

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MD

ORDER NO. 13,385

IN THE MATTER OF:

Served August 15, 2012

Rulemaking to Amend Rules of )  
Practice and Procedure and )  
Regulations: Regulation )  
Nos. 51 & 64 )  
Case No. MP-2012-015

This rulemaking was announced in Order No. 13,151, served February 13, 2012, pursuant to Title II of the Washington Metropolitan Area Transit Regulation Compact<sup>1</sup> (Compact), Article XIII, Section 3, and Commission Rule No. 30, for the purpose of soliciting comments on proposed amendments to Commission Regulation No. 51, "Definitions," and Commission Regulation No. 64, "Safety Regulations".<sup>2</sup>

This order adopts the amendments proposed in Order No. 13,151, as modified in response to the comments filed, which are discussed below. The final regulations adopted in this order: (1) clarify the WMATC safety standards for operations in vehicles seating 9 persons or more, including the driver; (2) establish the WMATC safety standards for operations in vehicles seating fewer than 9 persons, including the driver; (3) establish the WMATC safety standards for transportation of disabled passengers; and (4) promote enhanced WMATC safety enforcement.

**I. BACKGROUND**

The Washington Metropolitan Area Transit Commission, (Commission or WMATC), regulates private sector motor carriers transporting passengers for hire between points in the Washington Metropolitan Area Transit District (Metropolitan District), pursuant to the Compact. Article XI, Section 5(a), of Title II of the Compact states that each authorized carrier shall provide safe and adequate transportation service, equipment, and facilities.

The Commission's safety regulations may be found in Regulation No. 64, which provides as follows:

The Commission adopts and incorporates herein by reference the Federal Motor Carrier Safety Regulations [FMCSRs] as amended from time to time, to the extent that

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<sup>1</sup> Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990) (codified at D.C. CODE § 9-1103.01 (2012); MD. TRANSP. CODE § 10-203 (2012); & VA. CODE §§ 56-529, 530 (2012)).

<sup>2</sup> The Commission's Rules and Regulations are available at [www.wmatc.gov](http://www.wmatc.gov).

the said regulations apply to the operations of passenger carriers. These regulations are set out in Title 49 of the Code of Federal Regulations.

The Commission adopted Regulation No. 64 in 1991.<sup>3</sup> Regulation No. 64 replaced the safety regulations that had been in place since 1963.<sup>4</sup> The 1963 regulations applied to carriers holding authority from the Commission and their drivers and "buses".<sup>5</sup> Bus was defined as "any vehicle operated by a 'Passenger Carrier' over the public streets or highways within the Metropolitan District and used for the transportation of passengers for hire."<sup>6</sup> Thus, under the Commission's 1963 safety regulations, all WMATC carriers, vehicles, and drivers were covered. That changed with the adoption of Regulation No. 64 in 1991.

Regulation No. 64 only applies to: (1) WMATC vehicles seating 9 persons or more, including the driver; and (2) the drivers and carriers operating such vehicles. Vehicles seating 8 persons or less, including the driver, and the drivers and carriers operating such vehicles only, are not covered. This follows from the definition of "commercial motor vehicle" in the FMCSRs adopted by Regulation No. 64.

When the Commission adopted the FMCSRs in 1991, the term "commercial motor vehicle" meant, in pertinent part, a vehicle used on public highways in interstate commerce to transport more than 15 passengers, including the driver.<sup>7</sup> Early Commission decisions focused chiefly on vehicle inspections and driver qualifications.<sup>8</sup>

Congress expanded the statutory definition of commercial motor vehicle in June 1998 in the Transportation Equity Act for the 21st Century (TEA-21) to include smaller vehicles used on highways in interstate commerce to transport 9 to 15 passengers, including the driver, for compensation (9-15 passenger for-hire CMVs).<sup>9</sup> The Act stipulated that the FMCSRs would automatically apply to the operation

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<sup>3</sup> *In re Rules of Prac. & Proc. & Regs.*, No. MP-91-05, Order No. 3600 (Jan 17, 1991).

<sup>4</sup> *In re Safety Regs.*, No. 37, Gen. Order No. 8 (Sept. 20, 1963).

<sup>5</sup> *In re Safety Regs.*, No. 37, Gen. Order No. 8, App. Reg. No. 100-09 (Sept. 20, 1963).

<sup>6</sup> *Id.*, Reg. No. 101-02.

<sup>7</sup> See 49 C.F.R. § 390.5 (1996), at <http://www.gpoaccess.gov/cfr/index.html>; see also 49 U.S.C.S. App. § 2503(1)(B) (1990) (same).

<sup>8</sup> See e.g., *In re All-Star Presidential, LLC, & Presidential Limo. Serv., Inc.*, No. MP-95-82, Order No. 4961 (Oct. 29, 1996); *In re Double Decker Bus Tours, W.D.C., Inc.*, No. AP-95-21, Order No. 4730 (Jan. 4, 1996); *In re Double Decker Bus Tours, W.D.C., Inc.*, No. AP-95-21, Order No. 4642 (Aug. 9, 1995); *In re D.C. Ducks, Inc.*, No. AP-94-21, Order No. 4361 (Aug. 9, 1994).

<sup>9</sup> Pub. L. No. 105-178, § 4008(a)(2), 112 stat. 107, 404 (June 9, 1998).

of such vehicles one year after enactment except to the extent exempted by the Secretary of Transportation.<sup>10</sup>

In an interim final rule in September 1999, the Federal Highway Administration (FHWA) conformed the commercial motor vehicle definition in the FMCSRs with the 1998 statutory amendment but exempted 9-15 passenger for-hire CMV operations from the FMCSRs for six months to allow time for consideration of a companion rulemaking to make the six-month exemption permanent while modifying it so that operators of such vehicles in the future would be subject to some minimal reporting, vehicle marking, and accident recordkeeping requirements.<sup>11</sup>

In December 1999, Section 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) directed the Secretary to amend the FMCSRs so that at a minimum they apply to commercial vans commonly referred to as "camionetas" and those commercial vans operating in interstate commerce outside commercial zones "that have been determined to pose serious safety risks."<sup>12</sup>

In January 2001, having succeeded to the motor carrier jurisdiction of the FHWA, the Federal Motor Carrier Safety Administration (FMCSA) made final FHWA's 1999 interim definition and FHWA's proposed exemption.<sup>13</sup> WMATC honored the new definition later that year but ignored the exemption when it cited the insurance requirements under 49 C.F.R. § 387.25 in an order revoking the WMATC Insurance Endorsements of carriers whose WMATC authority was restricted to operations in vehicles seating 15 persons or less, including the driver.<sup>14</sup>

In January 2003, the Commission initiated a rulemaking to resolve conflicts between the WMATC vehicle marking requirements in WMATC Regulation No. 61, on the one hand, and the WMATC vehicle marking requirements in Regulation No. 62 and the FMCSR vehicle marking requirements imported through Regulation No. 64, on the other.<sup>15</sup> The order initiating the rulemaking noted that the FMCSR vehicle marking requirements applied to vehicles "designed or used to transport nine or more persons, including the driver."<sup>16</sup> The order did

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<sup>10</sup> *Id.* § 4008(b).

<sup>11</sup> 64 Fed. Reg. 48510 (Sept. 3, 1999); see also 64 Fed. Reg. 48518 (Sept. 3, 1999) (proposed rulemaking).

<sup>12</sup> Pub. L. No. 106-159, § 212, 113 stat. 1748, 1766 (Dec. 9, 1999).

<sup>13</sup> 66 Fed. Reg. 2756 (Jan. 11, 2001).

<sup>14</sup> *In re Epps Transp. Co., Inc.*, No. MP-01-44, Order No. 6375 (Oct. 3, 2001).

<sup>15</sup> *In re Rulemaking to Amend Reg. No. 61 & Reg. No. 62*, No. MP-03-08, Order No. 7015 (Jan. 27, 2003).

<sup>16</sup> *Id.* at 2.

not mention any exemption.<sup>17</sup> The Commission resolved the conflict with Regulation No. 64 by stipulating that the FMCSRs adopted through Regulation No. 64 do not include vehicle marking requirements.<sup>18</sup>

In August 2003, in response to the 1999 MCSIA mandate, the FMCSA lifted the exemption with respect to 9-15 passenger for-hire CMVs "operated beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location."<sup>19</sup> Operation of such vehicles wholly within a 75-mile radius was still exempt, subject only to the reduced reporting, marking, and recordkeeping requirements proposed by the FHWA in 1999 and made final by the FMCSA in 2001.<sup>20</sup> The Commission, however, did not recognize this distinction. On the contrary, the Commission completely ignored the exemption when it cited noncompliance with 49 C.F.R. 387.35 as grounds for rejecting the WMATC Insurance Endorsement of a carrier with restricted WMATC operating authority in 2004<sup>21</sup> and as grounds for revoking the WMATC Insurance Endorsements of two other such carriers, one in 2004<sup>22</sup> and one in 2007.<sup>23</sup>

Congress eliminated the 75-mile exemption in 2005, declaring in Section 4136 of SAFETEA-LU<sup>24</sup> that "[t]he Federal motor carrier safety regulations that apply to interstate operations of commercial motor vehicles designed to transport between 9 and 15 passengers (including the driver) shall apply to all interstate operations of such carriers regardless of the distance traveled."<sup>25</sup> The FMCSA eventually removed the 75-mile exemption from the FMCSRs in 2010.<sup>26</sup>

Thus, today, Regulation No. 64 applies to WMATC operations in vehicles seating 9 persons or more, including the driver, but not

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<sup>17</sup> A footnote mentioned that the FMCSR vehicle marking requirements differed depending on whether the carrier's operations were confined to a 75 mile radius, but that caveat was ignored in the body of the order and in the table of conflicts contained in an appendix to the order.

<sup>18</sup> *In re Rulemaking to Amend Reg. No. 61 & Reg. No. 62*, No. MP-03-08, Order No. 7132 (Apr. 11, 2003).

<sup>19</sup> 68 Fed. Reg. 47860 (Aug. 12, 2003).

<sup>20</sup> *Id.*

<sup>21</sup> *In re L Thompson Enterprises, Inc.*, No. MP-04-144, Order No. 8285 (Sept. 20, 2004).

<sup>22</sup> *In re Washington Shuttle, Inc., t/a Supershuttle*, No. MP-04-151, Order No. 8235 (Aug. 24, 2004).

<sup>23</sup> *In re Fowler Trio, L.L.C., t/a AAA Transport and All American Adventures & Tours*, No. MP-07-153, Order No. 10,658 (July 25, 2007).

<sup>24</sup> Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, 119 Stat. 1144, 1745 (August 10, 2005) (codified as a note to 49 U.S.C. § 31136).

<sup>25</sup> 119 Stat. at 1745.

<sup>26</sup> 75 Fed. Reg. 4996 (Feb. 1, 2010) (effective May 3, 2010).

WMATC operations in vehicles seating fewer than 9 persons, including the driver.<sup>27</sup>

Regulation No. 64 also does not address safety issues unique to vehicles designed to accommodate disabled passengers, including those in wheelchairs. Passenger carrier regulations under the Americans with Disabilities Act,<sup>28</sup> (ADA), include vehicle safety standards,<sup>29</sup> but the Commission does not regard violations of those regulations as violations of Article XI, Section 5(a), of the Compact.<sup>30</sup>

Finally, the terseness of Regulation No. 64 has required the Commission to periodically clarify which FMCSRs apply to WMATC carriers and to what extent.<sup>31</sup>

## II. NOTICE OF PROPOSED RULEMAKING

As noted above, this rulemaking was announced in Order No. 13,151, served February 13, 2012. The order stated that the Commission proposed amending Regulation No. 64 to: (1) clarify which FMCSRs have been adopted for application to WMATC carriers and the extent to which they apply; (2) prescribe safety regulations for WMATC vehicles with a maximum seating capacity of fewer than 9 persons and the operators of such vehicles; and (3) adopt federal ADA van and bus regulations for application to WMATC handicapped-accessible vehicles. To enhance enforcement, the proposed amendments will require that carriers obtain for-hire license plates for their WMATC vehicles and

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<sup>27</sup> As with the 9-15 passenger for-hire CMV exemption, the Commission has consistently ignored the exemption for operations in the Washington, DC, commercial zone, currently codified at 49 C.F.R. § 372.219. See e.g., *In re Exec. Tech. Solutions, LLC, v. W & T Travel Servs. LLC, t/a WTTS*, No. FC-09-001, Order No. 12,282 (Jan. 14, 2010) (citing 49 CFR 396.17); *In re A Yankee Line, Inc.*, No. AP-09-086, Order No. 12,116 (Aug. 17, 2009) (citing 49 CFR 396); *In re Ride The Ducks Int'l, LLC*, No. AP-07-231, Order No. 11,246 (Mar. 31, 2008) (citing 49 CFR 391.31); *In re City Sightseeing USA Inc.*, No. AP-04-39, Order No. 8042 (June 1, 2004) (citing 49 CFR 391.31); *In re Thomas B. Howell, t/a Presidential Ducks*, No. AP-00-07, Order No. 5955 (Aug. 10, 2000) (citing 49 CFR 391.31, 396). Recognition of the commercial zone exemption would have the effect of tolling all FMCSRs as to virtually all operations under WMATC authority, which would render the Commission's adoption of the FMCRS pointless.

<sup>28</sup> See 42 U.S.C. § 12101 et seq (2009).

<sup>29</sup> 49 C.F.R. §§ 37, 38 (2009).

<sup>30</sup> See *In re Rules of Prac. & Proc. & Regs., Nos. 51, 55 & 63*, No. MP-96-21, Order No. 4786 (Mar. 12, 1996) (finding of noncompliance with ADA regulations would be relevant to determination of whether carrier engaged in undue discrimination under Compact).

<sup>31</sup> See e.g., *In re Fowler Trio, L.L.C., t/a AAA Transport and All American Adventures & Tours*, No. MP-07-153, Order No. 10,658 (July 25, 2007) (holding that safety regulations adopted by Reg. No. 64 include insurance company qualification standards); *In re Rulemaking to Amend Reg. No. 61 & Reg. No. 62*, No. MP-03-08, Order No. 7015 (Jan. 27, 2003) (resolving conflicts between vehicle marking requirements in Reg. No. 61 and those adopted through Reg. No. 64).

authorize the issuance of out-of-service notices for violations of the Commission's safety regulations.

The order further stated that the amendments to Regulation No. 64 will require amendment of Regulation No. 51-11, which defines the term "State" to mean "the Commonwealth of Virginia, the State of Maryland, or the District of Columbia." It is proposed that the term "State" shall be redefined to mean "a State of the United States and the District of Columbia."

The order also stated that the effect of these amendments will be to impart no change regarding vehicles seating 9 persons or more, restore safety regulations for vehicles seating 8 persons or less, establish safety regulations for handicapped-accessible vehicles, and enhance enforcement.

Finally, Order No. 13,151 disclosed how Regulation No. 51-11 and Regulation No. 64 would appear if the proposed amendments were adopted without change, and comments were invited on said amendments through March 30, 2012.

The order was posted to the Commission's website on the date of issuance and served on all carriers of record that same day. A notice of rulemaking was published in the Washington Times on February 16, 2012.

### **III. COMMENTS AND ANALYSES**

The Commission received comments from three persons: International Limousine Service, Inc., WMATC No. 38; Transcom, Inc., WMATC No. 582; and John Marshall, Esquire.

#### **A. Comments of International Limousine Service, Inc.**

The comments of International Limousine Service focus on the proposed regulations directed at vehicles seating 8 persons or less and the carriers operating such vehicles. International Limousine Service questions whether the Commission has considered the "financial hardships" that carriers operating these vehicles would face under the proposed amendments to Regulation No. 64.

Other than the wheelchair accessibility standards, and other than an annual vehicle inspection requirement that already exists for commercial and for-hire vehicles registered in the District,<sup>32</sup> Maryland,<sup>33</sup> and Virginia,<sup>34</sup> it does not appear to the Commission that any of the proposed amendments applying to these vehicles will require

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<sup>32</sup> See <http://dmv.dc.gov/info/DMV%20Municipal%20Regulations.shtm>.

<sup>33</sup> See [http://webapp.psc.state.md.us/Intranet/sitesearch/Whats\\_new/Maryland%20PSC%20Offers%20Advice%20for%20Choosing%20Limos%20for%20Prom.pdf](http://webapp.psc.state.md.us/Intranet/sitesearch/Whats_new/Maryland%20PSC%20Offers%20Advice%20for%20Choosing%20Limos%20for%20Prom.pdf)

<sup>34</sup> See <http://www.vsp.state.va.us/Safety.shtm>.

any significant financial outlay.<sup>35</sup> The proposed rules for 8-and-unders do little more than prohibit operation of unsafe vehicles and employment of unsafe drivers, and adoption of wheelchair accessibility standards will only affect those carriers that choose to operate such service and are not already subject to the Americans With Disabilities Act. Having no WMATC safety standards for vehicles transporting passengers seated in wheelchairs and no WMATC safety regulations for any vehicle seating fewer than nine persons, including the driver, is not consistent with the public interest.

International Limousine Service also expresses concern that the amendments to Regulation No. 64 will somehow "change . . . state laws" and negatively affect non-WMATC vehicles. Regulation No. 64 applies only to vehicles operated under WMATC authority. These amendments should have no effect on the laws of other jurisdictions.

#### **B. Comments of Transcom, Inc.**

The comments of Transcom likewise focus mostly on the proposed regulations directed at vehicles seating 8 persons or less and the drivers and carriers operating such vehicles. But Transcom also takes issue with two proposed regulations directed at all WMATC carriers. We first address Transcom's comments on the two proposed regulations directed at all WMATC carriers, and then we address the others.

**Regulation Nos. 64-05 Vehicle Out of Service & 64-06 Driver Out of Service.** Under these regulations the Executive Director or designee may require WMATC carriers to present vehicles and driver records for inspection and may order drivers and vehicles out of service if the vehicles and/or records are not produced or reveal violations of Regulation No. 64.

Transcom argues that a provision for reasonable notice should be expressly included in these regulations. That the Executive Director shall exercise delegated powers in a reasonable manner is implicit in all Commission delegations.

Transcom also argues that this is a "one strike you [the carrier] are out" rule. This would be the result if a carrier failed to produce any vehicles or failed to produce any driver records. This also would be the result if staff inspection revealed that all vehicles or all drivers were unsafe. In either case, directing a carrier to cease operating would be consistent with the public interest. In the latter case, the carrier would be required to shut down of its own accord. In any other case, any out of service notice would be vehicle and/or driver specific. Thus, the final rule shall stand as proposed.

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<sup>35</sup> The nominal cost of monitoring employee driving records and criminal records need not be borne by employers. It may be borne by employees as a condition of employment.

Regarding the proposed rules pertaining to vehicles seating 8 persons or less, and the drivers and carriers operating such vehicles, Transcom takes issue with the proposed regulations governing: driver vehicle inspections, annual vehicle inspections, driver qualifications, driver fitness, and driver criminal records. The comments and responses are as follows:

**Regulation No. 64-02(a) Driver Vehicle Inspection.** Transcom argues for a more detailed, less ambiguous driver vehicle inspection rule. The proposed rule is: "Before operating a vehicle, a driver shall determine that the vehicle is in good working order." The final regulation has been amended to specify which vehicle parts must be inspected at a minimum, and the frequency of inspection description has been reworded to remove any ambiguity.

**Regulation No. 64-02(b) Unsafe Vehicle.** The proposed rule prohibits operation of a vehicle that, among other things, has not passed a for-hire motor vehicle safety inspection within the preceding twelve months. Transcom argues that this part of the rule should not apply to new vehicles. Transcom cites Maryland as a jurisdiction that does not require inspection of new vehicles.

Current Commission safety inspection policy does not distinguish between "old" and "new" vehicles. As for the Compact signatories, an exemption is available in Maryland, where no inspection is required with respect to for-hire vehicles with less than 5,000 odometer miles and a seating capacity of 15 persons or less.<sup>36</sup> An exemption also exists in Virginia, but only for new vehicles purchased in Virginia and inspected by the manufacturer or distributor.<sup>37</sup> It appears that the District of Columbia has no exemption for new commercial and for-hire vehicles.<sup>38</sup> Until the signatory exemptions for new vehicles become more comprehensive and widely available among the signatories, we are inclined not to change existing WMATC policy.

**Regulation No. 64-02(c) Qualified Driver.** Transcom finds the driver qualification requirements in 64-02(c)(iv) (experience and/or training) & (v) (physical ability) too vague.

We disagree that 64-02(c)(iv) is too vague. The experience-and-or-training standard articulated in 64-02(c)(iv) has been borrowed almost verbatim from 49 CFR 391.11(b)(3), which has been in place for many years. The only difference between the two is that 49 CFR 391.11(b)(3), applies only to vehicles seating more than 8 persons; whereas, 64-02(c)(iv) applies only to vehicles seating fewer than 9

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<sup>36</sup> <http://webapp.psc.state.md.us/intranet/info/forms/form-28.pdf>.

<sup>37</sup> <http://www.vsp.state.va.us/Safety.shtm>.

<sup>38</sup> See <http://dmv.washingtondc.gov/serv/inspections.shtm> (only new vehicles not used for commercial or for hire are exempt from initial emissions inspection).

persons. We do not see how that difference renders the standard impermissibly vague.

We do agree, upon further reflection, that the "physical qualification" standard in 64-02(c)(v) is too vague and shall be eliminated from the final rule. That rule was borrowed from 49 CFR 391.11(b)(4), but the federal rule is further clarified by 49 CFR 391.41-49. Adopting the federal rule without adopting those clarifications would not be appropriate - nor would adopting the federal rule with those clarifications but without first having provided an opportunity for comment on those clarifications.

**Regulation No. 64-02(d) Unfit Driver.** Transcom finds the unfit driver standards in 64-02(d) too vague. Transcom urges the Commission to specify precisely how a carrier should monitor driver illness, fatigue, and drug/alcohol use so as to be in compliance with this regulation.

In drafting this rule, the Commission consciously avoided imposing a rigid, top-down monitoring regime out of concern for overly burdening carriers that, using a modest amount of ingenuity, should be capable of managing their operations in ways that might not occur to regulators but are reasonably calculated to uncover manifestly unfit drivers during the ordinary course of business. We are not convinced that a one-size-fits-all approach is absolutely necessary. Until such time as evidence comes to light establishing that variation in monitoring methods is inadvisable, the rule shall stand as proposed.<sup>39</sup> In the meantime, carriers that make no effort to monitor their drivers, or are otherwise unconcerned about the mental and physical condition of their drivers, run the risk of being found not in compliance with this regulation.

**Regulation No. 64-02(h) Criminal History Record.** As proposed, this rule would prohibit a carrier from hiring a new driver without first obtaining a certified copy of the driver's complete criminal history record maintained by each state in which the driver resided during the preceding ten years. Transcom argues that this would require a WMATC carrier to "master the laws of all fifty states." We disagree. This rule merely requires each new driver to identify on

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<sup>39</sup> This approach stands in contrast to the Commission's continuation of the federal one-size-fits-all approach for vehicles seating 9 persons or more. Most, if not all, WMATC carriers with vehicles seating 16 or more persons are registered with the FMCSA. Continuing a single set of safety regulations for those carriers makes the most sense. As for WMATC carriers with vehicles seating 9 to 15 persons, Congress has specifically determined that local interstate operations in such vehicles should be covered by the FMCSRs, as noted above in the discussion of the history of safety regulation leading up to this rulemaking. We agree. *Cf., In re Security for the Protection of the Public*, No. MP-85-02, Order No. 2721 (June 19, 1985) (finding adoption of federal \$1.5 million liability insurance minimum appropriate for WMATC vehicles seating fewer than 16 passengers based on study of WMATC carriers).

the job application his/her state(s) of residence for the prior ten years and to ensure that said state(s) forward the driver's certified criminal history record(s) to his/her prospective employer.

Transcom also advocates that the Commission waive this regulation as to drivers required to maintain a federal security clearance. This would have the effect of shifting the burden of compliance to the driver and clearance agency. We believe the carrier should not be absolved of this responsibility.

### **C. Comments of John Marshall, Esquire**

Mr. Marshall offers comments on proposed Regulation Nos. 64-01, 64-02(a)-(d), 64-05, and 64-06.

With respect to Regulation No. 64-02, subsections (a)-(d), Mr. Marshall recommends that the Commission make these subsections more specific. We have addressed this above in our response to Transcom's comments.

As for Regulation Nos. 64-05, and 64-06, Mr. Marshall argues that not every violation of Regulation No. 64 should result in the removal from service of a vehicle and/or driver, that warning notices and other sanctions should be considered. If the violation has been corrected, we agree. But we can think of no argument that would justify permitting an unsafe vehicle or unsafe driver to transport passengers.

Finally, Mr. Marshall questions whether the FMCSRs should apply to WMATC carriers through proposed Regulation No. 64-01 because of the "short haul" nature of WMATC operations. Mr. Marshall takes particular exception with the "recordable accident rate"<sup>40</sup> of 1.7 accidents per million miles for urban carriers, which is one of the criteria used under 49 C.F.R. Part 385 for assessing the safety fitness of a carrier.<sup>41</sup> Mr. Marshall cites accident statistics for urban taxi fleets in opposition. But Mr. Marshall declines to vouch for the accuracy or comparability of these statistics. Mr. Marshall suggests that the Commission conduct its own study of accident rates, but we are not persuaded that we should adopt the FMCSRs without also adopting the recordable-accident safety standard specifically adopted by the Secretary of Transportation for motor carriers operating in urban areas, and we do not believe that this rulemaking should be postponed so that we might perform such a study ourselves.

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<sup>40</sup> Recordable accident, as defined in [49 C.F.R. § 390.5](#), means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

<sup>41</sup> See 49 C.F.R. § 385, Appendix A, III, B.

It also appears that Mr. Marshall questions the wisdom of applying "an accident standard designed for busses and eighteen wheel tractor trailers" to vehicles seating only 9 to 15 persons, but Mr. Marshall does not explain why we should ignore Congress' determination that short haul operations in these smaller vehicles should no longer be outside the reach of the FMCSRs.<sup>42</sup> Accordingly, we shall decline Mr. Marshall's invitation to make the Washington Metropolitan Area perhaps the only multi-state urban region in the country not subject to the interstate passenger carrier safety standards deemed appropriate by Congress.

#### **IV. ADOPTION OF AMENDED REGULATION NOS. 51-11 AND 64**

As amended consistent with the discussion above, Regulation No. 51-11 and Regulation No. 64 shall read as follows:

51. Definitions.

51-11. State means a State of the United States and the District of Columbia.

64. Safety Regulations.

64-01. Safety Regulations for Vehicles Seating 9 Persons or More, Including the Driver. The Commission adopts and incorporates herein by reference the Federal Motor Carrier Safety Regulations (FMCSRs) in Parts 40 (Drug and Alcohol Testing Procedures), 380 (Special Training), 382 (Controlled Substances & Alcohol), 383 (Commercial Driver's License (CDL)), 385 (Safety Fitness Procedures), 390 (General), 391 (CMV Drivers), 392 (CMV Operation), 393 (CMV Parts & Accessories), 395 (CMV Hours of Service), and 396 (CMV Inspection, Repair & Maintenance) of Title 49 of the Code of Federal Regulations, as amended from time to time. The FMCSRs adopted and incorporated herein shall apply to vehicles operated under WMATC authority and seating 9 persons or more, including the driver, and to the drivers and carriers operating such vehicles, whether such vehicles are operated in interstate commerce or not; provided, that Parts 40 (Drug and Alcohol Testing Procedures), 382 (Controlled Substances & Alcohol) and 383 (Commercial Driver's License (CDL)) shall apply only to vehicles seating 16 persons or more, including the driver, and to the drivers and carriers operating such vehicles. References to "Department of Transportation", "Federal Motor Carrier Safety Administration", "Agency", "Secretary", and "Administrator" shall be understood to refer to WMATC.

64-02. Safety Regulations for Vehicles Seating 8 Persons or Less, Including the Driver. The following regulations shall apply to vehicles operated under WMATC authority and seating 8 persons or less, including the driver, and to the drivers and carriers operating such vehicles.

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<sup>42</sup> 119 Stat. at 1745.

(a) Driver Vehicle Inspection. On each day that a vehicle is operated, before the vehicle is operated for the first time that day, the driver shall determine that the vehicle is in good working order by confirming safe operability of vehicle brakes, lights, windows, mirrors, seat belts, horn, steering, and wheels.

(b) Unsafe Vehicle. No person shall operate a vehicle, and no carrier shall permit a person to operate a vehicle, that is not in good working order; has not passed a for-hire motor vehicle safety inspection conducted by the District of Columbia or one of the fifty states within the preceding twelve months; or otherwise appears unsafe to operate.

(c) Qualified Driver. No person shall operate a vehicle, and no carrier shall permit a person to operate a vehicle, unless that person:

- (i) is at least 21 years old;
- (ii) has a current, valid driver's license issued by the driver's state of residence;
- (iii) can read and speak the English language sufficiently to converse with the public, understand highway traffic signs and signals, respond to official inquiries, and make entries in reports and records; and
- (iv) can, by reason of experience, training, or both, safely operate the type of motor vehicle he/she drives.

(d) Unfit Driver. No person shall operate a vehicle, and no carrier shall permit a person to operate a vehicle, if that person is unfit to operate a vehicle by reason of:

- (i) any alcohol in his/her system;
- (ii) any controlled substance, narcotic, or habit-forming drug in his/her system;
- (iii) any prescription medication in his/her system of a type or in an amount that might render the person incapable of operating a motor vehicle safely; or
- (iv) illness or fatigue.

(e) Disqualified Driver. No person shall operate a vehicle, and no carrier shall permit a person to operate a vehicle, while disqualified by reason of: (1) being found guilty of; (2) forfeiting bond or collateral upon a charge of; or (3) otherwise being penalized civilly or criminally for any of the following offenses:

- (i) driving a motor vehicle under the influence of alcohol;
- (ii) driving a motor vehicle under the influence of a controlled substance, narcotic, or habit-forming drug;
- (iii) leaving the scene of an accident while operating a motor vehicle;
- (iv) committing a felony or misdemeanor involving the use of a for-hire motor vehicle;
- (v) violating an out of service notice;
- (vi) violating any of the Commission's Safety Regulations;
- (vii) committing any other offense that tends to render the person unfit to operate a vehicle.

(f) Disqualification Period. Drivers disqualified under Regulation No. 64-02(e) shall be disqualified for a period of:

- (i) 90 days to 1 year after the date of the first conviction or forfeiture of bond or collateral;
- (ii) 1 year to 5 years after the date of a second separate conviction or forfeiture of bond or collateral within a 10-year period;
- (iii) 3 years to 5 years after the date of a third or subsequent separate conviction or forfeiture of bond or collateral within a 10-year period.

(g) Driving Record. A carrier shall not employ a person as a driver without first obtaining a certified copy of the person's complete driving record maintained by each state from which the person held a motor vehicle operator's license or permit during the preceding ten years. Every twelve months thereafter a carrier shall obtain a certified copy of the person's driving record maintained by each state from which the person held a motor vehicle operator's license or permit during those twelve months.

(h) Criminal History Record. A carrier shall not employ a person as a driver without first obtaining a certified copy of the person's complete criminal history record maintained by each state in which the person resided during the preceding ten years. Every twelve months thereafter a carrier shall obtain a certified copy of the person's criminal history record maintained by each state in which the person resided during those twelve months.

64-03. Adoption of ADA Safety Specifications. Vehicles operated under WMATC authority and used to transport passengers seated in wheelchairs shall be equipped with securement devices and with lifts or ramps and shall comply with Americans with Disabilities Act (ADA) Specifications for Transportation Vehicles in Subparts B (Buses & Vans) and G (Over-the-Road Buses) of Part 38 of Title 49 of the Code of Federal Regulations, as amended from time to time, as follows:

(a) Over-the-Road Buses. Over-the-road buses, as that term is defined in 49 C.F.R. § 37.3, shall comply with the following provisions of 49 C.F.R. Subpart G:

- (i) Vehicle lifts shall comply with 49 C.F.R. § 38.159(b);
- (ii) Vehicle ramps shall comply with 49 C.F.R. § 38.159(c); and
- (iii) Securement devices shall comply with 49 C.F.R. § 38.159(d).

(b) All Other Vehicles. Vehicles other than over-the-road buses, as that term is defined in 49 C.F.R. § 37.3, shall comply with the following provisions of 49 C.F.R. Subpart B:

- (i) Vehicle lifts shall comply with 49 C.F.R. § 38.23(b);
- (ii) Vehicle ramps shall comply with 49 C.F.R. § 38.23(c); and
- (iii) Securement devices shall comply with 49 C.F.R. § 38.23(d).

64-04. For-Hire License Plates. No person shall operate a motor vehicle under WMATC authority, and no carrier shall permit a person to operate a motor vehicle under WMATC authority, without for-hire license plates.

64-05. Vehicle Out of Service. The Executive Director, or designee, may require a carrier to present a motor vehicle for inspection by Commission staff. The Executive Director, or designee, shall issue written notice directing a carrier to withdraw from service any vehicle not presented for inspection upon request and any

vehicle presented for inspection and found not to be in compliance with one or more provisions of Regulation No 64. No vehicle directed to be withdrawn from service may be returned to service absent a Commission order or written notice from the Executive Director, or designee, stating that the vehicle may be returned to service.

64-06. Driver Out of Service. The Executive Director, or designee, may require a carrier to produce driver records for inspection by Commission staff. The Executive Director, or designee, shall issue written notice directing a carrier to withdraw from service any driver whose records have not been produced upon request and any driver whose records have been produced and who have been found not to be in compliance with one or more provisions of Regulation No 64. No driver directed to be withdrawn from service may be returned to service absent a Commission order or written notice from the Executive Director, or designee, stating that the driver may be returned to service.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', written in a cursive style.

William S. Morrow, Jr.  
Executive Director