

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MD

ORDER NO. 15,198

IN THE MATTER OF:

Served November 14, 2014

Rulemaking to Amend Rules of Practice and Procedure and Regulations: Regulation Nos. 54, 58, 60, and 67) Case No. MP-2014-115))))

This rulemaking was announced in Order No. 14,936, served July 24, 2014, pursuant to Title II of the Washington Metropolitan Area Transit Regulation Compact,¹ (Compact), Articles III, V, and XIII, and Commission Rule No. 30, for the purpose of making amendments to the Commission's Rules of Practice and Procedure and Regulations, Regulation Nos. 54, 58, 60, and 67.

Order No. 14,936 was posted to the Commission's website, www.wmatc.gov, on July 24, 2014, and has remained posted since then. The order describes the amendments that are being proposed, explains the basis for each, and illustrates how each new or changed rule would read if adopted as proposed.

The order established a 30-day comment period. The 30-day comment period has closed. No comments were received. We therefore adopt the amendments as proposed (see below) effective 60 days from the date of this order.

I. BACKGROUND

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

Article III, Section 6, of the Compact provides that: "The Commission . . . shall publish rules and regulations governing the conduct of its operations." Article XIII, Section 3(a), states that: "The Commission shall perform any act, and prescribe, issue, make,

¹ 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).

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

amend, or rescind any order, rule, or regulation that it finds necessary to carry out the provisions of [the Compact]." Article XIII, Section 2(b), states that: "Rules of practice and procedure adopted by the Commission shall govern all hearings, investigations, and proceedings under [the Compact]." Article V, Section 4, stipulates that: "The Commission may delegate by regulation the tasks that it considers appropriate."

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

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

In October 2011, the Commission's Rules of Practice and Procedure and Regulations included some specific delegations of authority to the Executive Director.⁴ But not all Commission delegations in existence at that time had been published in that manner. Those that had not were added to the Commission's Rules of Practice and Procedure and Regulations in December 2011 after notice and opportunity to comment.

Experience has shown that those delegations have improved the efficiency of the agency without compromising the public interest or prejudicing the rights of carriers subject to WMATC regulation. The similar delegations and other measures adopted in this order likewise should further improve efficiency without compromise or prejudice.

II. ADOPTION OF AMENDMENTS

The amendments proposed in Order No. 14,936 are adopted as follows:

A. Electronic Application Filing

Commission Regulation No. 54 is amended by replacing current Regulation No. 54-03 with the following text.

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

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

54-03. How Filed

An application shall be filed by delivering the original to the Commission's offices. Filing fees and, as required, the cost of publishing notice, of transcribing a hearing on an application, and for an administrative law judge to preside over a hearing, shall be borne by the applicant. Incomplete applications, and those otherwise failing to comply with these regulations, may be rejected by the Executive Director and returned to the applicant. For the purpose of this Regulation No. 54-03, an original application shall include an application filed electronically through the Commission's website using the Commission's electronic filing procedure, and an application filed in this manner shall be deemed to meet the original signature requirement of Commission Rule No. 4-05.

B. Electronic Service of Conditional Grant Orders

Commission Regulation No. 54 is amended by adding new Regulation No. 54-09 as follows.

54-09. Service of Orders

Orders issued in application proceedings may be served in a manner complying with Commission Rule No. 5-01 or by electronic means using the contact information on file with the Commission for the person to be served or for the person's agent, attorney, or other representative designated to receive such service.

C. Mandatory WMATC Insurance Filer ID

Commission Regulation No. 58 is amended by replacing current Regulation No. 58-18 with the following text.

58-18. Electronic Filing ID. An insurer shall 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.

D. Insurance Gap Show Cause Orders

Commission Regulation No. 58 is amended by replacing current Regulation No. 58-14 with the following text.

58-14. Non-Continuous Coverage.

(a) If a carrier's operating authority is suspended under Regulation No. 58-12 and the effective date of a later-filed replacement Endorsement falls 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.

- (b) Upon the failure of a carrier to comply timely with the foregoing requirements of this Regulation No. 58-14, the Executive Director shall issue an order directing the carrier to show cause why a civil forfeiture should not be assessed against the carrier and/or why the carrier's operating authority should not be suspended or revoked.

E. Insurance-Related Suspension

Commission Regulation No. 58 is amended by deleting Regulation No. 58-20 and replacing Regulation No. 58-12 with the following text.

58-12. Automatic Suspension.

- (a) 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.
- (b) The Commission's Executive Director shall issue an order noting the automatic suspension of a carrier's operating authority under Regulation No. 58-12 as soon as practicable after such an event occurs. The order shall admonish that no operations may be conducted under the carrier's certificate of authority unless and until otherwise ordered by the Commission. The order shall advise that the carrier's operating authority shall be subject to revocation if the carrier fails to file the necessary WMATC Insurance Endorsement(s) and pay the late fee under Regulation No. 67-03(c) within 30 days.
- (c) Unless a carrier's WMATC operating authority stands suspended for reasons in addition to those triggering automatic suspension under Regulation No. 58-12(a), the Executive Director shall issue a lift-suspension order if the conditions for lifting a suspension under Regulation No. 58-13 are met within the aforementioned 30 days.

F. Insurance-Related Revocation and Reconsideration

Commission Regulation No. 58 is amended by replacing current Regulation No. 58-15 with the following text.

58-15. Revocation & Reconsideration.

- (a) Upon a carrier's failure to comply timely with a suspension order issued under Regulation No. 58-12, and as soon as practicable thereafter, the Executive

Director shall issue an order revoking the carrier's operating authority or shall refer the matter for consideration by the Commissioners.

- (b) If a carrier's operating authority is revoked for failure to comply with Regulation No. 58, or an order issued thereunder, the Executive Director shall reopen the proceeding and reinstate said authority if the following two conditions are met: (i) the carrier files a timely application for reconsideration in accordance with Rule No. 27-06; and (ii) the application is supported by the necessary Endorsement(s) and by payment of the late fee under Regulation No. 67-03(c); provided, that reinstatement shall not be available under this provision if the carrier's WMATC operating authority stands revoked for other reasons, as well.

G. Annual Report Deadline

Commission Regulation No. 60 is amended by replacing current Regulation No. 60-03 with the following text.

60-03. Automatic Suspension. A carrier's operating authority shall stand suspended upon the carrier's failure to file an annual report under Regulation No. 60-01 on or before April 30 of the year the report is due.

H. Annual Fee Deadline

Commission Regulation No. 67 is amended by replacing current Regulation No. 67-04 with the following text.

67-04. Automatic Suspension. A carrier's operating authority shall stand suspended upon a carrier's failure to pay an annual fee under Regulation No. 67-02 or late fee under Regulation No. 67-03(a) or (b) on or before April 30 of the year the fee is due.

J. Annual Report-Related Suspension Orders

Commission Regulation No. 60 is amended by replacing current Regulation No. 60-04 with the following text.

60-04. Issuance of Orders Under Rule No. 60-03.

- (a) The Commission's Executive Director shall issue an order noting the automatic suspension of a carrier's operating authority under Regulation No. 60-03 as soon as practicable after such an event occurs. The order shall admonish that no operations may be conducted under the carrier's certificate of authority unless and until otherwise ordered by the Commission. The order shall advise the carrier that the carrier's operating authority shall be subject to revocation if the carrier fails to file a complete current annual report and pay all outstanding fees within 30 days.

- (b) Unless a carrier's WMATC operating authority stands suspended for reasons in addition to those triggering automatic suspension under Regulation No. 60-03, the Executive Director shall issue an order lifting a suspension imposed under Regulation No. 60-03 if the carrier files a complete current annual report and pays all outstanding fees within the aforementioned 30 days.

K. Annual Fee-Related Suspension Orders

Commission Regulation No. 67 is amended by replacing current Regulation No. 67-06 with the following text.

67-06. Issuance of Orders Under Rule No. 67-04.

- (a) The Commission's Executive Director shall issue an order noting the automatic suspension of a carrier's operating authority under Regulation No. 67-04 as soon as practicable after such an event occurs. The order shall admonish that no operations may be conducted under the carrier's certificate of authority unless and until otherwise ordered by the Commission. The order shall advise the carrier that the carrier's operating authority shall be subject to revocation if the carrier fails to pay all outstanding fees within 30 days.
- (b) Unless a carrier's WMATC operating authority stands suspended for reasons in addition to those triggering automatic suspension under Regulation No. 67-04, the Executive Director shall issue an order lifting a suspension imposed under Regulation No. 67-04 if the carrier pays all outstanding fees within the aforementioned 30 days.

L. Annual Report-Related Revocation and Reconsideration

Commission Regulation No. 60 is amended by adding new Regulation No. 60-05 as follows.

60-05. Revocation & Reconsideration.

- (a) Upon a carrier's failure to respond to a suspension order issued under Regulation No. 60-04, and as soon as practicable thereafter, the Executive Director shall issue an order revoking the carrier's operating authority or shall refer the matter for consideration by the Commissioners.
- (b) If a carrier's authority is revoked for failure to comply with Regulation No. 60, or an order issued thereunder, the Executive Director shall reopen the proceeding and reinstate said authority if the following two conditions are met: (i) the carrier files a timely application for reconsideration in accordance with Rule No. 27-06; and (ii) the application is supported by the necessary complete annual report and by payment of all applicable fees

under Regulation Nos. 67-02 and 67-03; provided, that reinstatement shall not be available under this provision if the carrier's WMATC operating authority stands revoked for other reasons, as well.

M. Annual Fee-Related Revocation and Reconsideration

Commission Regulation No. 67 is amended by adding new Regulation No. 67-09 as follows.

67-09. Revocation & Reconsideration.

- (a) Upon a carrier's failure to respond to a suspension order issued under Regulation No. 67-06, and as soon as practicable thereafter, the Executive Director shall issue an order revoking the carrier's operating authority or shall refer the matter for consideration by the Commissioners.
- (b) If a carrier's authority is revoked for failure to comply with Regulation No. 67, or an order issued thereunder, the Executive Director shall reopen the proceeding and reinstate said authority if the following two conditions are met: (i) the carrier files a timely application for reconsideration in accordance with Rule No. 27-06; and (ii) the application is supported by payment of all applicable fees under Regulation Nos. 67-02 and 67-03 and by compliance with the annual report requirements in Regulation No. 60-01; provided, that reinstatement shall not be available under this provision if the carrier's WMATC operating authority stands revoked for other reasons, as well.

THEREFORE, IT IS ORDERED: that the foregoing amendments to the Commission's Rules of Practice and Procedure and Regulations are hereby adopted and effective 60 days from the date of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BROWN:



William S. Morrow, Jr.
Executive Director