

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,334

IN THE MATTER OF:

Served July 3, 2012

WASHINGTON SHUTTLE, INC., Trading )  
as SUPERSHUTTLE, WMATC No. 369 )  
Investigation of Violation of )  
Commission Regulation No. 64 )

Case No. MP-2011-099

This matter is before the Commission for assessment of the estimated costs of confirming respondent's implementation of corrective actions undertaken in response to a proposed "Unsatisfactory" safety rating issued by the Commission on March 1, 2012.

In addition to assessing estimated costs, this order requires respondent to produce certain documents relating to this investigation.

**I. BACKGROUND**

The Washington Metropolitan Area Transit Regulation Compact,<sup>1</sup> (Compact), applies to: "the transportation for hire by any carrier of persons between any points in the Metropolitan District."<sup>2</sup> A person may not engage in transportation subject to the Compact unless there is in force a Certificate of Authority issued by the Washington Metropolitan Area Transit Commission (WMATC) authorizing the person to engage in that transportation.<sup>3</sup> "A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority."<sup>4</sup> "Each authorized carrier shall: (a) provide safe and adequate transportation service,

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<sup>1</sup> Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), amended by Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

<sup>2</sup> Compact, tit. II, art. XI, § 1. 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; and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of those counties, cities, and airports. Compact, tit. I, art. II.

<sup>3</sup> Compact, tit. II, art. XI, § 6(a).

<sup>4</sup> Compact, tit. II, art. XI, § 11(b).

equipment, and facilities; and (b) observe and enforce Commission regulations established under [the Compact].”<sup>5</sup>

The Commission may investigate on its own motion a fact, condition, practice, or matter to determine whether a person has violated or will violate a provision of the Compact or a rule, regulation, or order.<sup>6</sup> If the Commission finds that a respondent has violated a provision of the Compact or any requirement established under it, the Commission shall issue an order compelling compliance and effecting other just and reasonable relief.<sup>7</sup>

This investigation was initiated on November 28, 2011, in Order No. 13,063 to review respondent’s compliance with the Commission’s safety regulation, 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 the said regulations apply to the operations of passenger carriers. These regulations are set out in Title 49 of the Code of Federal Regulations.

Regulation No. 64 applies to: (1) WMATC vehicles seating 9 persons or more, including the driver; and (2) the drivers and carriers operating such vehicles. This follows from the definition of “commercial motor vehicle” in the FMCSRs adopted by Regulation No. 64: “*Commercial motor vehicle* means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle . . . (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation).”<sup>8</sup>

According to Commission records, respondent operates over 140 vans with a seating capacity of 9-10 persons each. Vans seating 9-15 persons have been identified by federal authorities as posing unique safety concerns. In a letter dated December 10, 2010, the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration (FMCSA) advised state DMV commissioners that federal “safety data indicate that 9, 12, and 15-passenger vans are often inadequately maintained, and the tires are especially vulnerable to deterioration as they age.” And “[b]ecause these vehicles have unique handling characteristics, they display particular sensitivity to rollovers, particularly when they are fully loaded.”

One of respondent’s 10-passenger vans was involved in a fatal crash on the Dulles Access Road on August 15, 2011. Accordingly, the

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<sup>5</sup> Compact, tit. II, art. XI, § 5.

<sup>6</sup> Compact, tit. II, art. XIII, § 1(c).

<sup>7</sup> Compact, tit. II, art. XIII, § 1(d).

<sup>8</sup> 49 C.F.R. § 390.5 (2011) (available at <http://www.gpo.gov/fdsys/>).

Commission concluded that the public interest warranted a comprehensive review of respondent's compliance with the FMCSRs as adopted by Commission Regulation No. 64. Order No. 13,063 directed the Commission's Executive Director to take the necessary steps to conduct the review, including but not limited to hiring a firm qualified to perform safety compliance reviews of motor passenger carriers using the criteria the FMCSA uses under Part 385, Appendix B, of the FMCSRs.

## **II. SAFETY RATING**

The Executive Director hired Consolidated Safety Services (CSS) to conduct the review. CSS has more than 20 years of experience providing commercial motor vehicle safety support services to various clients nationwide and has conducted New Entrant Safety Audits of motor passenger carriers on behalf of the FMCSA and comparable reviews of motor passenger carriers for the Department of Defense.

CSS conducted a comprehensive onsite safety compliance review and evaluation of respondent's records and vehicles during the week of February 6, 2012. CSS delivered its report to WMATC on February 14, 2012. Based on the findings, conclusions, and recommendations in the report, respondent was assigned a proposed safety rating of "Unsatisfactory" on March 1, 2012.<sup>9</sup> Respondent was advised that the proposed rating would become "final" in 45 days in accordance with 49 C.F.R. 385.11(c)(1) - at which time respondent would be required to cease operating commercial motor vehicles in the Metropolitan District in accordance with 49 C.F.R. 385.13(a)(1) - unless respondent took the necessary steps in the meantime to improve the proposed rating to "Conditional" or "Satisfactory".

According to 49 C.F.R. § 385, Appendix B, a safety rating is determined by the number of violations of "acute" and "critical" regulations: "Acute regulations are those identified as such where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier." "Critical regulations are those identified as such where noncompliance relates to management and/or operational controls." CSS found no violations of acute regulations, but CSS's review did reveal five violations of critical regulations: two with respect to the Driver factor, one with respect to the Operational factor, and two with respect to the Vehicle factor.

After discussing the report with Commission staff and a CSS representative, respondent filed a request on April 12, 2012, for a change to safety rating based upon corrective actions. The request was supported by respondent's "Plan of Remedial Actions to Achieve Full Compliance with Federal Motor Carrier Safety Act," plus new and updated

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<sup>9</sup> An Unsatisfactory rating indicates that a carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard in 49 C.F.R. 385.5(a) and that a carrier is operating at an unacceptable level of compliance.

safety compliance forms. Based on the plan and forms and on respondent's representation that implementation of the plan's corrections to management and operational controls had begun and that full compliance with Daily Vehicle Inspection Report requirements would take 60-90 days to achieve, the proposed safety rating was changed to "Conditional" on April 17, 2012,<sup>10</sup> in accordance with 49 C.F.R. § 385.17, subject to a follow-up review to confirm full implementation of respondent's plan.

### **III. ASSESSMENT OF ESTIMATED COSTS**

Article XIV, Section 1, of the Compact contemplates that the cost of investigating a carrier shall be borne by the carrier, as follows:

(a) A carrier shall bear all expenses of an investigation or other proceeding conducted by the Commission concerning the carrier, and all litigation expenses, including appeals, arising from an investigation or other proceeding.

(b) When the Commission initiates an investigation or other proceeding, the Commission may require the carrier to pay to the Commission a sum estimated to cover the expenses that will be incurred under this section.

(c) Money paid by the carrier shall be deposited in the name and to the credit of the Commission, in any bank or other depository located in the Metropolitan District designated by the Commission, and the Commission may disburse that money to defray expenses of the investigation, proceeding, or litigation in question.

(d) The Commission shall return to the carrier any unexpended balance remaining after payment of expenses.

By this order, the Commission is assessing \$2,000 as the sum of expenses the Commission estimates it will incur in conducting a follow-up review of respondent's safety compliance. Once payment has been received, the Commission's Executive Director shall take the necessary steps to conduct the review, including but not limited to hiring a firm qualified to perform safety compliance reviews of motor passenger carriers using the criteria the FMCSA uses under Part 385, Appendix B, of the FMCSRs.

### **IV. PRODUCTION OF RECORDS**

The fatal crash that prompted this investigation has been investigated by the Metropolitan Washington Airports Authority Police Department, the law enforcement agency with jurisdiction over the Dulles Access Road. According to the report of the investigator,

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<sup>10</sup> Originally, the proposed rating was due to become final April 15, 2012, but the 45-day period was extended on April 13, 2012, to April 25, 2012, pursuant to 49 C.F.R. § 385.17(f), when it became apparent that WMATC would not have sufficient time to review the request for change in rating by April 15, which fell on a Sunday.

neither speed, nor drugs, nor alcohol, nor the driver's psychological state were causal or contributing factors. The investigation revealed no evidence of vehicle mechanical deficiencies. The report concludes that the direct cause of the crash was human error, i.e., loss of control of vehicle due to driver failure to maintain full attention on the road.

Respondent shall be required to produce all documents in its possession, custody, or control pertaining to the driver charged in the fatality. Respondent also shall be required to report said driver's current employment status and any corrective or disciplinary action initiated by respondent beyond the corrective safety compliance actions mentioned above.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIV, Section 1, of the Compact, the Commission hereby assesses \$2,000 as the sum of expenses the Commission estimates it will incur in conducting a follow-up review of respondent's safety compliance.

2. That respondent is hereby directed to pay to the Commission within 15 days of the date of this order, by check or money order, the sum of two thousand dollars (\$2,000).

3. That the funds remitted by respondent pursuant to this order under Article XIV, Section 1, of the Compact, shall be used to hire a qualified firm to perform a follow-up review of respondent's compliance with FMCSRs in accordance with 49 C.F.R. 385, Appendix B, and be used to defray any other expenses incurred by the Commission in the course of pursuing this investigation.

4. That within 30 days, respondent shall produce all documents in its possession, custody, or control pertaining to the driver charged in the August 15, 2011, Dulles Access Road fatality.

5. That within 30 days, respondent shall submit a written statement reporting the current employment status of the driver charged in the August 15, 2011, Dulles Access Road fatality and describing any corrective or disciplinary action initiated by respondent above and beyond the corrective safety compliance actions undertaken in response to the March 1, 2012, proposed safety rating.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director