



## 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; Withdrawal

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

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

**SUMMARY:** FTA is withdrawing the October 30, 2023, advance notice of proposed rulemaking (ANPRM) concerning minimum safety standards to address fatigue-related safety incidents. FTA has determined not to issue a notice of proposed rulemaking at this time.

**DATES:** The ANPRM published on October 30, 2023, at 88 FR 74107 is withdrawn as of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].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 Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments.
- *Fax:* (202) 493-2251
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building Ground Floor, Room W12-140, Washington, D.C., 20590-0001.
- *Hand Delivery/Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue S.E., Washington, D.C., 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.

*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 Jeremy Furrer, Office of Transit Safety and Oversight (TSO), (202) 366-8929, or [jeremy.furrer@dot.gov](mailto:jeremy.furrer@dot.gov). For legal matters, contact Mark Montgomery, Office of Chief Counsel, (202) 366-1017, or [mark.montgomery@dot.gov](mailto:mark.montgomery@dot.gov). Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 30, 2023, FTA published an ANPRM seeking public input on minimum safety standards to provide protections for transit workers to obtain adequate rest to reduce the risk of fatigue-related safety incidents (88 FR 74107). Specifically, FTA sought public input in two areas: (1) hours of service; and (2) fatigue risk management programs. FTA received 76 relevant comments in response to the ANPRM but did not receive specific information about current hours of service and fatigue policies and regulations. The submitted comments were generally supportive of FTA action to mitigate transit worker fatigue but expressed concerns about the lack of

available data needed to produce an effective rulemaking.

Subsequently, FTA issued a request for information (RFI) directly to all 797 agencies subject to the Public Transportation Agency Safety Plan (PTASP) regulation at 49 CFR part 673, including State departments of transportation and State safety oversight agencies (SSOAs). The RFI sought to collect information related to current policies and requirements mitigating the risk of fatigue-related safety incidents through hours of service policies and/or fatigue risk management programs. FTA received responses from 261 organizations, including 239 comments from PTASP agencies sharing useful information about current fatigue mitigation praxis. The comments revealed that 129 agencies already have some form of hours of service policy and 41 agencies have a fatigue risk management plan. An additional 32 agencies use fatigue management practices without having a fully formalized policy in place.

#### **FTA's Reason for Withdrawal**

FTA has determined not to proceed with an NPRM at this time because safety risks associated with transit worker fatigue are covered by the PTASP regulation at 49 CFR part 673. That regulation requires operators of public transportation systems that receive Federal funds under the FTA Urbanized Area Formula Grants (49 U.S.C. 5307), and rail transit agencies subject to the FTA State Safety Oversight (SSO) Program under 49 CFR part 674, to develop an Agency Safety Plan (ASP) that includes the processes and procedures to implement a Safety Management System (SMS). SMS is a comprehensive, collaborative, and systematic approach to managing safety. The regulation sets scalable and flexible minimum standards for ASPs, including requirements for the identification, assessment, and mitigation of risk and strategies to minimize exposure to hazards. In cases where transit agencies determine there is a risk of operator fatigue or related safety risks, the PTASP regulation requires agencies as part of their SMS processes to develop methods to identify mitigations or strategies to reduce the

likelihood and severity of the potential consequences.

As an alternative to rulemaking, FTA may take other actions pursuant to its safety authorities under 49 U.S.C. 5329 to address risks associated with transit worker fatigue, including the issuance of special or general directives. Additionally, FTA must issue restrictions and prohibitions by whatever means are determined necessary and appropriate if it determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exist such that there is a substantial risk of death or personal injury. 49 U.S.C. 5329(h). This would include unsafe conditions or practices associated with operator fatigue.

### **Conclusion**

Based on the foregoing reasons, FTA withdraws the October 30, 2023, ANPRM titled “Transit Worker Hours of Service and Fatigue Risk Management.” If FTA determines further action to be necessary, it will consider regulatory action.

Authority: 49 U.S.C. 5329, 49 CFR 1.91

Issued in Washington, DC, under authority delegated in 49 CFR 1.91.

**Tariq Bokhari,**

*Acting Administrator.*

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