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**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 675**

**[Docket No. FTA-2023-0018]**

**RIN 2132-AB46**

# Transit Worker Hours of Service and Fatigue Risk Management

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

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** The Federal Transit Administration (FTA) is considering proposing minimum safety standards to provide protections for transit workers to obtain adequate rest thereby reducing the risk of fatigue-related safety incidents. FTA seeks public input in two areas: hours of service; and fatigue risk management programs. FTA seeks information to understand better current industry practices, priorities, requirements, and the costs and benefits of Federal requirements. The information received in response to this ANPRM will assist FTA as it considers potential regulatory requirements.

**DATES:** Comments should be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may send comments, identified by docket number FTA-2023-0018, by any of the following methods:

- Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for sending comments.
- Fax: (202) 493-2251
- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC, 20590-0001.

- Hand Delivery / Courier: Dockets Operations, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to https://www.regulations.gov, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to https://www.regulations.gov. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program matters, contact Valerie Beck, Office of Transit Safety and Oversight, FTA, telephone (202) 366-9178 or FTAFitnessforDuty@dot.gov. For legal matters, contact Emily Jessup, Attorney Advisor, 202-366-8907 or emily.jessup@dot.gov.

Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

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## I. Legal Basis for Rulemaking

Congress directed the Federal Transit Administration (FTA) to establish a comprehensive Public Transportation Safety Program in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141) (MAP-21), which was reauthorized by the Fixing America's Surface Transportation Act (Pub. L. 114-94). The Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58) (IIJA), continues FTA's authority to regulate public transportation systems that receive Federal financial assistance under chapter 53 of title 49.[1] Section 5329(f)(7) of title 49, United States Code, authorizes FTA to issue rules to carry out the public transportation safety program.

Section 5329(b)(2) of title 49, United States Code, directs FTA to develop and implement a National Public Transportation Safety Plan (NSP) that includes minimum safety standards to ensure the safe operation of public transportation systems. In 2017, FTA published its first iteration of the NSP, which was intended to be FTA's primary tool for communicating with the transit industry about its safety performance.[2] Subsequently, on May 31, 2023, FTA published proposed revisions to the NSP to address new requirements in the IIJA, to continue to mature FTA's national safety program and to advance transit safety further (88 FR 34917). While the NSP currently contains only voluntary standards, FTA is considering whether to propose mandatory standards for transit worker hours of service and fatigue risk management through a new rulemaking.

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[1] Enacted by the Infrastructure Investment and Jobs Act. Public Law 117-58 (November 15, 2021).

[2] 82 FR 5628 (January 18, 2017).

## II. Background

At present, there are no Federal minimum standards for hours of service (HOS) and fatigue risk management programs (FRMP) in the transit industry. HOS regulations reduce excessively long work hours, while FRMP address other workplace factors impacting fatigue, such as training and scheduling. Public transit is the only mode of transportation without such standards for its workers. The National Transportation Safety Board (NTSB) and FTA's Transit Advisory Committee for Safety (TRACS), among others, have recommended regulatory action to address safety concerns associated with transit worker fatigue. NTSB has found fatigue to be a cause and contributing factor for dozens of fatal transportation events dating back almost 40 years.

NTSB has repeatedly identified rail transit crashes in which fatigue played a role. In 2004, two Washington Metropolitan Area Transit Authority Metrorail trains collided at the Woodley Park station, resulting in the transport of about 20 people to local hospitals and causing an estimated $3.45 million in property damage. NTSB found that the train operator, who had only 8 hours off between shifts, did not have the opportunity to receive adequate sleep to be fully alert and to operate safely.[3] In 2014, a Chicago Transit Authority train collided with a bumping post at O'Hare Station and went up an escalator at the end of the track, resulting in 33 injured passengers, an injured train operator, and $11.1 million in damages. NTSB found that the train operator had worked 12 consecutive days and nights and experienced the effects of a cumulative sleep debt, which contributed to them falling asleep.[4] In 2021, two Massachusetts Bay Transportation Authority light rail vehicles collided, resulting in 24 injured passengers, 3 injured crewmembers, and about $2 million in equipment damage. The train operator told investigators that they believed they had fallen asleep.[5]

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[3] See NTSB RAR-06/01 "Collision Between Two Washington Metropolitan Area Transit Authority Trains at the Woodley Park-Zoo/Adams Morgan Station in Washington, D.C." (November 3, 2004), available at https://www.ntsb.gov/investigations/AccidentReports/Reports/RAR0601.pdf (last visited May 16, 2023).

[4] See NTSB/RAR-15-01 "Railroad Accident Report: Chicago Train Authority Train Collides with Bumping Post and Escalator at O'Hare Station" (March 24, 2014), available at https://www.ntsb.gov/investigations/accidentreports/reports/rar1501.pdf (last visited April 5, 2023).

[5] See NTSB/RIR-22-15 "Massachusetts Bay Transportation Authority Trolley Collision with Derailment" (July 30, 2021), available at https://www.ntsb.gov/investigations/AccidentReports/Reports/RIR2215.pdf (last visited May 16, 2023).

In addition to NTSB's reports, local investigations have identified fatigue-related transit crashes. For example, on March 11, 2023, a Denver Regional Transportation District (RTD) light rail train derailed, resulting in injuries to two people, the train and RTD track, and station infrastructure. RTD determined that the train operator likely fell asleep before impact.[6] In addition, the Washington Metrorail Safety Commission has identified at least two recent incidents in which a train operator appeared to fall asleep while operating the train.[7]

FTA's stakeholders have also identified fatigue as an area of concern. On July 15, 2021, FTA published a Request for Information to solicit input from the public regarding information and data on transit safety concerns that FTA should evaluate for potential action.[8] FTA received 86 comments from 78 individuals and organizations, including rail transit agencies, State Safety Oversight Agencies, labor unions, industry businesses and organizations, and private individuals. Respondents, including 4 transit agencies, offered 21 comments recommending FTA develop HOS requirements.

Studies and medical research reports indicate that fatigue can deleteriously affect transportation worker performance. FTA's 2022 report, Medical Fitness for Duty and Fatigue Risk Management prepared by the Center for Urban Transportation Research ("CUTR 2022 Report"), concluded that a fatigued transit worker may be unable to effectively perform safety-critical tasks, which may lead to "catastrophic events."[9] A 2017 National Safety Council report, Fatigue in Safety-Critical Industries, found that 97 percent of employers in the transportation industry state that workers feel the impact of fatigue (the highest among all the safety-critical industries surveyed), that 66 percent reported decreases in productivity due to fatigue, and that

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[6] See Corrective Action Plan CAP01-03112023, The Regional Transportation District (RTD) – Denver (April 25, 2023), available at https://s3.documentcloud.org/documents/23789054/042523-cap01-03112023-jeffco-station-derailment.pdf (last visited May 17, 2023).

[7] See WMSC Commissioner Brief: W-0128 – Red Signal Overrun – Largo Town Center Station – August 18, 2021 (Dec. 7, 2021), available at https://wmsc.gov/wp-content/uploads/2021/12/W-0129-Red-Signal-Overrun-at-Largo-Town-Center-Station-August-18-2021.pdf (last visited May 17, 2023); Final Report of Investigation A&I E19328 (June 25, 2019), available at https://wmsc.gov/wp-content/uploads/2020/02/W-0019-Adoption-of-WMATA-Final-Report_E19326_2019_06_25-Failure-to-service-station-merged.pdf (last visited May 17, 2023).

[8] 86 FR 37400 (July 15, 2021).

[9] See FTA Report No. 0223 "FTA Standards Development Program: Medical Fitness for Duty and Fatigue Risk Management" (June 2022), available at https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-07/FTA-Report-No-0223.pdf (last visited April 5, 2023).

45 percent stated they had experienced safety incidents due to fatigue-related issues[10]. In a study of railroad employees, the Federal Railroad Administration (FRA) found that exposure to fatigue raised the chance of a human factors accident by 11 to 65 percent.[11] Two research studies specifically examine transit bus operator fatigue. The first study found an increased propensity for collision involvement with an increase in weekly driving hours.[12] The second study found that most bus operators work split schedules, which use shifts that are broken by a long break, typically two or more hours. The study found that split schedules are the most fatigue-inducing schedule.[13] News reports of fatigue-related transit bus crashes also indicate, anecdotally, that transit bus operator fatigue is more prevalent than is captured in NTSB accident reports and State Safety Oversight Agency incident reports to FTA.[14] FTA does not collect fatigue data as part of its National Transit Database (NTD), and there are no Federal requirements that the influence of fatigue be recorded during safety incident investigations.

This advance notice of proposed rulemaking (ANPRM) does not make specific proposals but requests public input in two areas: (1) HOS; and (2) FRMP. FTA will use information received in response to this ANPRM to inform FTA's future decision-making on whether and how to pursue Federal regulatory action in those two areas. This ANPRM is not requesting input on other topics that may impact a transit worker's fitness for duty, including medical qualifications and prescription and over-the-counter drug use, unless they are relevant to HOS or FRMP. FTA may address those topics independently in the future.

**A. Hours of Service**

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[10] See National Safety Council Report "Fatigue in Safety-Critical Industries: Impact, Risks & Recommendations" (2017), available at: https://nsccdn.azureedge.net/nsc.org/media/site-media/docs/fatigue/part3-fatigue-survey-report.pdf (last visited June 22, 2023).

[11] See Federal Railroad Administration, "Fatigue Status of the U.S. Railroad Industry" (2013), available at https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/2929/TR_Fatigue%20Status%20US%20Railroad%20Industry_CO%2020121119_20130221_FINAL.pdf (last visited April 21, 2023).

[12] See Sando, T., Mtoi, E., & Moses, R., "Potential Causes of Driver Fatigue: A Study on Transit Bus Operators in Florida," Transportation Research Board of the National Academies' 2011 90th Annual Meeting, paper no. 11-3398, November 2010, available in the public docket for this rulemaking.

[13] See Sando, T., Angel, M., Mtoi, E., & Moses, R., "Analysis of the Relationship Between Operator Cumulative Driving Hours and Involvement in Preventable Collisions," Transportation Research Board of the National Academies' 2011 90th Annual Meeting, paper no. 11-4165, November 2010, available in the public docket for this rulemaking.

[14] See, e.g., "New Video released in 2021 Pace bus crash that killed woman after driver fell asleep at the wheel" (March 27, 2023), available at https://www.fox32chicago.com/news/pace-to-pay-13m-settlement-after-bus-driver-fell-asleep-at-wheel-causing-crash-that-killed-68-year-old-woman (last visited May 17, 2023); "Sleepy SMART bus driver who caused crash gets 93 days in jail" (May 4, 2015), available at https://www.clickondetroit.com/news/2015/05/04/sleepy-smart-bus-driver-who-caused-crash-gets-93-days-in-jail/ (last visited May 17, 2023).

The goal of HOS regulations is to prevent excessively long work hours to lower the risk of fatigue and fatigue-related safety incidents. While HOS regulations alone cannot ensure that individuals receive adequate restorative rest, they can ensure that individuals have enough time off to obtain adequate rest on a daily and weekly basis. HOS regulations generally define parameters for active work time, time on duty, time off duty between shifts, work week hours, and the maximum number of consecutive workdays.

1. NTSB and TRACS Recommendations

NTSB has four open fatigue-related safety recommendations to FTA arising from a March 2014 rail collision in which a train collided with a bumping post and went up an escalator at the O'Hare Station in Chicago, Illinois.[15] NTSB determined that the probable cause of the collision was the failure of the train operator to stop the train due to falling asleep as a result of fatigue. Safety Recommendation R-15-019 recommends FTA establish regulations that set HOS limitations, provide predictable work and rest schedules, and consider circadian rhythms and sleep and rest requirements. The other three recommendations are discussed in the Fatigue Risk Management section below.

In October 2014, FTA tasked TRACS with developing recommendations on the elements that should comprise a Safety Management System (SMS) approach to a fatigue management program. TRACS found that transit worker fatigue is a serious problem and recommended in 2015 that FTA develop a Federal regulation mandating minimum HOS requirements as its first priority.[16] TRACS issued a report which noted that the committee "feels strongly that HOS is a fundamental, initial pillar of an SMS framework and should be implemented by FTA as soon as possible." In the same report, TRACS recommended that FTA's HOS regulations apply to employees involved with moving revenue and maintenance equipment, including bus and rail operators, dispatchers, conductors, and controllers. TRACS further recommended a maximum of

[15] See NTSB/RAR-15-01 "Railroad Accident Report: Chicago Train Authority Train Collides with Bumping Post and Escalator at O'Hare Station" (March 24, 2014), available at https://www.ntsb.gov/investigations/accidentreports/reports/rar1501.pdf (last visited April 5, 2023).
[16] See TRACS Report 14-02, "Establishing a Fatigue Management Program for the Bus and Rail Transit Industry" (July 30, 2015), available at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/TRACS_Fatigue_Report_14-02_Final_(2).pdf (last visited April 5, 2023).

12 on-duty hours over a maximum duty tour of 14 hours, including any periods of interim release, with a minimum of 10 consecutive hours off-duty between shifts, and a maximum number of 6 consecutive working days.

TRACS considered whether FTA should identify a maximum number of on-duty hours over the six consecutive working days. In its report, TRACS noted that experts from the Volpe National Transportation Systems Center recommended a limit of 60 on-duty hours over 6 consecutive working days, which would allow for a 10-hour workday, 9 hours of sleep, a 2-hour commute, and 5 hours of personal time (e.g., eating, showering, and family time). TRACS found that some agencies expressed concern about the need to hire and train new employees to achieve the staffing levels necessary to operate under the recommended HOS requirements, which could result in managing large numbers of inexperienced employees. The TRACS report noted that the committee considered anecdotal evidence from one agency that despite initial resistance from operators to give up overtime, employees came to cite an overall increase in quality of life from the agency's adoption of a 60-hour maximum limit. TRACS members did not reach a consensus on the issue of including a maximum number of hours over six days and therefore did not make a recommendation in this regard to FTA.

2. Consensus Standards

Through its bus and rail working groups, the American Public Transportation Association (APTA) develops voluntary, consensus-based industry operating and maintenance standards. APTA's consensus HOS standards for train operators limit maximum operating hours to 12 hours, with a maximum duty day of 16 hours. APTA's consensus standards suggest that train operators have a minimum off-duty time of 10 hours and a maximum period of 7 consecutive workdays. APTA's voluntary standards do not include a maximum number of on-duty hours over the 7 consecutive workdays.[17]

[17] See APTA RT-OP-S-015-09 Rev 1, "Train Operator Hours-of-Service Requirements" (June 7, 2019), available at https://www.apta.com/wp-content/uploads/APTA-RT-OP-S-015-09_Rev_-1-1.pdf (last visited April 5, 2023).

3. Federal and State Regulations

The Federal Motor Carrier Safety Administration (FMCSA), FRA, Federal Aviation Administration, and United States Coast Guard prescribe HOS limitations applicable to their regulated industries, as summarized in detail in the CUTR 2022 Report.[18] Of particular relevance to transit operators, FMCSA prohibits drivers of passenger-carrying commercial motor vehicles from driving more than 10 hours following 8 consecutive hours off duty. Such drivers also may not drive after being on duty for 15 hours following 8 consecutive hours off duty. FMCSA limits on-duty time to no more than 60 hours over 7 consecutive days for motor carriers that do not operate every day of the week, and to no more than 70 hours over eight consecutive days for motor carriers that operate every day of the week.[19] FMCSA's HOS requirements do not apply to transit buses operated by any political subdivision of a State.[20] Transit buses operated by contractors that operate under their own USDOT registration, however, may be subject to FMCSA's requirements if they operate in interstate commerce. FRA requires that before a train employee engaged in commuter or intercity rail passenger transportation remains or goes on-duty the employee must have had at least 8 consecutive hours off duty during the prior 24 hours or at least 10 consecutive hours off duty after working 12 consecutive hours. Those train employees may not spend more than 14 consecutive calendar days on duty, although there are some specific, additional limitations for train employees who engage in service during the hours of 8 p.m. – 3:59 a.m. (known as "Type II" schedules).[21] Train employees working at least one Type II schedule may not spend more than 6 consecutive calendar days on duty. FRA HOS regulations for passenger train crews also require a commuter or intercity passenger railroad to evaluate Type II schedules using a validated biomathematical model of human performance and fatigue determine whether train employees may be at increased risk of fatigue. Railroads must

[18] See FTA Report No. 0223 "FTA Standards Development Program: Medical Fitness for Duty and Fatigue Risk Management" (June 2022), available at https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-07/FTA-Report-No-0223.pdf (last visited April 5, 2023).
[19] 49 CFR 395.5 (January 3, 2017).
[20] 49 CFR 390.3T(f)(2) (November 11, 2021).
[21] 49 CFR 228.405 (January 3, 2017).

develop a fatigue risk mitigation plan to reduce the risk of fatigue in those schedules having an increased risk for fatigue.[22] Train crews must also receive initial and refresher training on fatigue awareness and other topics related to understanding and mitigating fatigue as part of HOS requirements.[23]

In addition to Federal regulations, a number of States have their own State HOS limitations that apply to bus and rail operators.[24] FTA's understanding, however, is that State HOS limitations do not apply to transit workers in most States. Some States and transit agencies also have policy requirements, not codified in State law, that include HOS limitations.

**B. Fatigue Risk Management Programs**

HOS limitations do not account for other factors that contribute to fatigue, including work schedules; environmental factors, such as temperature and humidity; circadian rhythms; and the effects of the type of task being performed, such as the level of monotony or stress. FRMPs complement HOS requirements by addressing various workplace factors that contribute to fatigue to reduce the potential for fatigue-related safety incidents. An effective FRMP implements processes to measure, manage, and mitigate fatigue risk in a specific operational setting.

1. NTSB and TRACS Recommendations

As a result of its March 2014 investigation of the Chicago train collision, NTSB issued three recommendations to FTA relating to fatigue risk management. Safety Recommendation R-15-018 recommends FTA develop and implement a work scheduling program for rail transit agencies that incorporates the management of fatigue risk. Safety Recommendations R-15-020 and R-15-021 focus on identifying training and certification necessary for work schedulers and training personnel who are responsible for developing rail transit employee work schedules.

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[22] 49 CFR 228.407 (January 3, 2017).

[23] 49 CFR 228.411 (January 3, 2017).

[24] See FTA Report No. 0223 "FTA Standards Development Program: Medical Fitness for Duty and Fatigue Risk Management" (June 2022), available at https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-07/FTA-Report-No-0223.pdf (last visited April 5, 2023).

TRACS made several recommendations to FTA relating to FRMP requirements in its 2015 report.[25] TRACS noted that shift scheduling is an essential part of managing fatigue. TRACS recommended that FTA require transit agencies to provide the necessary training for their work schedulers to understand elements of fatigue science, including circadian rhythms. In addition, TRACS recommended that agencies provide mandatory fatigue awareness training for all safety-sensitive personnel, including bus and train operators, conductors, tower operators, starters, inspectors, yard persons, shift schedulers, maintenance-of-way employees, signal and electric traction employees, mechanical department employees, dispatchers, and supervisors, and consider fatigue as a potential underlying factor in all safety investigations of incidents and accidents. TRACS also recommended that FTA require transit agencies to collect and track data on fatigue performance measures to evaluate the success of their FRMPs.

2. Consensus Standards

APTA's consensus standards for rail transit system fatigue management programs establish formal steps to develop and implement an organization's fatigue management program for operators, controllers, and any other safety-critical personnel.[26] APTA's standards include the establishment of a fatigue management program steering committee and a fatigue management policy with core program elements. APTA's standards also provide that agencies must consider fatigue as a line of inquiry when conducting accident investigations or developing schedules and that agencies must collect and assess fatigue-related data.

3. Federal Regulations

In 2022, FRA promulgated regulations that require railroads that operate commuter and intercity passenger service to develop and implement an FRMP.[27] Pursuant to those regulations, a railroad must develop, and FRA must approve, an FRMP that contains the goals of the

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[25] See TRACS Report 14-02, "Establishing a Fatigue Management Program for the Bus and Rail Transit Industry" (July 30, 2015), available at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/TRACS_Fatigue_Report_14-02_Final_(2).pdf (last visited April 5, 2023).
[26] See APTA RT-OP-S-23-17 "Fatigue Management Program Requirements" (April 7, 2017), available at https://www.apta.com/wp-content/uploads/Standards_Documents/APTA-RT-OP-S-023-17.pdf (last visited April 5, 2023).
[27] 87 FR 35660 (June 13, 2022), codified at 49 CFR part 270 et seq.

program; describes processes to conduct a fatigue risk assessment, identify mitigations, and monitor identified fatigue-related hazards; and describes how railroads plan to implement an FRMP. At a minimum, when conducting a risk assessment, a railroad must evaluate the general health and medical conditions that can affect the fatigue levels, scheduling issues that can impact quality and quantity of sleep, and characteristics of each job category of safety-related railroad employees that can affect fatigue levels.

## III. Comments Sought

FTA seeks comments, information, and data from the public in response to this ANPRM. We request that commenters address their comments specifically to the enumerated list of issues below, and number their comments to correspond to each issue. In the following questions, FTA uses the term "transit worker" to indicate any employee, contractor, or volunteer working on behalf of a public transit agency. This includes vehicle operators, dispatchers, maintenance workers, managerial staff, and all other workers whose information could aid the development of a future Hours of Service and Fatigue Risk Management rule. Please indicate which worker groups you are addressing when commenting.

### A. Regulatory Options

1. Generally, why should or should not FTA adopt mandatory Federal hours of service (HOS) and fatigue risk management programs (FRMP) requirements for transit workers?
2. What aspects of transit operations should FTA consider if it develops Federal HOS and FRMP requirements for transit workers? Are there unique characteristics of transit operations, as compared to motor carrier and railroad operations, that FTA should consider when evaluating existing FMCSA and FRA requirements? How should FTA consider differences in urban and rural operating environments and agency size?
3. Specifically, what are the reasons you would or would not support any of the following options? What alternatives should FTA consider? Please explain.

a. The TRACS recommendation for a maximum of 12 on-duty hours over a maximum duty tour of 14 hours, with a minimum of 10 consecutive hours off-duty between shifts, and a maximum of 6 working days.

b. The Volpe recommendation to TRACS for a limit of 60 on-duty hours over 6 consecutive working days.

c. The APTA train operator standard of a maximum time of 12 operating hours, a maximum duty day of 16 hours, a minimum off-duty time of 10 hours, and a maximum period of l7 consecutive workdays. Is there a likely increase in safety risk by adopting the APTA standard for a maximum duty day of 16 rather than 14 hours? How would a 16-hour duty day change transit agency operations as compared to a 14-hour duty day?

d. For transit bus operators, FMCSA's passenger carrier HOS requirements of a 15-hour on-duty limit and a 10-hour driving limit following 8 consecutive hours off-duty, and no more than 70 hours over 8 consecutive days. Could adoption of different HOS requirements for transit bus drivers than FMCSA's passenger carrier requirements cause confusion for drivers?

e. A requirement for transit agencies to develop and implement an FRMP. If transit agencies were required to develop and implement an FRMP, what elements should the FRMP include? Should transit agencies have primary responsibility for developing the FRMP? For agencies that have a Safety Committee, should the Safety Committee have a role in developing or approving the FRMP?

4. What specific qualities of workers' regular tasks should FTA consider to make them subject to HOS requirements? Does the definition of "safety-sensitive function" in 49 CFR 655.4 include all categories of employees who FTA should consider for HOS requirements? Are there employees who perform safety-sensitive functions who should not be subject to HOS requirements?

5. Would you support a single HOS standard that applies across all transit modes subject to safety regulation by FTA? Or would you support multiple HOS standards based on the varying characteristics of different transit modes, for example, one set of standards for bus operators and a different set of standards for rail operators? Please explain.
6. Should shift schedulers who create work schedules have minimum certification and training requirements? If so, please explain what minimum requirements for training and/or certification FTA should consider establishing.

**B. Benefits and Costs**

7. How would changes in hours, as a result of new HOS requirements, impact worker health and safety?
8. Do you have information on any HOS research FTA should consider as part of this or future rulemakings?
9. How would changes in hours, as a result of HOS requirements, impact transit agency operations (e.g., their ability to fully staff service)? How would changes in hours impact customers? What costs would agencies incur to change their operations and ensure that workers comply with the requirements?

**C. Fatigue Data Collection**

10. Is the prevalence of fatigue among transit workers and its safety implications tracked or measured? Please explain. Do you have any data on the prevalence or impact of fatigue among transit workers?
11. As a standard process, do investigations consider whether fatigue was a probable cause or contributing factor in a transit safety event? If so, please explain. How are such data recorded or tracked? Do you have any data on transit safety events in which fatigue was determined to be a probable cause or contributing factor?

12. Would you support requirements for State Safety Oversight Agencies in investigating the potential role of fatigue in rail safety events and near misses? If so, what requirements would you support? What would be the burdens to the industry? What would be the benefits?
13. Would you support routine data collection through the National Transit Database on whether an incident was fatigue related? What additional data would help assess national trend analyses on the safety impacts of fatigue? For example, FTA could update National Transit Database reporting for major safety events to include elements, such as the number of hours the operator was on duty, the end time of the operator's previous shift before the current shift, and the number of consecutive days the operator was on duty. Which of these would be useful? Would other data elements be useful? What barriers might impact the collection of additional data? Would this data be useful for both bus and rail events?
14. What would the burdens to the industry be if FTA instituted new requirements to record transit worker fatigue data in the National Transit Database? What would be the benefits to the industry of having such worker fatigue data for transit safety events?
15. FTA recently began collecting annual counts of fatal bus collisions from transit operators that are not currently required to file major safety event reports. These are primarily operators in rural areas, or operators with fewer than 30 vehicles in peak service. Some of these fatal bus collisions may be fatigue-related. Should FTA consider gathering data on fatigue from these events?

**D. Current Hours of Service and Fatigue Risk Management Policies**

16. Do you have information or data on whether and how transit agencies are currently using their documented safety risk management processes to assess the associated safety risk and, based on the results of the safety risk assessment, identify safety risk mitigations or strategies as necessary to address the safety risk of transit worker fatigue through their Agency Safety Plan?

17. Do you have information or data on existing State or local HOS or FRMP requirements that apply to transit workers?
    a. To which transit agencies do they apply?
    b. To which modes do they apply?
    c. To which classifications of workers do they apply (e.g., operators, maintenance, dispatchers)?
    d. Are waivers allowed to accommodate exigent or other circumstances? Please explain.
    e. Please describe the HOS and FRMP requirements (e.g., hours restrictions, training requirements, designated breaks, and rest areas).
    f. Has the effectiveness of the HOS or FRMP requirements been evaluated? How were they evaluated and what were the results?
    g. Are existing HOS requirements part of collective bargaining agreements? If so, what are the details? If not, how would HOS or FRMP requirements interact with existing collective bargaining agreements?
18. Is transit worker secondary employment tracked? If so, how? Are secondary employment hours tracked in addition to primary employment? Do transit agencies face any limitations on their ability to track secondary employment?
19. Do you have information on transit worker schedules for operators, maintenance workers, control center workers, and other workers?
    a. How long are shifts? How long are overtime shifts?
    b. What are the non-operational job responsibilities of bus and rail operators? How much time do workers spend on-task, for example, operating a vehicle or performing maintenance work, as compared to other work, such as office administrative work?
    c. How many breaks do workers get? How long are the breaks?

d. How much off-duty time do workers get?

e. What split--shift policies are used? What is their service span on their longest service days? Which workers work split shifts?

f. How consistent are transit workers' shift schedules? Are assigned service hours stable week-to-week? Month-to-month? Year-to-year?

20. What fatigue-related factors are considered when developing bus and rail schedules? Why are these factors considered?

21. Do you have information on transit agency use of other safety enhancing policies or technology solutions that FTA should consider?

## IV. Regulatory Analyses and Notices

### Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866 ("Regulatory Planning and Review"), as supplemented by Executive Order 13563 ("Improving Regulation and Regulatory Review"), and the Executive order on Modernizing Regulatory Review, directs Federal agencies to assess the benefits and costs of regulations, to select regulatory approaches that maximize net benefits when possible, and to consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of $200 million or more. The agency has considered the impact of this ANPRM under these Executive orders and the Department of Transportation's regulatory policies and procedures. In this ANPRM, the agency requests comments that would help FTA assess and make judgments on the benefits, costs, and other impacts, of transit worker fitness for duty standards. FTA believes that a notice relating to new requirements for hours of service and fatigue risk management programs may generate raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive order on Modernizing Regulatory Review, and therefore is significant.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This ANPRM would not establish any new information collection requirements.

**Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to https://www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at https://www.dot.gov/privacy.

**National Environmental Policy Act**

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This ANPRM qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the ANPRM will involve unusual or extraordinary circumstances and has determined that it will not.

**Executive Order 12630 (Taking of Private Property)**

FTA has analyzed this ANPRM under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this ANPRM affects a taking of private property or otherwise has taking implications under Executive Order 12630.

**Executive Order 12988 (Civil Justice Reform)**

This ANRPM meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Executive Order 13045 (Protection of Children)**

FTA has analyzed this ANPRM under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

**Executive Order 13175 (Tribal Consultation)**

FTA has analyzed this ANPRM under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

**Executive Order 13211 (Energy Effects)**

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

**Executive Order 12898 (Environmental Justice)**

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (https://www.transportation.gov/transportation-policy/environmental-justice/department-transportation-order-56102a) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all

rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit).

FTA has evaluated this action under the Executive order, the DOT Order, and the FTA Circular and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

**Regulation Identifier Number**

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this rulemaking with the Unified Agenda.

**List of Subjects in 49 CFR Part 675**

Mass transportation, Safety.

(Authority: 49 U.S.C. 5329; 49 CFR 1.91)

**Nuria I. Fernandez,**

*Administrator*.

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