

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MD

ORDER NO. 13,082

IN THE MATTER OF:

Served December 14, 2011

Rulemaking to Amend Rules of)
Practice and Procedure and)
Regulations: Rule Nos. 24, 26,)
and 27, and Regulation Nos. 54, 58,)
60, 61, 62, 66, and 67)

Case No. MP-2011-091

This rulemaking was announced in Order No. 13,022, served October 18, 2011, for the purpose of soliciting comments on proposed amendments to the Commission's Rules of Practice and Procedure and Regulations,¹ Rule Nos. 24, 26, and 27, and Regulation Nos. 54, 58, 60, 61, 62, 66, and 67.

The Washington Metropolitan Area Transit Commission, (Commission or WMATC), licenses and regulates private sector motor carriers transporting passengers for hire between points in the Washington Metropolitan Area Transit District.²

Article III, Section 6, of the Compact provides that: "The Commission . . . shall publish rules and regulations governing the conduct of its operations." Article XIII, Section 3(a), states that: "The Commission shall perform any act, and prescribe, issue, make, amend, or rescind any order, rule, or regulation that it finds necessary to carry out the provisions of [the Compact]." Article XIII, Section 2(b), states that: "Rules of practice and procedure adopted by the Commission shall govern all hearings, investigations, and proceedings under [the Compact]." Article V, Section 4, stipulates that: "The Commission may delegate by regulation the tasks that it considers appropriate."

Commission Rule No. 1-04 states that: "The Commission may designate and authorize one or more of its members, employees, or representatives to conduct any inquiry, investigation, hearing, or other process or act necessary to its duties and function." Rule No. 31, titled "Staff of the Commission", provides that:

¹ The Commission's Rules and Regulations are available at www.wmatc.gov.

² The Metropolitan District includes: "the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties."

The Executive Director is in charge of the offices of the Commission. The staff is under the direct supervision of the Executive Director. In the performance of administrative functions, the Executive Director works under the direction of, and is responsible to, the Chairman of the Commission.³ Otherwise, the Executive Director is under the direction of, and is responsible to, the full Commission.

In addition to the general delegations of authority in Rule Nos. 1-04 and 31, the Commission has issued specific delegations of authority to the Executive Director at various times throughout its history. Some of those delegations are published in the Commission's Rules of Practice and Procedure and Regulations.⁴ Others are not. This rulemaking was initiated for the purpose of codifying the specific delegations of authority that exist in unpublished form.

Notice of this proceeding was issued in Order No. 13,022 on October 18, 2011. The order discusses the history of unpublished delegations and the specific amendments to the Commission's Rules of Practice and Procedure and Regulations that are under consideration in this proceeding.

Order No. 13,022 was posted to the Commission's website, www.wmatc.gov, on October 18, 2011, and has remained posted there since then. Copies have been served on all WMATC carriers.

The 30-day comment period announced in Order No. 13,022 has now closed. No comments were received. The following amendments proposed in Order No. 13,022 therefore are adopted effective immediately.

I. ELECTRONIC SIGNATURE

Commission Rule No. 24 is amended by inserting the following text after current Rule No. 24-02.

"24-03. Electronic Signature. The Commission's Executive Director may sign Commission orders by use of an electronic facsimile."

II. CARRIER APPLICATIONS: NEW, EXPANSIVE, & TRANSFERRED

Commission Regulation No. 54 is amended by inserting the following text after current Regulation No. 54-06.

³ Under Article III, Section 3(b), of the Compact: "The chairman shall be responsible for the Commission's work and shall have all powers to discharge that duty."

⁴ See Rule Nos. 5-01, 7-02, 7-05, 7-06, 8-01-04, 15-04, 18-01, 19-02, 24-02, 25-02, and 27-02; Regulation Nos. 54-03, 55-05, 62-03. Available at www.wmatc.gov.

"54-07. Routine Applications for Irregular Route Authority. The executive director shall have the authority to approve applications to obtain, transfer or expansively amend a WMATC certificate of authority that meet the following seven criteria:

- (a) the application concerns irregular route authority only;
- (b) the application is signed and complete;
- (c) any additional information requested of applicant has been furnished;
- (d) the applicant published notice in a newspaper of general circulation, if and as directed, and public notice was posted to the Commission's website;
- (e) no comments, requests for intervention or protests have been received;
- (f) the application raises no common control or jurisdictional issues; and
- (g) the record contains no evidence tending to rebut the applicant's prima facie case.

Evidence tending to rebut a prima facie fitness showing shall include evidence of: insolvency, unfit safety rating from USDOT, prior WMATC revocation or denial of operating authority, and other transportation regulatory agency findings of unfitness. Such evidence shall not include an applicant's prior failure to satisfy the conditions of a grant of authority within the 180 days allowed by Regulation No. 66."

III. CARRIER APPLICATIONS: TERMINATION & MINOR AMENDMENT

Commission Regulation No. 54 is amended by inserting the following text after new Regulation No. 54-07.

"54-08. Name Change, Seating Capacity Restriction, and Voluntary Termination Applications. The Executive Director may approve the following applications:

- (a) legal name change not involving a transfer of authority;
- (b) trade name change;
- (c) seating capacity restriction addition; and
- (d) voluntary termination of authority.

Such applications shall not be subject to the requirements in Regulation Nos. 54-02, 54-04, and 54-05. Legal name applications shall include proof of legal change. A trade name application shall include proof of trade name registration in the jurisdiction where applicant's principal place of business is located. In the case of an applicant whose principal place of business is outside the District of Columbia, Maryland, or Virginia, the Commission will accept a registration certificate from the jurisdiction in the Metropolitan District where applicant's local office or designated agent for service is located."

IV. VOIDED CONDITIONAL GRANTS

Commission Rule No. 26 is amended by inserting the following text after current Rule No. 26-04.

"26-05. Reopening by Executive Director. In the event a conditional grant of authority becomes void due to an applicant's failure to timely satisfy the conditions of issuance within the 180 days allowed by Regulation No. 66, the Commission's Executive Director may reopen the proceeding and issue said authority if the applicant timely files an application for reconsideration in accordance with Rule No. 27-06 and satisfies the conditions of issuance on or before the deadline for requesting reconsideration."

Commission Rule No. 27 is amended by inserting the following text after current Rule No. 27-05.

"27-06. Reconsideration of Voided Grant of Authority. The voiding of a conditional grant of authority pursuant to Regulation No. 66 represents the final decision of the Commission on the underlying application and therefore is subject to reconsideration. Publication of said decision shall be deemed to occur on the 181st day following issuance of the conditional grant."

Commission Regulation No. 66 is amended by replacing current Regulation No. 66 with the following text.

"66. Voiding of Conditional Grant of Authority.

66-01. 180-Day Deadline. Except as provided in Regulation No. 66-02, the time for complying with the conditions of a grant of authority shall not be extended beyond 180 days from the date of the grant. A conditional grant of authority shall be void on the 181st day following the date of the grant if full compliance has not been achieved at that time. An applicant which has three successive conditional grants voided under this regulation shall be barred from reapplying for a period of one year as measured from the end of the third 180-day period.

66-02. Extensions. Upon timely request for an extension of the 180-day deadline in Regulation No. 66-01, the Commission's Executive Director may grant a maximum extension of 31 days."

V. AUTOMATIC SUSPENSION ORDERS

Commission Regulation No. 58 is amended by inserting the following text after current Regulation No. 58-19.

"58-20. Issuance of Orders Under Rule Nos. 58-12 & 58-13. The Commission's Executive Director shall issue an order noting the automatic suspension of a carrier's operating authority under Regulation No. 58-12 as soon as practicable after such an event occurs. The order shall admonish that no operations may be conducted under the carrier's certificate of authority unless and until otherwise ordered by the Commission. The order shall advise that the carrier's operating authority shall be subject to revocation if the carrier fails to file the necessary WMATC Insurance Endorsement(s) and pay the late fee under Regulation No. 67-03(c) within 30 days. The

Executive Director shall issue a lift-suspension order if the conditions for lifting a suspension under Regulation No. 58-13 are met within the aforementioned 30 days."

Commission Regulation No. 60 is amended by inserting the following text after current Regulation No. 60-03.

"60-04. Issuance of Orders Under Rule No. 60-03. The Commission's Executive Director shall issue an order noting the automatic suspension of a carrier's operating authority under Regulation No. 60-03 as soon as practicable after such an event occurs. The order shall admonish that no operations may be conducted under the carrier's certificate of authority unless and until otherwise ordered by the Commission. The order shall advise the carrier that the carrier's operating authority shall be subject to revocation if the carrier fails to file a complete current annual report within 30 days. The Executive Director shall issue an order lifting a suspension imposed under Regulation No. 60-03 if the carrier files a complete current annual report within the aforementioned 30 days."

Commission Regulation No. 67 is amended by inserting the following text after current Regulation No. 67-05.

"67-06. Issuance of Orders Under Rule No. 67-04. The Commission's Executive Director shall issue an order noting the automatic suspension of a carrier's operating authority under Regulation No. 67-04 as soon as practicable after such an event occurs. The order shall admonish that no operations may be conducted under the carrier's certificate of authority unless and until otherwise ordered by the Commission. The order shall advise the carrier that the carrier's operating authority shall be subject to revocation if the carrier fails to pay all outstanding fees within 30 days. The Executive Director shall issue an order lifting a suspension imposed under Regulation No. 67-04 if the carrier pays all outstanding fees within the aforementioned 30 days."

VI. VEHICLE MARKING WAIVER

Commission Regulation No. 61 is amended by inserting the following text after current Regulation No. 61-05.

"61-06. Limousines and Luxury Sedans. The requirements in Rule 61-01(a) are waived as to limousines and luxury sedans seating 15 persons or less, including the driver. The requirements in Rule 61-01(b) are waived as to limousines and luxury sedans seating 9 persons or less, including the driver. The term "luxury sedans and limousines" includes sport utility vehicles (SUVs) but not vans."

VII. VEHICLE LEASE APPROVAL

Commission Regulation No. 62 is amended by replacing current Regulation No. 62-03 with the following text.

"62-03. Action by Executive Director.

(a) Review. The Executive Director or his delegate shall review for sufficiency each vehicle lease filed in accordance with this regulation. The review shall be completed no later than the end of the third business day following receipt of the lease.

(b) Acceptance or Rejection. Copies of complete leases created by using the Commission's lease form, and copies of complete leases not created by using the Commission's form but in substantially the same form and containing substantially the same terms, shall be accepted for filing. All others shall be rejected."

VIII. WMATC INSURANCE ENDORSEMENT REVOCATION

Commission Regulation No. 58 is amended by replacing current Regulation No. 58-09 with the following text.

"58-09. Right to Revoke. The Executive Director may, upon thirty days' notice, revoke any WMATC Insurance Endorsement if, in the judgment of the Executive Director, such security does not comply with the Commission's regulations or for any reason fails to provide satisfactory or adequate protection for the public."

THEREFORE, IT IS ORDERED: that the foregoing amendments to the Commission's Rules of Practice and Procedure and Regulations are hereby adopted and effective immediately.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.
Executive Director