

WMSC R-2019-10
September 10, 2019

WASHINGTON METRORAIL SAFETY COMMISSION
777 North Capitol Street, N.E.
Washington, D.C. 20002

RESOLUTION APPROVING TIME-CRITICAL REVISIONS TO THE
PROGRAM STANDARD REGARDING INVESTIGATIVE REPORTS

WHEREAS, the Washington Metrorail Safety Commission (“WMSC”) is the state safety oversight authority for the Washington Metropolitan Area Transit Authority (“WMATA”) Metrorail system, and oversight of WMATA’s investigative activities, including interviews of WMATA personnel after safety events, is critical to the mission of the WMSC;

WHEREAS, the legislation authorizing the formation of the Washington Metrorail Safety Commission (the “WMSC”) (also known P.L. 115- 54 or the “Compact”) provides the WMSC with responsibility for investigations, including the power to “Conduct, or cause to be conducted, inspections, investigations, examinations, and testing of WMATA personnel and contractors” and to “[t]ake such other actions as the Commission may deem appropriate consistent with its purpose and powers”;

WHEREAS, 49 CFR 674.35(a) and the regulation implementing the U.S. DOT’s state safety oversight agency program deem that the WMSC “must investigate or require an investigation of any accident and is ultimately responsible for the sufficiency and thoroughness of all investigations, whether conducted by the [WMSC] or [WMATA].”;

WHEREAS, the WMSC ultimately reviews and adopts investigative findings of WMATA;

WHEREAS, the WMSC has re-reviewed the Program Standard and discovered ambiguity regarding when draft final investigative reports are due for submission to the WMSC;

WHEREAS, the WMSC believes that removing this ambiguity is a time-critical task so that the WMSC may effectively and properly carry out its mandate;

WHEREAS, Section 2 of the WMSC’s Program Standard, as adopted by the WMSC, contemplates a process through which the WMSC may make time-critical changes to the Program Standard; and

WHEREAS, the WMSC seeks to avail itself of the process for amending the Program Standard.

NOW, THEREFORE, BE IT RESOLVED THAT THE WASHINGTON METRORAIL SAFETY COMMISSION:

Approves the attached time-critical revisions to the Program Standard regarding Investigative Reports.

Adopted by the Metrorail Safety Commission at its meeting on September 10, 2019.

SECTION 8 ACCIDENT INVESTIGATIONS

Investigations – (WMSC-SOP-005)

The WMSC is required to investigate, or cause WMATA to investigate, all accidents. Additionally, the WMSC requires that certain other safety events are investigated, as detailed in the Safety Event Notification Matrix in Appendix A. This section of the Program Standard provides the procedures for the investigation of accidents and other safety events requiring an investigation. The procedures described in this section for accident investigations apply equally to any other safety events requiring an investigation pursuant to the matrix in Appendix A.

The WMSC is ultimately responsible for the sufficiency and thoroughness of all investigations required by this Program Standard, regardless of whether an investigation is conducted by the WMSC or by WMATA. Because of this overall responsibility, the WMSC is effectively overseeing all investigations, even when the WMSC chooses not to conduct an investigation itself. This section of the WMSC Program Standard describes the process through which the WMSC will exercise this oversight.

The purpose of safety event investigation is to gather and assess facts to determine the cause(s), and to make recommendations from which CAPs can be proposed to prevent recurrence of a similar safety event. These can consist of short-term mitigations (that WMATA completes quickly, often before the investigation report is finalized) and longer-term CAPs (that require WMSC approval, monitoring, and verification of completion).

The WMSC has developed enhanced investigation procedures in accordance with MAP-21 requirements. The WMSC's investigation procedures will provide a framework for WMATA's own investigation procedure. The WMSC will review and formally approve WMATA's investigation procedure on an annual basis to ensure that it addresses any observed gaps in process and remains aligned with the WMSC program standard.

From the outset of an investigation of any reportable safety event, WMATA shall:

- a. Notify WMSC Staff when additional investigative activity beyond the initial on-scene activity is conducted by a WMATA team, personnel or panel, including but not limited to performing interviews, questioning witnesses, or conducting inspections, measurements, examinations, or tests, as part of the investigation; and
- b. Provide for WMSC Staff's participation to the fullest extent achievable in all investigative activities, and make all information related to the investigation available to WMSC Staff at any time.

When safety event occurs, WMATA will initiate and conduct the investigation, unless notified that the WMSC intends to conduct the investigation. When the WMSC participates in these investigations, the WMSC will coordinate with appropriate/designated WMATA personnel, and the activities of the WMSC and WMATA will be subject to all applicable law governing the disclosure and protection of information. Regardless of which entity conducts the investigation, a report will be prepared for all accident and certain other safety events as specified in the matrix in Appendix A. These reports will be submitted to the WMSC for its Commissioners to consider and adopt.

For each investigation required by the Program Standard that WMATA conducts, WMATA shall investigate in accordance with this Program Standard using investigation procedures approved by the WMSC. Each such investigation shall be documented in a final report that includes a description of investigation activities, findings, identified causal factors, and Corrective Action Plans (CAPs). WMATA shall provide monthly status reports to the WMSC that document investigation activities and findings. **The investigation report shall be submitted to the WMSC within 60 calendar days following the date of the safety event,** unless the WMSC has agreed in writing that the complexity or comprehensiveness of the investigation demand more time for a thorough effort into determining the causal factors. The WMSC will review and formally approve each investigation report. Each final report will be brought to the WMSC Board for approval and adoption as the Commission's own investigation.

From time to time the WMSC may require WMATA to conduct an investigation of and/or prepare an investigation report for a safety event (whether listed in the matrix in Appendix A or not) that would not otherwise require an investigation or report.

The remainder of this section addresses the WMSC's own process for determining to conduct its own independent investigation, the role of the WMSC in supporting any investigation conducted by the NTSB or FTA, and how causal factors that are identified will be incorporated into the WMSC Program implementation; and procedures for balancing confidentiality and transparency.

All WMSC personnel conducting investigations shall be trained and certified in accordance with the Public Transportation Safety Certification Training Program and all other relevant contemporaneous accident investigation techniques and effective practices.

WMSC staff teams conducting investigative activities will consist of WMSC SSO personnel, or a combination of WMSC SSO personnel and WMSC contractor personnel, or consist of WMSC contractor personnel acting on behalf of and as agent of the WMSC. Each investigation will be under the direction of the WMSC Chief Executive Officer. WMSC representatives, to include permanent WMSC staff and contracted staff, have the authority, training and expertise to conduct investigation activities under the direction of the WMSC Chief Executive Officer including rights to access all WMATA property, equipment, systems, records, personnel, and contractor personnel.

For some accidents or other safety events, the WMSC may decide to conduct a fully independent investigation, separate and apart from WMATA. This may be due to the severity of the event, particular circumstances surrounding the event, or the potential for a conflict of interest with the investigation. If it deems appropriate, the WMSC shall conduct its own, independent investigation in accordance with the WMSC Accident Investigation Procedures. If the WMSC investigates, WMATA may also conduct its own concurrent investigation. This in its entirety will be carried out under the WMSC Chief Executive Officer's direction.

The WMSC will follow Title 49 CFR Part 674.23 in releasing any materials pertaining to completed and adopted investigation reports.

The WMSC will follow its document release policy, which is modeled after the Federal FOIA and its exemptions and exclusions pertaining to ongoing investigations.

The WMSC will maintain all open investigation reports and related records submitted to it, per the Freedom of Information Policy (FOIA) Policy, as Title 49 CFR 674.23 prescribes. In the case of NTSB

investigations to which the WMSC is a party, the WMSC will consider the investigation open until the NTSB publishes a final report.

The WMSC Freedom of Information Policy and the WMSC Open Meetings Policy each describe transparency criteria with which the WMSC must comply and describe instances in which various investigative materials and other sensitive information arising during an open investigation can be protected until the WMSC Board concludes any relevant investigations and adopts its conclusions and findings.

Draft and Final Investigative Report Content

All draft and final investigative reports produced for the WMSC (and referenced throughout this section) must contain, at a minimum, the following information, if relevant to the investigation:

1. Event description
2. Notifications
3. Incident response and command
4. Precipitating event
5. Immediate corrective actions / mitigation strategies
6. Operator status information
 - a. Fatigue evaluation
 - b. Training
 - c. Post-event testing
7. Investigation records
 - a. Operator or responding individual report
 - b. Field supervision report
 - c. Employee record / work history
 - d. Post-event safety inspection
 - e. Data analysis
 - f. Factors causing or contributing to the incident
 - g. Corrective Action Plans being proposed to address causal factors
 - h. Findings

More information may be included, based on WMATA's investigation procedures or external recommendations (such as APTA accident investigation procedure standards, RT-SOP-002-02). Likewise, the WMSC may request more information about an accident or other safety event, including trends.

WMATA Authorized by the WMSC to Conduct Investigation on Its Behalf

In accordance with Title 49 CFR Part 674.27, the WMSC may order WMATA to conduct an investigation. Depending on the circumstances of the safety event, the WMSC may require WMATA to convene an Accident Investigation Committee in line with the procedures contained in its SSPP.

The WMSC requires that WMATA investigate for WMSC reportable safety events in addition to those accident types for which the FTA mandates an investigation per Title 49 CFR Part 674 Appendix A. Such investigations must include the final accident report content as noted above. In each case, a clear and objective identification of cause must be made, and the report content requirements above must be met.

The WMSC will accept investigation reports that do not contain new CAPs when existing CAPs already address the causes identified in the accident; when this is the case, WMATA must identify the existing

CAPs that address the causes identified in the accident. The WMSC is authorized to obtain or observe any material created, compiled, or otherwise used by WMATA as part of its investigation. In line with the WMSC policies, any such material will be treated as confidential while the investigation remains on-going.

Accident investigation reports, comprised of reports from operations, maintenance, etc., as appropriate, and Safety and Environmental Management Department investigation documentation as appropriate, must be sent to the WMSC according to the following schedule:

1. **Initial Notification:** Basic information about the reportable event must be transmitted verbally and via email to the WMSC, as set forth in Section 7.
2. **Preliminary Report:** As soon as possible after the event, but within three (3) business days, from the event date, WMATA must email preliminary written information, including any investigation summary information, preliminary reports from field personnel, and other available information.
3. **Investigation Status Report:** The WMSC may, at its discretion, request from WMATA a report indicating the status of an investigation, including any significant new reports or report components, and any preliminary investigation conclusions within ten (10) days of the safety event. ~~Within 60 calendar days after the event, if the investigation process is not complete, WMATA will update Investigation Status Reports on an online shared site.~~ Extension request including an adjusted schedule for the completion of investigations will be prepared when reports require additional time to be completed. The WMSC Chief Executive Officer or designee may consider additional time based on the severity, complexity, and unique investigative demands of each incident. ~~Status reports will reside in a shared electronic site which WMSC and WMATA will use as a common platform to share information on investigation status.~~
4. **Draft Final Investigation Report:**, ~~Within 60 calendar days of the occurrence of the event being investigated, WMATA Safety personnel must submit to the WMSC a Draft Final report authored by the safety department or its authorized representative.~~ If needed the WMSC may submit questions on or identify missing information to WMATA for resolution. Once these questions have been resolved, the WMSC Chief Executive Officer may *approve* the Draft Final Report in writing for technical sufficiency. Note that WMSC approval does not constitute closure of the investigation (see no. 5, below).
5. **Final Investigation Report:** After WMATA has received the WMSC approval of the Draft Final report, it may issue a Final Report, which the WMSC Board may then formally approve and adopt. Per Title 49 CFR Part 674.35(b), upon formal adoption of the Investigation Report the WMSC must issue a written report on its review of the WMATA investigation, describing investigation activities, factors that caused or contributed to the safety event, and corrective action plans as necessary. If WMATA does not concur with the WMSC's review of the incident investigation, WMATA may submit a written dissent from the report which may be included in the report at the discretion of the WMSC Chief Executive Officer.

If the WMSC requires more information or documentation to approve a report, it will notify WMATA. The WMSC may periodically provide WMATA with a copy of its safety event tracking database to outline what report documentation has been received and what additional documentation it has requested for each open investigation. If the WMSC requests changes to the report, WMATA shall make revisions according

to a jointly determined timeframe developed on a case-by-case basis, under the direction of the WMSC Chief Executive Officer. The WMSC will typically submit its questions on Draft Final Reports via comment sheets to WMATA, using the shared site, online. The WMSC requests that responses to its questions be provided via the comment sheet and/or a revised Draft Final Report or Final Report. The WMSC will consider the comment sheet responses an addendum to the Final Report it receives and part of the adopted investigation. Additional details about the investigations process is described in the WMSC Accident Investigations procedure.

Investigation reports must be delivered to the WMSC electronically as a .pdf (or some other unalterable format) with all required WMATA signatures visible.

WMSC-Conducted Investigation

All WMSC personnel have authority under the WMSC Program to conduct investigations and evaluate records, materials, data, analysis, and other information pertinent to the investigation. WMATA will provide to the WMSC investigation team the resources and information necessary to conduct the investigation in an effective and efficient fashion.

The WMSC on-site team will wait until WMATA and/or other emergency response personnel have established Incident Command at the scene before commencing its on-site investigation. The WMSC reserves the right to request that WMATA preserve the scene avoiding removal of damaged equipment, or not rerailing equipment, not conducting clean-up of debris, ensuring all electronic records are preserved without being overwritten until WMSC arrives, and personnel involved in the event be available for interviews in a manner that does not delay post incident testing.

WMSC investigation personnel will conduct field analysis, operational surveys, interviews, record checks, data analysis, and other on-site and off-site tasks which may be necessary for a comprehensive investigation. The WMSC will also assess compliance with operating rules and procedures; conduct follow-up interviews (if required); analyze employee records and the results of post-event drug and alcohol tests; and conduct vehicle and equipment inspections. The WMSC will comply with its own investigations protocols described and referred in this Program Standard, as well as the American Public Transportation Association's (APTA's) Operating Practices standard RT-OP-002-02: "Recommended Process for Performing Rail Transit Accident/Incident Investigations."

Within 45 calendar days of completion of the on-site and off-site investigation, the WMSC investigation team will prepare a draft investigation report containing information on the investigation activities, factors that caused or contributed to the event, and a corrective action plan if necessary or appropriate. The draft investigation report will be provided to WMATA for its review. Comments will be due to the WMSC within 30 calendar days. A final investigation report will be issued by the WMSC within 45 calendar days of after receipt of WMATA's comments.. If WMATA does not concur with the WMSC's report, WMATA may submit a written dissent from the report which WMSC will include in the report.

Any urgent findings/hazards identified while an investigation is ongoing will be brought to the immediate attention of WMATA so that it can take action.

Investigation Conducted by Other Agencies

Depending on the circumstances of a safety event, another agency such as the NTSB might conduct an investigation utilizing its own procedures and personnel. In the event of an NTSB investigation, the WMSC shall request party status to the investigation. The WMSC will support the NTSB investigation. WMATA shall ensure that the WMSC receives a copy of all information that it provides to the NTSB during the investigation, and WMATA shall also ensure that the WMSC receives all NTSB reports and any recommendations related to the investigation. The WMSC will assist the NTSB by providing information requested about WMATA critical practices and other matters as appropriate. WMSC may prepare a party submission to the NTSB.

The WMSC will participate in any discussions and reviews between WMATA and the NTSB pertaining to any Metrorail safety event. The WMSC and WMATA will review the NTSB findings, draft report, and final report, and the WMSC Chief Executive Officer will determine whether or not to recommend to the WMSC Board to adopt the NTSB report and recommendations. Should the NTSB recommendations be adopted by the WMSC, WMATA shall implement corrective measures to address causal factors and recommendations. WMATA will propose corrective actions to address each of these recommendations. The WMSC will be governed by its corrective action plan procedures in reviewing, approving, and monitoring the completion of these corrective action plans that emerge as a result of these recommendations.

If the FTA conducts an investigation of a WMATA Metrorail event, the WMSC will participate in such an investigation, adhering to FTA's protocols for such participation. Participation by the WMSC, in such an FTA investigation, does not eliminate or preclude the WMSC from conducting its own independent investigation to include drawing conclusions on causal factors and requiring WMATA to take corrective measures to address such causal factors.

Any recommendations that lead to corrective action plans associated with an FTA-led investigation will be assessed by the WMSC prior to being incorporated into the WMSC's Corrective Action Plan tracking mechanism for monitoring progress and closure.

Further, the WMSC recognizes that the FTA Administrator may assess the soundness and sufficiency of any investigation either overseen or independently conducted by the WMSC.