

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,077

IN THE MATTER OF:

Served January 14, 2008

Rulemaking to Amend Rules of ) Case No. MP-2008-017  
Practice and Procedure and )  
Regulations: Regulation No. 58 )

Pursuant to Title II of the Compact, Article XIII, Section 3, and Commission Rule No. 30, the Commission hereby initiates and gives notice of a rulemaking for the purpose of proposing amendments to Commission Regulation No. 58, "Security for Protection of the Public".

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 Washington Metropolitan Area Transit Regulation Compact,<sup>1</sup> (Compact). Regulation No. 58 prescribes the minimum insurance requirements for such carriers, including taxicabs and other vehicles performing a bona fide taxicab service, when performing certain interstate trips, and carriers operating under temporary authority or a certificate of authority issued by the Commission.

The amendments proposed in this rulemaking are not intended to affect taxicabs and other vehicles performing a bona fide taxicab service. They are only intended to affect carriers operating under temporary authority or a certificate of authority issued by the Commission. The terms "WMATC carrier(s)" and "carrier(s)" as used in this notice therefore shall be understood to mean carriers operating under authority issued by WMATC but not taxicabs and not other vehicles performing a bona fide taxicab service.

The amendments proposed in this notice fall into three categories: (1) codification of existing interpretations and practices; (2) adoption of new miscellaneous provisions; and (3) establishment of electronic filing rules.

**I. CODIFICATION OF EXISTING INTERPRETATIONS AND PROCEDURES**

Regulation No. 58 was adopted January 17, 1991,<sup>2</sup> and generally requires that each WMATC carrier maintain on file with the Commission a WMATC Certificate of Insurance and Policy Endorsement, (WMATC

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

<sup>2</sup> In re Rules of Prac. & Proc. & Regs., No. MP-91-05, Order No. 3600 (Jan. 17, 1991).

Insurance Endorsement).<sup>3</sup> Carriers with authority unrestricted as to vehicle seating capacity must maintain \$5 million in auto liability coverage.<sup>4</sup> Carriers with authority restricted to operations in vehicles seating fifteen persons or less, including the driver, capacity must maintain \$1.5 million in auto liability coverage.<sup>5</sup>

The Commission has issued a number of interpretations of Regulation No. 58 since 1991. The Commission has also imposed certain procedural requirements on carriers that experience a lapse in coverage. The Commission proposes incorporating these interpretations and lapsed-coverage procedures into Regulation No. 58.

#### **A. Interpretations**

The existing interpretations covered by this rulemaking fall into the following categories: (1) carrier name and address, (2) authorized insurance company; (3) authorized signer; (4) original endorsement; (5) duplicate coverage; (6) fiduciaries; and (7) duty to verify.

##### **1. Name & Address**

Regulation No. 58-06 provides that a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement), "shall be issued in the full and correct name of the individual, partnership, corporation, or other entity that is the carrier. In the case of a partnership, the partnership and all partners shall be named Insureds."

The Commission has rejected WMATC Insurance Endorsements on numerous occasions because the carrier name on the endorsement did not match the carrier name on file with the Commission.<sup>6</sup> Requiring the full and correct name helps ensure that an insurance filing is credited to the proper carrier and not some other carrier with a similar name.

The Commission has interpreted "full and correct name" to include a carrier's trade name.<sup>7</sup> In the case of partnerships, however, the Commission has not since 1994 enforced the requirement that "all

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<sup>3</sup> Regulation No. 58-13 does state that "The Commission will consider the application of a carrier to provide other forms of security for the protection of the public." But no carrier has qualified under this provision since 1995. See *In re Greyhound Lines, Inc.*, No. AP-89-26, Order No. 4675 (Oct. 5, 1995) (Carrier approved for self-insurance failed to comply with conditions of self-insurance approval and subsequently filed WMATC Insurance Endorsement).

<sup>4</sup> Regulation No. 58-03(c).

<sup>5</sup> *Id.*

<sup>6</sup> *E.g.*, *In re Links Enterprises and Investments, LLC*, No. AP-05-152, Order No. 10,264 (Feb. 1, 2007); *In re Amna O. Abugusseisa, t/a AB & B Trans*, No. MP-03-50, Order No. 7205 (May 21, 2003); *In re Old Town Trolley Tours of Wash., Inc.*, No. MP-00-12, Order No. 5861 (Apr. 18, 2000).

<sup>7</sup> See *In re Omojola M. Ogunlegan, t/a Precious Care Transportation*, No. MP-00-67, Order No. 6052 (Dec. 4, 2000) (sole proprietor directed to file WMATC Insurance Endorsement without "inc." in trade name).

partners" be named in the endorsement as well as the partnership itself.<sup>8</sup>

To further ensure that an insurance filing is credited to the proper carrier, the Commission routinely requires that the carrier address on the endorsement match an address for that carrier on file with the Commission,<sup>9</sup> even though Regulation No. 58 is silent in that regard.

The Commission proposes amending Regulation No. 58-06 to codify these interpretations and practices. With respect to carrier address, it is not the intention of the Commission to incorporate state insurance eligibility requirements based on the locus of a carrier's principal place of business, garage, or operations. That would be inappropriate.<sup>10</sup> The purpose of requiring an address match is simply to ensure that an insurance filing is credited to the proper carrier. Carriers are expected to comply with state insurance law requirements, however.<sup>11</sup>

## **2. Authorized Insurance Company**

Regulation No. 58-01 provides that: "A carrier shall secure the public by means of an insurance policy or policies in such minimum amounts and subject to such conditions as the Commission may prescribe." The regulation does not specify who qualifies as an acceptable insurer. Commission precedent construing Commission Regulation No. 64, however, does.

Commission Regulation No. 64 provides that the Commission's safety regulations shall be the Federal Motor Carrier Safety Regulations for passenger carriers under Title 49 of the Code of Federal Regulations. Commission precedent holds that the safety regulations adopted by Regulation No. 64 include the insurance company qualification standards prescribed by the Federal Motor Carrier Safety Administration (FMCSA) at 49 C.F.R. § 387.<sup>12</sup> The core FMCSA (and thus

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<sup>8</sup> See *In re V.I.P. Tours*, No. MP-94-02, Order 4266 (Mar. 28, 1994) (removing partner names from certificate of authority).

<sup>9</sup> See e.g., *In re Annie Gardner, t/a as Gardner Transp.*, No. AP-06-115, Order No. 10,348 (Mar. 23, 2007); *In re JBT Enterprise, LLC, t/a Access Mobility Transp.*, No. MP-06-119, Order No. 9783 (July 28, 2006); Order No. 7205.

<sup>10</sup> Cf., *In re V.I.P. Tours*, No. AP-83-10, Order No. 2504 (Dec. 2, 1983) (removing certificate of authority restrictions based on local police regulations).

<sup>11</sup> See WMATC Insurance Endorsement (all terms, conditions, and limitations in policy remain in full force and effect as binding between insured and insurer).

<sup>12</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); *In re L Thompson Enterprises, Inc.*, No. MP-04-144, Order No. 8285 (Sept. 20, 2004); *In re Washington Shuttle, Inc., t/a Supershuttle*, No. MP-04-151, Order No. 8235 (Aug. 24, 2004); *In re Epps Transp. Co., Inc.*, No. MP-01-44, Order No. 6375 (Oct. 3, 2001).

WMATC) insurance company requirements may be found in 49 C.F.R. § 387.35, which provides as follows:

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is -

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates, or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

Clearly, state authorization is a prerequisite in the federal scheme as is consent to suit in any jurisdiction in which the insured operates. The latter, however, is not an issue under Regulation No. 58 inasmuch as a WMATC Insurance Endorsement only applies to a carrier's operations in a single jurisdiction, the Metropolitan District.<sup>13</sup>

Rather than continuing to import this federal standard, the Commission proposes amending Regulation No. 58 to stipulate that the policy underlying a WMATC Insurance Endorsement must be lawfully issued by an insurer licensed to issue insurance policies in at least one of the fifty states or the District of Columbia.

### **3. Authorized Signer**

Regulation No. 58 does not specify who may sign a WMATC Insurance Endorsement, but because a WMATC Endorsement amends the underlying policy, the Endorsement must be signed by someone with authority to bind the insurance company to such amendments. Typically, this will be an underwriter employed by the company that issued the policy. If an agent signs, he or she must be identified by the underlying insurance company as authorized to issue WMATC

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<sup>13</sup> See *Burger King Corp. v. Rudzewicz* 471 U.S. 462 (1985) (local court has jurisdiction over matters arising out of defendant's specific contacts with jurisdiction).

Endorsements on the insurance company's behalf.<sup>14</sup> The authorization must be in writing.<sup>15</sup> The Commission will not grant retroactive filing status to a later-filed authorization letter.<sup>16</sup> The Commission will not accept an endorsement from an agent the insurance company repudiates.<sup>17</sup>

The Commission proposes amending Regulation No. 58 to state that insurance companies that authorize agents to execute and file the WMATC Insurance Endorsement on their behalf must submit the authorization in writing to the Commission.

#### **4. Original Endorsement**

Regulation No. 58-05 states that: "An original of every certificate of insurance or notice of cancellation shall be filed on forms prescribed by or acceptable to the Commission." Although Regulation No. 58 does not define the term "original", the Commission has rejected WMATC Insurance Endorsements bearing stamped signatures<sup>18</sup> and WMATC Insurance Endorsements filed by fax.<sup>19</sup> Cancellation notices bearing stamped signatures and filed by fax, on the other hand, have been routinely accepted.

We see no reason to continue following one practice or policy for endorsements and another for cancellation notices. The FMCSA has found facsimile signatures sufficiently reliable in this context, as evidenced by its policy of accepting such signatures on its own endorsement.<sup>20</sup> Insistence on a "wet signature" prevents the Commission from realizing the efficiencies available today through the

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<sup>14</sup> *In re Rapidtrans, Inc.*, No. MP-02-04, Order No. 6500 (Jan. 18, 2002); *In re District of Columbia Arc, Inc., t/a DC ARC*, No. MP-01-100, Order No. 6475 (Dec. 19, 2001). In other words, the putative agent must be a "recognized underwriter" for the insurance company. *In re Skyhawk Logistics, Inc.*, No. MP-07-072, Order No. 10,681 (Aug. 8, 2007); Order No. 10,658; Order No. 8235; *In re Dav-El Transportation, Inc.*, No. MP-03-07, Order No. 7011 (Jan. 23, 2003).

<sup>15</sup> *In re Rapidtrans, Inc.*, No. MP-01-99, Order No. 6471 (Dec. 19, 2001).

<sup>16</sup> *In re District of Columbia ARC, Inc., t/a DC ARC*, No. MP-01-100, Order No. 6556 (Mar. 1, 2002).

<sup>17</sup> *In re Comprehensive Care II, Inc.*, No. MP-00-61, Order No. 6019 (Oct. 17, 2000); *In re Winter Growth, Inc.*, No. MP-00-23, Order No. 5944 (July 28, 2000); *In re Best Transp. Servs., Inc., t/a BTS Airport Express*, No. MP-99-54, Order No. 5691 (Sept. 3, 1999).

<sup>18</sup> *In re Mohammed H. A. Ahmed, t/a Nour Transp.*, No. MP-00-63, Order No. 6034 (Oct. 30, 2000); *In re Peter Pan Bus Lines, Inc.*, No. MP-97-08, Order No. 5029 (Feb. 26, 1997).

<sup>19</sup> Order No. 10,681; *In re Dav-El Transp., Inc.*, No. MP-03-07, Order No. 7011 (Jan. 23, 2003); *In re Old Town Trolley Tours of Wash., Inc.*, No. MP-00-12, Order No. 5861 (Apr. 18, 2000).

<sup>20</sup> See *Interpretation for Part 387: Minimum Levels of Financial Responsibility for Motor Carriers - §387.39 Forms - Question 3* (use of facsimile signature (e.g., printed, stamped, autopenned, etc.) on the Form MCS-90B endorsement deemed acceptable). Available at: [www.fmcsa.dot.gov/rules-regulations/rules-regulations.htm](http://www.fmcsa.dot.gov/rules-regulations/rules-regulations.htm).

various electronic forms of communication that have emerged since Regulation No. 58-05 was adopted in 1991. The validity of electronic records and signatures - including those generated or transmitted by electronic data interchange, electronic mail, voice mail, facsimile, telex, telecopying, scanning, and similar technologies - is recognized under the Uniform Electronic Transactions Act,<sup>21</sup> which has been adopted by all three Compact signatories.<sup>22</sup>

The Commission proposes amending Regulation No. 58 to expressly permit the filing of WMATC insurance forms by fax, email, or other electronic means - including forms bearing stamped or other facsimile signatures.

#### **5. Duplicate Coverage**

Prior to 1991, WMATC carriers with mixed-size fleets - fleets comprised both of vehicles seating 16 persons or more (large) and of vehicles seating 15 persons or less (small) - were required to maintain \$5 million in liability insurance for their large vehicles but only \$1.5 million in liability insurance for their small vehicles.<sup>23</sup> That practice was abandoned in 1991 in favor of the current requirement that WMATC carriers with mixed-size fleets shall insure all of their WMATC vehicles for \$5 million, even their small vehicles.<sup>24</sup> Only carriers with authority restricted to operations in small vehicles may insure such vehicles for only \$1.5 million.<sup>25</sup>

Also prior to 1991, the Commission only accepted certificates of insurance issued for "the full limits of liability required."<sup>26</sup> This required that a "single insurance company underwrite the entire risk" despite the insurance industry's willingness to write coverage in layers that when added together provided the minimum required coverage.<sup>27</sup> The Commission reversed itself and began allowing layered coverage in March 1991 in recognition of the potential cost savings for WMATC carriers and to conform with the practice of the

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<sup>21</sup> See [www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ueta99.htm](http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ueta99.htm) (comments of National Conference of Commissioners on Uniform State Laws regarding definitions of "Electronic Record" and "Electronic Signature" under the Act).

<sup>22</sup> D.C. CODE § 28-4901, et. seq. (2007); MD. CODE, COMMERCIAL LAW § 21-101, et. seq. (2006); VA. CODE § 59.1-479, et. seq. (2007).

<sup>23</sup> *In re United Mgmt. Corp.*, No. MP-92-31, Order No. 3995 (Sept. 3, 1992). For carriers with special operations authority only, the requirement was \$750,000 for small vehicles.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Regulation No. 62-04 (adopted pursuant to General Order No. 17 (Sept. 30, 1966)) (effective Oct. 31, 1966).

<sup>27</sup> *In re Rules of Prac. & Proc. & Regs.*, No. MP-91-05, Order No. 3623 (March 8, 1991). A typical combination would be \$1 million primary and \$4 million excess, with one company underwriting the primary coverage and another the excess.

Interstate Commerce Commission (ICC),<sup>28</sup> whose insurance regulations this Commission had sought to emulate in the past.

Thereafter, a carrier petitioned the Commission for a return to the prior practice of permitting vehicle specific coverage, and the Commission denied the petition on the ground that the prior practice had proved "unsound and administratively unworkable".<sup>29</sup> The new Endorsement covering all vehicles whether or not identified in the policy better ensured complete coverage of a carrier's entire fleet. Subsequent holdings confirmed this position.<sup>30</sup>

A related problem developed later where carriers would obtain more than one policy for a given layer of coverage and file only one Endorsement. To make sure that all claimants were aware of the full protections afforded by the carrier's WMATC Endorsement, the Commission began ordering carriers to discard all but one policy for any given layer of coverage and report all vehicles to the remaining insurer.<sup>31</sup>

The Commission proposes amending Regulation No. 58 by adding some express restrictions codifying these two lines of precedent.

#### **6. Fiduciaries**

As noted above, Regulation No. 58-06 provides that a WMATC Insurance Endorsement shall be issued in the full and correct name of the carrier. Requiring the full and correct name helps ensure that an insurance filing is credited to the proper carrier and not some other carrier with a similar name.

A related concern arises when the carrier is a corporation and it forfeits its charter. Under state law the corporation ceases to exist and its assets are typically deemed to be held in trust by

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<sup>28</sup> *Id.*

<sup>29</sup> Order No. 3995.

<sup>30</sup> *In re L&N Transportation Co., Inc.*, No. MP-01-49, Order No. 6293 (July 19, 2001); *In re Errands Plus, Inc., t/a RMA Chauffeured Transp. Serv.*, No. MP-01-61, Order No. 6272 (July 3, 2001); *In re Shirley L. Nelson, t/a L&N Transp.*, No. MP-96-16, Order No. 4834 (May 9, 1996); *In re Shirley L. Nelson, t/a L&N Transp.*, No. MP-96-16, Order No. 4770 (Feb. 26, 1996).

<sup>31</sup> See *In re Emanco Transportation Inc & Abdelmagid Kahliel Hamid Khaliel, t/a Emanco Trans*, No. MP-07-245, Order No. 10,925 (Nov. 20, 2007) (four vans, two primary policies); *In re Comfort Ama Arthur, t/a El-Shaddai Transp.*, No. MP-07-181, Order No. 10,635 (July 17, 2007) (two vans, two primary policies); *In re Americare Medical Transp., Inc.*, No. MP-05-37, Order No. 8621 (Apr. 1, 2005) (same); *In re E-Z Medical Wheels, Inc.*, MP-03-110, Order No. 7461 (Oct. 10, 2003) (multiple vans, two primary policies); *In re Jihad Properties Transp. SVC LLC, t/a 4 All Occasions Transp. Serv.*, No. MP-03-85, Order No. 7360 (Aug. 21, 2003) (two vans, two primary policies); *In re Nile Express Transport, Inc.*, No. MP-00-22, Order No. 5939 (July 21, 2000) (same).

the directors.<sup>32</sup> The Commission has held that such an occurrence compromises the certainty of coverage under the WMATC Insurance Endorsement,<sup>33</sup> and that, therefore, the forfeiture of a carrier's corporate charter is grounds for revoking the carrier's WMATC Insurance Endorsement pursuant to Commission Regulation No. 58-09.<sup>34</sup>

FMCSA regulations take a different tack. Under 49 C.F.R. § 387.29, the terms "insured" and "principal" mean "the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier." (Emphasis added). Under 49 C.F.R. § 387.37, fiduciaries are covered at the moment of succession. Given its normal definition, fiduciaries would include not only directors holding assets by virtue of corporate charter forfeiture, but other trustees as well, such as trustees in bankruptcy.

Upon further reflection, we believe the public interest would be better served by express adoption of the principle embodied in § 387.37 that coverage under a motor carrier's Insurance Endorsement shall not terminate simply because a carrier's operations have been transferred to a trustee.

The Commission proposes amending Regulation No. 58 to expressly obligate the insurance company named in a WMATC Insurance Endorsement to pay, within the limits of liability stated in the endorsement, any final judgment against the insured or the insured's fiduciary for injury, death, or property damage, resulting from the operation, maintenance, or use of a motor vehicle in performing transportation under the Compact.

#### **7. Duty to Verify**

Before the Commission may assess a civil forfeiture it must make a finding that the carrier acted "knowingly and willfully".<sup>35</sup> Similarly, before revoking a carrier's operating authority the Commission must make a finding that the carrier's failure to comply was "willful".<sup>36</sup> The Commission has held that the term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>37</sup> The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe

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<sup>32</sup> See e.g., *Cloverfields Improvement Assn, Inc., v. Seabreeze Properties, Inc.*, 362 A.2d 675 (Md. Ct. Spec. App. 1976), *aff'd*, 373 A.2d 935 (Md. 1977); VA. CODE ANN. § 13.1-753.

<sup>33</sup> *In re V.I.P. Tours, Inc., & V.I.P. Tours, L.L.C.*, No. MP-01-98, Order No. 6577 (Mar. 20, 2002).

<sup>34</sup> *In re Metro Medicab, Inc.*, No. MP-07-023, Order No. 10,392 (Apr. 6, 2007); *In re Dependable Medical Transport Inc.*, No. MP-02-129, Order No. 6949 (Dec. 12, 2002).

<sup>35</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>36</sup> Compact, tit. II, art. XI, § 10(c).

<sup>37</sup> *In re Advance Care Servs., Inc.*, No. MP-03-46, Order No. 7332 (July 24, 2003).

conduct marked by careless disregard whether or not one has the right so to act.<sup>38</sup> At a minimum, this means that when a carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary endorsement has been filed before continuing to operate on and after the termination date.<sup>39</sup>

The Commission proposes amending Regulation No. 58 to incorporate this precedent and to provide that proof a carrier has satisfied its duty to verify shall consist of written verification from the Commission.

#### **B. Lapsed Coverage Procedures**

Regulation No. 58-02 provides: "Security for the protection of the public shall remain in effect at all times. In the event a carrier fails to maintain on file with the Commission an effective certificate of insurance, the operating authority of said carrier is deemed automatically suspended."

When an automatic suspension occurs under Regulation No. 58-02, the Commission issues a order noting the automatic suspension, directing the carrier to cease operating and granting the carrier thirty days to replace the terminated endorsement(s) and pay the \$50 late fee due under Regulation No. 67-03(c). Such orders warn that failure to comply may result in revocation of the carrier's operating authority. What happens next depends on a carrier's response.

If an automatically-suspended carrier does not file the necessary replacement endorsement(s) and pay the \$50 late fee within thirty days, the Commission will issue an order revoking the carrier's operating authority.<sup>40</sup> Otherwise, if an automatically-suspended carrier files the necessary replacement endorsement(s) and pays the \$50 late fee within thirty days what happens next depends on the effective date of the endorsement(s).

If the effective date of the replacement endorsement(s) is the same as, or earlier than, the termination date of the endorsement(s) being replaced, the Commission will issue an order lifting the suspension.<sup>41</sup> If the effective date of the replacement

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *E.g., In re Simon & Miriam Corp.*, No. MP-07-133, Order No. 10,677 (Aug. 8, 2007); *In re Owopelola Shobajo, t/a Lola Ventures*, No. MP-07-127, Order No. 10,676 (Aug. 8, 2007); *In re Dominic McDuff, t/a Safety First Med. Transp.*, No. MP-07-115, Order No. 10,675 (Aug. 8, 2007); *In re Ahmed Sati Mohamed A. Alim, t/a Mission Trans Servs.*, No. MP-07-114, Order No. 10,674 (Aug. 8, 2007).

<sup>41</sup> *E.g., In re Express Transp. Servs., Inc.*, No. MP-07-189, Order No. 10,769 (Sept. 19, 2007). *See In re Nile Express Transp., Inc.*, No. MP-07-050, Order No. 10,376 (Apr. 3, 2007) (in absence of insurance gap, Executive Director may issue lift suspension order once respondent has complied with automatic-suspension order).

endorsement(s) is later than the termination date of the endorsement(s) being replaced - thereby creating a period of time during which the carrier is uninsured or underinsured, an "insurance gap" - the suspension will not be lifted; instead, the Commission will issue an order requiring the carrier to verify in accordance with Rule No. 28 that the carrier timely ceased operations as of the automatic suspension date.<sup>42</sup> The carrier will also be required to corroborate the verification by furnishing copies of its business records (chiefly recent financial records) and/or confirmation from the carrier's clients.<sup>43</sup>

If the carrier complies with the Rule 28 order and the record establishes timely cessation of operations, the Commission will issue an order lifting the suspension.<sup>44</sup> If the carrier does not comply with the Rule 28 order or the record does not establish timely cessation of operations, the Commission will issue an order requiring the carrier to show cause why the Commission should not assess a civil forfeiture and/or revoke the carrier's operating authority.<sup>45</sup>

If a carrier does not respond to a show cause order, the Commission may issue an order assessing a forfeiture and/or revoking the carrier's operating authority.<sup>46</sup> If the carrier responds and shows cause, the Commission may issue an order lifting the suspension.<sup>47</sup> If the carrier responds, and the record shows the carrier operated while suspended but not while uninsured or underinsured, the Commission will issue an order assessing a civil forfeiture and placing the carrier on

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<sup>42</sup> E.g., *In re Addis Transp., Inc.*, No. MP-07-164, Order No. 10,767 (Sept. 17, 2007); *In re Ibrahim A. Fahadi*, No. MP-07-117, Order No. 10,643 (July 20, 2007); *In re Second To None Tour & Travel Inc.*, No. MP-06-135, Order No. 10,278 (Feb. 8, 2007).

<sup>43</sup> E.g., Order No. 10,767 (client confirmation); Order No. 10,643 (records, client confirmation); Order No. 10,278 (records).

<sup>44</sup> E.g., *In re Abdelrahman E. Ali, t/a Twins Trans*, No. MP-07-185, Order No. 10,988 (Dec. 12, 2007); *In re Calistus T. Folem, t/a Abang Health Transp.*, No. MP-07-113, Order No. 10,670 (Aug. 8, 2007); *In re Praise Transp., Inc.*, No. MP-07-122, Order No. 10,641 (July 18, 2007); *In re Pearlean Vivian Cook, t/a Pearl's Transp. Co.*, No. MP-06-178, Order No. 10,306 (Mar. 6, 2007).

<sup>45</sup> E.g., *In re Global Imex Incorporated*, No. MP-07-135, Order No. 10,843 (Oct. 19, 2007); *In re Zee Transp. Serv. Inc.*, No. MP-07-120, Order No. 10,654 (July 24, 2007); *In re Special People Transportation, LLC*, No. MP-06-103, Order No. 10,347 (Mar. 23, 2007); *In re Charming Servs., LLC*, No. MP-05-20, Order No. 9175 (Dec. 9, 2005).

<sup>46</sup> *In re Westview Medical & Rehabilitation Services, P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007); *In re Special People Transportation, LLC*, No. MP-06-103, Order No. 10,683 (Aug. 8, 2007); *In re John Y. Ngwafon, t/a Mungai's Health Transp.*, No. MP-04-208, Order No. 9173 (Dec. 9, 2005); *In re John Carmen Cadet, t/a Reliable Transp.*, No. MP-04-128, Order No. 8560 (Feb. 16, 2005).

<sup>47</sup> *In re Gbade Femi Tokan, t/a U-First Transp.*, No. MP-04-207, Order No. 9039 (Oct. 13, 2005); see *In re Caring & Carrying Corp.*, No. MP-05-72, Order No. 9383 (Mar. 8, 2006) (lifting suspension after passenger affidavits produced).

probation.<sup>48</sup> If the record shows the carrier operated while suspended and uninsured or underinsured, the Commission will issue an order assessing a civil forfeiture and revoking the carrier's operating authority.<sup>49</sup>

If a carrier's authority is revoked for failure to comply with or respond to an order issued under Regulation No. 58, or for failure to demonstrate timely cessation of operations, an application for reconsideration under Article XIII, Section 4(a), of the Compact must be supported by the necessary endorsement(s) and payment of late fee.<sup>50</sup>

The Commission proposes amending Regulation No. 58 to formalize these procedures, with one change. As noted above, the Commission's practice in a gap case generally has been to prolong the suspension until such time as the proceeding has concluded.<sup>51</sup> The suspension is prolonged even if the gap is closed in the interim.<sup>52</sup> In retrospect, prolonging the suspension has resulted in disproportionate penalties for some carriers in the form of lost revenue. For those carriers, the size of the penalty has been determined not just by the nature and severity of the offense but also by how long the investigation takes, something that is not entirely within a carrier's control.

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<sup>48</sup> E.g., *In re Zee Transp. Serv. Inc.*, No. MP-07-120, Order No. 10,671 (Aug. 8, 2007); *In re Annie Gardner, t/a Gardner Transportation*, No. MP-06-115, Order No. 10,456 (May 8, 2007).

<sup>49</sup> Order No. 10,882; *In re Handi-Pro Transportation, Inc.*, No. MP-07-060, Order No. 10,817 (Oct. 10, 2007); *In re Yai Med. Transp., L.L.C.*, No. MP-05-09, Order No. 8845 (July 22, 2005); *In re Rehoboth Trans. Serv. LLC*, No. MP-04-155, Order No. 8684 (May 4, 2005); *In re A.S.K. Enters, Inc.*, No. MP-04-152, Order No. 8495 (Jan. 10, 2005); *In re EMK Servs. Inc.*, No. MP-04-153, Order No. 8440 (Nov. 29, 2004); *In re Central African Women Empowerment Org. Corp., t/a CAWEO Transp. Servs.*, No. MP-03-65, Order No. 7948 (Apr. 20, 2004); *In re Elijah Jehovah Inc.*, No. MP-03-178, Order No. 7899 (Mar. 25, 2004); *In re Babikir Ibrahim Elhag, t/a "BTS" Babcare Transp. Servs.*, No. MP-04-01, Order No. 7891 (Mar. 23, 2004); *In re Advance Care Servs., Inc.*, No. MP-03-46, Order No. 7332 (July 24, 2003); *In re ACEP Group Inc.*, No. MP-02-128, Order No. 7069 (Mar. 4), *aff'd on recon.*, Order No. 7137 (Apr. 18 2003); *In re Safe Haven, Inc.*, No. MP-02-14, Order No. 6762 (Aug. 7, 2002).

<sup>50</sup> *In re Dominic McDuff, t/a Safety First Med. Transp.*, MP-07-115, Order No. 10,766 (Sept. 17, 2007); *In re David C. Pearson, t/a E & H Trans. Co.*, MP-06-021, Order No. 9810 (Aug. 8, 2006); *In re Worku G. Legesse, t/a Phyladelphia Transp.*, MP-03-80, Order No. 7514 (Nov. 5, 2003).

<sup>51</sup> At which time either the suspension is lifted, see e.g., Order Nos. 10,671; 10,670; 10,641; 10,456; 10,306; 9039, or the certificate of authority is revoked. See e.g., Order Nos. 10,456; 9173; 8845; 8684; 8560.

<sup>52</sup> Order No. 10,376; see also *In re Sydney Shuttle, LLC*, No. MP-07-064, Order No. 10,792 (Sept. 28, 2007) (suspension still in effect after gap closed); Order No. 10,671 (same). But see *In re Ibrahim A. Fahadi*, No. MP-07-117, Order No. 10,850 (Oct. 19, 2007) (lifting suspension upon closing of gap).

Prolonging the suspension in a gap case was not always the Commission's practice. In at least one instance, the Commission lifted a suspension upon the filing of an endorsement that created a gap.<sup>53</sup> This may be the better approach. Once the carrier has restored insurance coverage and filed the necessary WMATC Insurance Endorsement(s), the carrier's operations no longer pose the risk of uncompensated loss that existed during the gap, and the Commission may still investigate whether the carrier continued operating while suspended.

Thus, under the new rule, the suspension in a gap case would be lifted upon the filing of the necessary replacement endorsement(s) and payment of the \$50 late fee, just as in a non-gap case, but the proceeding would remain open while the Commission investigated whether respondent timely ceased operations. To aid in that investigation, a carrier in a gap case would still be required to verify timely cessation of operations and corroborate the verification with records and/or customer confirmation.

## **II. NEW MISCELLANEOUS PROVISIONS**

The Commission proposes further amending Regulation No. 58 as follows:

### **A. Voluntary Termination**

Neither Regulation No. 58 nor Commission precedent defines when coverage terminates when a carrier's operating authority is voluntary terminated. The Commission proposes amending Regulation No. 58 to provide that, consistent with the rule for cancellations, a WMATC Insurance Endorsement shall terminate thirty days after the Commission receives the Carrier's application for voluntary termination. Termination shall not be contingent on approval of the application. If the application is withdrawn, dismissed or denied, the carrier must cease operating on the effective date of the termination if the carrier has not filed the necessary replacement endorsement(s).

### **B. Public Access**

The Commission proposes amending Regulation No. 58 to provide that consistent with 49 C.F.R. § 387.31(e), the contents of all WMATC Insurance Endorsements filed with the Commission shall be considered public information.

### **C. Regulation No. 64**

The Commission proposes amending Regulation No. 58 to provide that once Regulation No. 58 has been amended, the Federal Motor Carrier Safety Regulations adopted and incorporated by reference

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<sup>53</sup> See *In re Central African Women Empowerment Org. Corp., t/a CAWEO Transp. Servs.*, No. MP-03-65, Order No. 7948 at 2 (Apr. 20, 2004) (discussing suspension in prior gap proceeding).

pursuant to Regulation No. 64 will no longer include FMCSA's insurance regulations.<sup>54</sup>

### III. ELECTRONIC FILING RULES

As noted above, the Commission proposes amending Regulation No. 58 to expressly permit the filing of WMATC insurance forms by fax, email, or other electronic means - including forms bearing stamped or other facsimile signatures.

To enable electronic filing, the Commission proposes amending Regulation No. 58 to provide that, consistent with 49 C.F.R. § 387.323, an insurer may electronically file WMATC insurance forms through the Commission's website after obtaining a user ID and password.

On those occasions that website access is interrupted, an insurer would still have the option of filing by other means, including by other electronic means.

### IV. PROPOSED AMENDED REGULATIONS

If amended as proposed, Regulation No. 58 would read as follows.

58-01. Financial Responsibility Requirement. No carrier shall transport passengers for hire between points in the Metropolitan District unless and until the carrier has satisfied the financial responsibility requirements set forth in this regulation.

58-02. Minimum Insurance Coverage. A carrier shall obtain one or more insurance policies securing the public against loss resulting from the carrier's operation, maintenance, or use of a motor vehicle, in the minimum amount specified in this section. Coverage shall remain in effect continuously until terminated. In the case of vehicles insured in compliance with subsection (c), tiered or layered coverage shall be permitted, provided that not more than one policy may be obtained for any one tier or layer. The minimum amount of coverage, by type of vehicle, is as follows:

(a) Taxicabs:

A taxicab operator shall maintain the minimum insurance coverage required by the operator's licensing authority when engaged in interstate operations subject to the Commission's jurisdiction.

(b) Vehicles defined in Regulation No. 51-09:

An operator of a vehicle meeting the definition in Regulation No. 51-09 shall maintain the minimum insurance coverage required by the operator's licensing

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<sup>54</sup> C.f., *In re Rulemaking to Amend Reg. No. 61 & Reg. No. 62*, No. MP-03-08, Order No. 7132 (Apr. 11, 2003) (barring incorporation of federal vehicle marking regulations after amending Regulation No. 61).

authority for that vehicle when engaged in interstate operations subject to the Commission's jurisdiction.

(c) Vehicles operated under WMATC authority:

- i. Carriers with operating authority unrestricted as to vehicle seating capacity shall maintain minimum insurance coverage of \$5,000,000, Combined Single Limit, (bodily injury, death, and property damage) per accident.
- ii. Carriers with operating authority restricted to vehicles seating 15 persons or less, including the driver, shall maintain minimum insurance coverage of \$1,500,000, Combined Single Limit, (bodily injury, death, and property damage), per accident.

58-03. WMATC Certificate of Insurance and Policy Endorsement. A carrier operating under temporary authority or a certificate of authority issued by the Commission (WMATC carrier) shall maintain on file with the Commission at all times an acceptable, effective "WMATC Certificate of Insurance and Policy Endorsement" (WMATC Insurance Endorsement).

58-04. Acceptable Endorsement. A WMATC Insurance Endorsement must be completed in its entirety. Incomplete Endorsements will not be accepted. A WMATC Endorsement must:

- (a) display the carrier name, and any trade name, on file with the Commission;
- (b) display a carrier address that matches an address for the carrier on file with the Commission;
- (c) be issued in accordance with state and local insurance laws by an insurer licensed or authorized to issue insurance policies in at least one of the fifty states or the District of Columbia;
- (d) be signed (manually or by stamp or machine) by a person designated for that purpose by an authorized representative of the insurer in a written authorization on file with the Commission.

58-05. Fiduciaries. The terms "carrier" and "insured" as provided in the WMATC Insurance Endorsement shall be understood to include any and all fiduciaries. Coverage of fiduciaries shall attach at the moment of succession.

58-06. Endorsement Filing. A WMATC Insurance Endorsement may be filed by any reasonable means - including by fax, email or other electronic means - provided the filing is legible. An electronic filing made under an Electronic Filing ID obtained from the Commission pursuant to Regulation No. 58-18 shall be deemed to meet the signature requirements of Regulation No. 58-04(d). In the case of electronic

filing by means other than Electronic Filing ID, the original WMATC Insurance Endorsement shall be filed within 15 days of the electronic filing; otherwise, the electronic filing shall be revoked pursuant to Regulation No. 58-09.

58-07. Endorsement Commencement and Termination. Coverage under a WMATC Insurance Endorsement shall commence on the specified effective date and continue until the earliest of:

- (a) the specified expiration date;
- (b) the effective date specified in a notice of cancellation or thirty days after the notice is received by the Commission, whichever is later;
- (c) thirty days after receipt by the Commission of an acceptable application from the insured for voluntary termination of WMATC operating authority;
- (d) thirty days after revocation by the Commission; or
- (e) the effective date of a later-executed replacement Endorsement.

Commencement and termination shall occur at 12:01 a.m. Eastern Standard Time or Eastern Daylight Time, as applicable.

58-08. Notice of Cancellation. A notice of cancellation must be in writing. The notice must identify the insured and state the number of the policy being cancelled. The notice must specify an effective date; provided, that cancellation shall not be effective sooner than thirty days after the date notice is received by the Commission. A notice of cancellation may be filed by any reasonable means - including by fax, email or other electronic means - provided the filing is legible.

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

58-10. Replacement of Cancelled, Revoked, or Voluntarily Terminated Endorsement. Once the Commission revokes a WMATC Insurance Endorsement or receives notice of cancellation or an acceptable application for voluntary termination, a carrier must file the necessary replacement WMATC Insurance Endorsement(s) prior to the termination date. A WMATC Insurance Endorsement marked for cancellation, revocation or voluntary termination may not be restored or revived, and may only be replaced with a newly executed WMATC Endorsement.

58-11. Duty to Verify. When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the

Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

58-12. Automatic Suspension. Failure to replace a WMATC Insurance Endorsement prior to termination shall result in immediate, automatic suspension of a carrier's WMATC operating authority. The carrier must suspend operations immediately and may not recommence operations unless and until otherwise ordered by the Commission.

58-13. Lifting of Suspension. The Commission may lift a suspension imposed under Regulation No. 58-12 once the carrier has filed the necessary replacement Endorsement(s) and paid the late fee under Regulation No. 67-03(c).

58-14. Non-Continuous Coverage. If a carrier's operating authority is suspended under Regulation No. 58-12 and the effective date of a later-filed replacement Endorsement occurs after the automatic suspension date, the carrier must verify timely cessation of operations in accordance with Commission Rule No. 28 and corroborate the verification with client statements and/or copies of pertinent business records, as directed by Commission order.

58-15. Reconsideration. If a carrier's authority is revoked for failure to comply with Regulation No. 58, or an order issued thereunder, an application for reconsideration under Article XIII, Section 4(a), of the Compact must be supported by the necessary Endorsement(s) and payment of late fee under Regulation No. 67-03(c).

58-16. Public Access. The contents of all WMATC Insurance Endorsements and notices of cancellation filed with the Commission shall be considered public information.

58-17. Other Forms of Security. The Commission may consider the application of a carrier to provide other forms of security for the protection of the public. Applicant must furnish evidence establishing to the satisfaction of the Commission the carrier's ability to satisfy its obligations for bodily injury, death, and property damage liability without adversely affecting the stability of the carrier or the public interest. Proof of qualification for self-insurance of bodily injury and property damage liability under the Interstate Commerce Act, as determined by the Federal Motor Carrier Safety Administration, together with proof that such qualification remains in effect, shall be deemed prima facie evidence of qualification for self-insurance under the Compact.

58-18. Electronic Filing ID. An insurer may obtain an Electronic Filing ID, for the purpose of filing WMATC Insurance Endorsements and notices of cancellation, by completing and submitting the Commission's Electronic Filing ID application form. Each insurer assigned an ID shall be responsible for keeping its ID and password

secure. If an insurer chooses to have its filings made by a third party, it may share the ID and password with that entity.

58-19. FMCSRs. The Federal Motor Carrier Safety Regulations adopted and incorporated by reference pursuant to Regulation No. 64 shall not include insurance requirements.

THEREFORE, IT IS ORDERED:

1. That a rulemaking is hereby initiated for the purpose of proposing amendments to the Commission's Rules of Practice and Procedure and Regulations, Regulation No. 58.

2. That Commission staff shall publish notice of this proceeding on the Commission's website and in a newspaper of general circulation in the Metropolitan District, no later than January 28, 2008.

3. That written comments must be submitted no later than March 15, 2008, by faxing them to (202)653-2179, emailing them to [insurance-rulemaking@wmatc.gov](mailto:insurance-rulemaking@wmatc.gov) or mailing them to 1828 L Street, N.W., Suite 703, Washington, DC 20036.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.  
Executive Director