYCT appropriately recognizes, analyzes, and responds to safety concerns, emerging trends, and safety risk related to the implementation of an effective and responsive RWP program commensurate with the safety risk associated with transit workers accessing the rail transit roadway in the performance of their job duties.

FTA is directing PTSB to take six required actions to address these findings. FTA requires PTSB to make enhancements to its oversight program to conduct independent analysis of NYCT RWP safety events; to enhance monitoring of NYCT's compliance with its RWP rules; to assess continued effectiveness of NYCT's RWP training program; and to increase monitoring and reporting regarding NYCT's activities to strengthen its RWP program and compliance with safety rules.

**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.

MTA 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. NYCT Department of Subways (DOS) 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.

PTSB is the agency designated by the State of New York to provide safety oversight for the NYCT subway system. FTA certified PTSB's safety oversight program for NYCT's subway system in February 2019. In exercising its oversight role, PTSB is responsible for ensuring NYCT's execution of its safety program and compliance with FTA safety requirements such as the Public Transportation Agency Safety Plans (PTASP) rule (49 CFR Part 673).

### **NYCT RWP Safety Events**

On November 29, 2023, a NYCT train struck and fatally injured a NYCT track worker while flagging for a cleaning crew near the 34th Street-Herald Square Station in Manhattan, NY. This accident remains under investigation by the National Transportation Safety Board (NTSB). This was the first RWP-related NYCT worker fatality since 2020, when a car cleaner was found dead after fouling the track and running into the electrified third rail.

On June 6, 2024, a NYCT train struck and critically injured a NYCT track worker near the Hoyt-Schermerhorn Street Station. NTSB is coordinating with PTSB, NYCT, and FTA to determine if further investigation of this incident is necessary. This was the first major injury of a track worker since a signal maintainer was hit by an in-service Q train on the northbound express track in the vicinity of the 8th Street-NYU station and lost his foot and had his other leg shattered in January 2022.

NYCT experienced 38 Potential Employee Contact (PEC)<sup>5</sup> near-miss events<sup>6</sup> in 2023, up 58 percent from 24 in 2022 and 65 percent from 23 in 2021. The most common type of PEC near-miss event involved improper flagging (19 events), a potential contributing factor in the worker safety events on November 29, 2023, and June 6, 2024. Other PEC near-miss events involved failures to follow established procedures for RWP or train operation.

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<sup>5</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>6</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.

In 2023, NYCT also experienced 228 non-PEC near-miss safety events, up three percent from 222 in 2022 and up 46 percent from 156 in 2021. These events are classified as incidents involving a train or a right of way operation which could have resulted in a customer injury or property damage but no potential for employee death or serious injury. These incidents include switch run-throughs, home signal overruns, third rail explosion/work procedure, train doors opening on the wrong side with no accessible platform/doors opening outside of station limits, and unauthorized wrong rail/reverse moves. As with the PEC incidents, the majority of the non-PEC incidents were caused by the failure of NYCT employees to comply with key safety rules and established procedures. Based on this data, FTA identified an escalating pattern of safety incidents and concerns in NYCT's RWP program and of non-compliance with NYCT key safety rules designed to protect workers and passengers in NYCT's operations.

### **PTSB Oversight of NYCT RWP Program**

As the Federally required and State-identified entity responsible for overseeing and enforcing safety at the NYCT rail transit system, Federal law<sup>7</sup> requires PTSB to oversee NYCT's execution of its Agency Safety Plan (ASP) and investigate any allegation of non-compliance with the ASP. To the extent that PTSB's RWP program is included in the agency's ASP, responding to a failure by NYCT to consistently implement an effective RWP program is part of its responsibility for overseeing the safety of the rail transit system.

### **Finding 1: PTSB Must Expand Activities to Oversee NYCT's RWP Program**

NYCT's RWP program is included in NYCT's Department of Subways Agency Safety Plan, which is reviewed and approved, overseen, and enforced by the PTSB through its SSO program. Through the NYSDOT Commissioner, PTSB also participates in NYCT's Executive Track Safety Task Force (Task Force). The Task Force is required by New York State [law](#) to meet a minimum of four times per year to review standards used in establishing roadway worker protection on NYCT property. Other members on the Task Force include the NYCT President, the President of Transport Workers Union of America (TWU) Local 100, and the New York State Commissioner of Labor.

FTA has conducted two audits to assess PTSB's implementation of its SSO program since the program was certified in 2019. FTA conducted its first post-certification audit of PTSB in June of 2021. FTA's most recent audit was conducted from May 30, 2024 through June 10, 2024.

As part of the recent SSO audit, FTA reviewed how PTSB oversees NYCT's RWP program, including how PTSB oversees NYCT's RWP program to implement 49 CFR 673.27(b)(1) requirements to "monitor its system for compliance with, and sufficiency of, the transit agency's procedures for operations and maintenance" and 49 CFR 673.27(b)(2) provisions to "monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended."

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<sup>7</sup> State Safety Oversight (SSO) Rule at 49 CFR Part 674.25(b) and (c)

FTA observed that PTSB receives reports on NYCT's RWP field observations and compliance activities, such as joint union safety walks, assessments by NYCT's safety culture observation team, joint OSS and labor track safety audits, and OSS RWP audits, and actively reviews, but does not independently verify, this information during monthly and quarterly meetings with NYCT and as part of its three-year audit of NYCT. PTSB also participates in NYCT Safety Committee meetings where RWP issues may be discussed.

FTA also observed that, despite the safety-critical nature of an RWP program and the documented decreasing safety performance, PTSB conducts limited independent field audits to assess the implementation and efficacy of NYCT's RWP program and PTSB's 2023 triennial audit of NYCT made no findings regarding the RWP program or its safety performance. While PTSB demonstrated understanding of key safety issues associated NYCT's RWP program, PTSB's oversight activities have been almost exclusively reactive (e.g., reviewing NYCT field observation reports). PTSB's oversight activities have not included actively ensuring the implementation and efficacy of the RWP program or proactive mitigation of the associated safety risk, such as conducting independent field activities, directing NYCT to address specific RWP issues or identified RWP concerns as a source of hazard identification in NYCT's safety risk assessment process. Further, PTSB has not directed NYCT to address safety concerns resulting from an increasing number of RWP rules violations through the safety risk assessment process. Therefore, FTA finds that PTSB must expand activities to actively ensure the implementation and efficacy of the RWP program and proactive mitigation of the associated safety risk.

FTA provides significant funding for PTSB's SSO program. Between Fiscal Years 2013 and 2024, FTA apportioned over \$22.4 million to the PTSB to conduct rail transit safety oversight in the State of New York. As of the date of issuance of this Special Directive, PTSB had disbursed only \$14.3 million of these funds, leaving approximately \$8.1 million of obligated funding available to strengthen oversight activities and support enhanced field observations of NYCT's RWP program.

## **Finding 2: PTSB Must Expand Activities to Oversee NYCT Responses to RWP Near-Misses and Safety Events**

On June 6, 2024, while FTA was in New York City conducting in-person interviews and observations for the most recent SSO triennial audit, a NYCT track worker was struck by a train in downtown Brooklyn and left in critical condition.

As part of routine audit activities and continued in response to the June 6, 2024 track worker injury, FTA reviewed information that PTSB had available on the safety performance of NYCT's RWP program. Specifically, FTA reviewed a log of open and closed Corrective Action Plans (CAPs) relating to near-miss events investigated by NYCT's Office of System Safety (OSS) that occurred between January 1, 2023 and February 4, 2024. The PTSB reviews and approved these CAPs as part of its oversight of NYCT's hazard identification and mitigation activities.

FTA also reviewed the 36 RWP near-miss-related CAPs proposed by NYCT and approved by PTSB for Calendar Year 2023. Corrective actions for 22 of these CAPs were to issue safety advisories, six CAPs included bulletins, and the remaining eight were still under review at the time of the audit. Safety advisories issued by the NYCT 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. However, 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 corrective action consisting mainly of safety advisories is insufficient to prevent recurrence.

The PTSB SSO Program Standard Section 8 specifies, “The PTSB SSO Program may request changes or additions to CAPs based on the primary cause or contributing factors of the event or programmatic/organizational issues identified, and *whether or not the CAPs fully resolve the issues identified based on experience from safety risk monitoring or previous CAPs that were indicated as implemented* [emphasis added].” FTA reviewed PTSB’s approved CAP reports and observed that PTSB did not request changes or additions to any of the RWP CAPs based on contributing factors to the event. Despite the observed decreased safety performance, PTSB has not conducted activities to determine if CAP implementation resolved the identified RWP-related safety risk.

Beyond its response to proposed CAPs, and despite worsening RWP safety performance as demonstrated by NYCT’s trend analysis for PEC and non-PEC near-miss events, FTA did not find evidence of PTSB engagement on NYCT’s RWP near-misses and safety events. For example, PTSB has not conducted an independent analysis of the RWP safety concerns and has not identified audit findings requiring CAPs in response to the increase in NYCT’s RWP safety events and near-misses. Therefore, FTA finds that PTSB has not provided sufficient oversight of NYCT’s response to near-misses and safety events to address worsening RWP safety performance that could continue to result in serious accidents, injuries, or fatalities if left unaddressed.

FTA also finds the recurring nature of certain incident types, such as improper flagging and failure to inhibit Automatic Train Operation in communications-based train control territory, suggests systemic issues that require comprehensive intervention and active field oversight. Additional safety analysis and field oversight by PTSB could help identify root causes of these persistent issues; ensure identified corrective actions are appropriate commensurate to the associated safety risk, are fully implemented, and are effective; and provide ongoing monitoring to prevent recurrence.

### **Finding 3: PTSB Must Expand Activities to Oversee NYCT’s RWP Training Program**

PTSB conducted its most recent triennial audit of NYCT’s compliance with its own ASP in 2021 as required by the SSO rule. The PTSB triennial audit included a review of NYCT’s RWP program as part of the Safety Promotion Training and Competency section, including

observations of NYCT's RWP training. However, PTSB's audit did not include an in-depth review of the requirements, effectiveness, and performance of NYCT's RWP training program, nor has PTSB conducted further follow-ups to review NYCT's RWP training program.

As described above, RWP rules compliance is identified as a key factor in recent RWP-related events and near-misses. While Findings 1 and 2 of this Special Directive address PTSB's response to RWP-related events and near-misses and its oversight of RWP program implementation, FTA finds that PTSB has not independently assessed the effectiveness and adequacy of NYCT's RWP training program commensurate to the safety risk described in the findings above and that expanded oversight of the RWP training program will inform and strengthen responses to the other findings of this Special Directive.

#### **DIRECTIVE AND REQUIRED ACTIONS:**

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

<b>Findings</b>		<b>Tracking #</b>	<b>Required Actions</b>
Finding 1	PTSB Must Expand Activities to Oversee NYCT's RWP Program	FTA-24-7-001-1	Within ten days of issuance of this Directive, PTSB must conduct weekly observations of NYCT's implementation of its RWP program for a period of not less than 100 days from the issuance of this Directive.
		FTA-24-7-001-2	Based on the results of the observations required in FTA-24-7-001-1, within 110 days of issuance of this Directive, PTSB must develop and submit to FTA for review, approval, and implementation monitoring CAP(s) to address deficiencies and risks identified by PTSB relating to its oversight of the implementation of NYCT's RWP program. PTSB must submit evidence of verification of the closeout of these CAPs to FTA within 12 months of FTA's CAP approval.
		FTA-24-7-001-3	Within 30 days of issuance of this Directive, PTSB must begin to report monthly to FTA on NYCT's progress in mitigating identified safety risks to roadway workers, including updates on actions taken to address this Special Directive and Special Directive 24-6.

Finding 2	PTSB Must Expand Activities to Oversee NYCT Responses to RWP Near-Misses and Events	FTA-24-7-002-1	Within 30 days of issuance of this Directive, PTSB must conduct an analysis of RWP safety events at NYCT since January 1, 2022 (including near-misses) and submit a report and mitigation plan to improve PTSB's program to oversee NYCT responses to RWP near-misses and events to FTA for review, approval, and implementation monitoring.
		FTA-24-7-002-2	Within 30 days of issuance of this Directive, PTSB must require NYCT to report RWP-related near-miss events to PTSB, no less than monthly. Within 45 days of issuance of this Directive, PTSB must begin monthly reporting of these events to FTA.
Finding 3	PTSB Must Expand Activities to Oversee NYCT's RWP Training Program	FTA-24-7-003	Within 60 days of issuance of this Directive, PTSB must conduct an independent audit of NYCT's RWP training program and require NYCT to develop and implement CAP(s) to address the results of the audit. PTSB must submit the audit report and approved CAPs to FTA for review, approval, and implementation monitoring.

In accordance with the timeframes specified above, PTSB must submit the required plans to FTA which demonstrate the specific actions PTSB 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) PTSB's plan(s) and will monitor PTSB's progress in resolving each finding and required action. FTA will conduct scheduled meetings with PTSB 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), PTSB 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 NYSDOT Commissioner and must include a brief explanation of why PTSB 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 PTSB 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 PTSB has clearly articulated legal or material facts not in evidence at the time of this Special Directive.

## **ENFORCEMENT**

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 may result in a determination by FTA that PTSB's SSO program does not meet the requirements of 49 U.S.C. § 5329(e), and attendant actions, including: (1) withholding SSO formula grant funds from PTSB; or (2) withholding up to five percent of New York's Urbanized Area Formula Funding appropriated under 49 U.S.C. § 5307.

Issued on: August 13, 2024



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U.S. Department of Transportation