



New York City Transit

August 14, 2024

Mr. Joseph P. DeLorenzo
Associate Administrator for Transit Safety and Oversight and Chief Safety Officer
Federal Transit Administration
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Mr. DeLorenzo,

I am writing to inform you that New York City Transit (NYCT) intends to appeal the Special Directives (Nos. 24-6 and 24-7) published today by the Federal Transit Administration (FTA) based on substantive and process issues outlined below, including:

- A 99.97% safety efficiency rate for work along the Subway Right-of-Way.
- Success of NYCT's Labor-Management Safety Task Force and joint MTA-Transport Workers Union (TWU)-Subway-Surface Supervisors Association (SSSA) audit team in assessing compliance with safety procedures.
- The two incidents at the core of the Special Directives, which took place in November 2023 and June 2024, respectively, remain under active investigation by the National Transportation Safety Board (NTSB), which has yet to determine causation.

In short, we strongly dispute FTA's view that NYCT has somehow been negligent when it comes to addressing the safety of track workers, one of our most essential priorities. The agency has extensive safety protocols covering the more than 1.5 million work tours that take place along the Right-of-Way during active service in our 24/7 subway system.

As someone who began his career working on railroad Rights-of-Way, I have firsthand experience with MTA's long-standing Roadway Protection (RWP) Program and how it successfully ensures a safe track environment. I mentioned our safety efficiency rate earlier -- in a 12-month period, there were 38 Potential Employee Contacts ("PEC") with moving trains out of 127,355 flagging occurrences, representing just 0.03% of work along the Right-of-Way. Of course, this doesn't even include the hundreds of thousands of shifts worked by the professionals performing construction and maintenance work within the subway system. We will be interested to learn if FTA has established a standard in excess of this 99.97% safety record.

Those few PEC that have occurred have been thoroughly investigated to determine cause, so we can implement new or strengthen existing mitigations to prevent future incidents. These include employee reinstructions, additional training, rule amendments, increased supervision, and in appropriate cases, discipline.

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Additionally, the aforementioned Labor-Management Safety Task Force reviews track safety rules and safety culture. NYCT's Office of System Safety (OSS) also coordinates a joint audit team with the TWU and SSSA that assesses compliance with safety procedures and identifies deficiencies in training and equipment to improve worker protection programs. In 2022 and 2023, the OSS, TWU and SSSA performed a combined 631 audits of more than 9,400 items with a 99% compliance rate. This record of success speaks for itself.

In this safety environment, it's unclear to us what prompted FTA's Special Directives in the first place. The two incidents cited as triggers for FTA review are still under investigation by the NTSB. Given the unresolved status of these inquiries, it seems premature to infer that a "combination of unsafe conditions and practices" led to those events.

Additionally, the data cited showing an increase in PEC compares 2023 to prior years when, due to the pandemic, there was comparatively little construction work underway in the subway system. It is not an "apples to apples" comparison. We agree that every incident is worthy of careful study and response but considering the increased volume of work in the subway system compared to prior years, we do not concur that the data supports the suggestion that there's been some dramatic increase in risk.

All of us at MTA value FTA's expertise, especially in matters of safety, but prior dealings with your organization and other federal regulators have involved detailed dialogue before findings are written up and made public. In this case, we had less than 24 hours' notice about the Special Directives, and there was just one single conversation between FTA safety professionals and MTA/NYCT counterparts about NYCT's safety programs. We would have appreciated the opportunity to understand FTA's investigation and to provide relevant information prior to publication. Declining to engage the professionals responsible for safety in the subway system creates the risk of a perceived rush to judgment.

As indicated above we will provide a fuller response to FTA in due course. As part of that process, we request an opportunity to speak with the professionals who developed and authored the report so we can understand better the information and analysis that went into the Special Directives.

Thank you in advance for your cooperation.

Sincerely,



Demetrius Crichlow
Interim President, NYCT