



NOTICE OF NON-COMPLIANCE:

C-0240, FALL PROTECTION FOR PERSONNEL WORKING ON ROADWAY MAINTENANCE MACHINES

ISSUED APRIL 4, 2025

Summary

As part of the 2023 WMSC Audit of Roadway Maintenance Machines (<https://wmsc.gov/audits/>), the Washington Metrorail Safety Commission (WMSC) found that Metrorail is putting its personnel at risk by not ensuring the use of adequate fall protection when working on or around RMM (roadway maintenance machines). As a result, corrective action plan (CAP) C-0240 was developed as required by Program Standard Sections 5.E.4 and 9.C to address this finding. C-0240 includes 5 Actionable Items. These Items are completed in succession to mitigate or resolve the safety hazard identified.

Actionable Item 1 of CAP C-0240 was provided to the WMSC on February 23, 2024. On April 18, 2024, Metrorail emailed the WMSC that it intended to pause submission of actionable items related to several open corrective action plans that relate to worker safety; C-240 is included on this list. C-0240 Actionable Item 2 was due on July 10, 2024, and Actionable Item 3 was due on January 22, 2025. Neither of these items were received as required.

Authority

The WMSC Compact (P.L. 115-54), Article IV, Powers, Sec. 30(a) states “In carrying out its purposes, the Commission, through its Board or designated employees or agents, shall, consistent with federal law: (a) Adopt, revise, and distribute a written State Safety Oversight Program[]” and Sec. 30(c) states “(c) Require, review, approve, oversee, and enforce the adoption and implementation of any Corrective Action Plans that the Commission deems appropriate[.]” Further, WMSC Compact Sec. 31(c) provides that the WMSC may “[c]ompel WMATA’s compliance with any Corrective Action Plan or order of the Commission by such means as the Commission deems appropriate...”.

Pursuant to WMSC Compact Sec. 30(a) and 30(b) and 49 CFR sec. 674.27(a)(1), version 7.1 of the WMSC Program Standard became effective on November 15, 2024 (may be found at <https://wmsc.gov/program-standard/>). Program Standard sec. 9.C states that “Each finding issued by the WMSC requires WMATA to develop a suitable CAP. The WMSC may also require WMATA to develop a CAP due to other types of findings or conclusions, including from the sources noted in Section 9.A.” “Upon written approval from the WMSC, WMATA must begin CAP implementation.” (Program Standard Section 9.C.)

49 C.F.R. § 674.27(a)(8) (2024) states that “The SSO program standard must explain the process the SSOA will follow and the criteria the SSOA will apply in conducting a complete audit of the RTA’s

compliance with its Public Transportation Agency Safety Plan at least once every three years, in accordance with 49 U.S.C. § 5329. Alternatively, the SSOA and RTA may agree that the SSOA will conduct its audit on an on-going basis over the three-year timeframe. The program standard must establish a procedure the SSOA and RTA will follow to manage findings and recommendations arising from the triennial audit.”

This Notice of Non-Compliance is brought in accordance with Program Standard sec. 11.B:

In the event WMATA fails to comply with any provision of this Program Standard, the WMSC may issue a notice of non-compliance, provide notice that the WMSC is invoking a power provided in Section 11.C, or both. The WMSC will identify the noncompliance issue and state any action required of WMATA in an email to the WMATA Executive Vice President and Chief Safety & Readiness Officer, or the General Manager. WMATA must then respond by the deadline set by the WMSC. If WMATA fails to address the issue, the WMSC may take further action described in this Section 11.

Background

On October 18, 2023, the WMSC issued its [Audit of Metrorail’s Roadway Maintenance Machines Program](https://wmsc.gov/audits/) (<https://wmsc.gov/audits/>). Finding 1 of the report states “Metrorail does not ensure the use of adequate fall protection when working on or around RMMs.”

During on-site observations for that audit a Metrorail employee climbed on top of the concrete plant on RMM F516 without fall protection. The concrete plant creates ready-mix concrete, and it appeared that the individual was checking the amount of aggregate in the machine, as they needed to quickly prepare this machine for use that night. Car Track & Equipment Maintenance (CTEM) shops obtained portable fall protection systems for the first time that are intended for use when personnel work on top of vehicles, but this system was not used in this case. Metrorail obtaining portable fall protection systems was a positive step, following a finding in a Quality Assurance, Internal Compliance and Oversight Internal Safety Review that the safety equipment is required by Occupational Health and Safety Administration regulations and Metrorail’s Public Transportation Agency Safety Plan. Metrorail closed that internal corrective action plan in October 2022 based on procuring the equipment, procedures for CTEM personnel to use it, training of CTEM personnel, and preventive maintenance plan for the equipment. Metrorail stated during the audit that personnel receive fall protection training, however, those protections were not being carried out in practice. In response to further follow-up questions, Metrorail’s Office of Occupational Safety and Health (OSH) acknowledged that the work observed by the WMSC did not comply with OSHA regulations or with WMATA’s fall protection standards.

Full details of this finding may be found in the WMSC’s audit report linked above. To guide Metrorail in addressing this finding, the WMSC issued the following minimum corrective action:

Metrorail must complete development of and implement a comprehensive fall protection program. This must include Metrorail conducting safety promotion activities to ensure that personnel working on and around RMMs (from departments including CTEM, TRST, PLNT) understand the hazard of falls from height and the necessary mitigations to keep themselves and their colleagues safe.

CAP C-0240 was developed to address this finding in accordance with WMSC Program Standard Section 9.C. An initial draft was provided to the WMSC on November 27, 2023. After review and feedback, the WMSC approved C-0240 for implementation on January 29, 2024.

C-0240 includes critical elements such as the development of a comprehensive fall protection program, review of issues surrounding fall protection including personnel working on RMMs, and additional awareness and training campaigns aimed at promoting understanding of the hazard of falls from height and the necessary mitigations to help keep personnel safe.

C-0240 Actionable Item 1 included the newly developed Metrorail Standard 4483-2-01/00, Fall Protection Program, dated May 30, 2023, and was timely submitted to the WMSC on February 23, 2024. On April 18, 2024, however, Metrorail emailed the WMSC the following:

As you are aware, on March 8, 2024, WMATA emailed WMSC in an effort to informally resolve a matter concerning the scope of the WMSC's audit of WMATA's Fitness for Duty and Occupational Health Programs. Since then, WMSC issued a subpoena dated April 8, 2024, seeking records and information pertaining to the referenced programs. In light of this development, WMATA intends to pause further discussion of the matters subject to the subpoena until the subpoena is resolved. This includes: 1. Responding to ongoing requests from WMSC for occupational safety and health data; 2. Submitting a revised draft for CAP #WMSC-24-C0255 [see its [notice of non-compliance](#)]; 3. Delaying upcoming deliverables for actionable items associated with CAPs listed in the attached document.

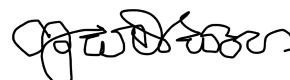
The document referenced in item 3 included C-0240. C-0240 Actionable Item 2 was due on July 10, 2024, and Actionable Item 3 was due on January 22, 2025. Neither of these items were received as required.

Worker safety is a fundamental part of the safety of the WMATA Rail System, and it is identified in WMATA's Public Transportation Agency Safety Plan. The WMSC is obligated to oversee the safety elements in WMATA's Agency Safety Plan. The WMSC and WMATA have had ongoing discussions attempting to resolve the differences that are preventing Metrorail from producing worker safety-related documents. However, WMATA stated that it would stand by its objections for producing any worker safety information. As the WMSC explained in its written response to Metrorail's written objections, and in subsequent discussions, Metrorail's objections to the WMSC's authority are without merit and do not justify its refusal to fully respond and participate in the CAP development process.

WMATA has chosen to prioritize its objection over the safety of its personnel.

Compliance

C-0240 is late. For WMATA to return to compliance with C-0240, WMATA must submit all CAP actionable items that are now past-due. As of the date of this notice, late actionable items include C-0240 AI 2 and 3.



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Washington Metrorail Safety Commission