

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7015

IN THE MATTER OF:

Served January 27, 2003

Rulemaking to Amend Rules of)
Practice and Procedure and)
Regulations, Regulation No. 61)
and Regulation No. 62)

Case No. MP-2003-08

Pursuant to Title II of the Compact, Article XIII, Section 3 and Commission Rule No. 30, the Commission hereby initiates a rulemaking for the purpose of proposing amendments to Commission Regulation Nos. 61 and 62 to resolve a conflict between Regulation No. 61, on the one hand, and Regulation Nos. 62 and 64, on the other.

Regulation No. 61 mandates the markings that must appear on vehicles used to transport passengers under WMATC authority. Regulation No. 62-06 further prescribes the markings that must appear on leased vehicles. Regulation No. 64 adopts and incorporates by reference the Federal Motor Carrier Safety Regulations (FMCSR) in Title 49 of the Code of Federal Regulations, to the extent they apply to passenger carriers. One of those regulations, 49 C.F.R. § 390.21, governs vehicle markings.

What is required and permitted under Regulation No. 61 differs from what is required and permitted under Regulation Nos. 62 and 64. A comparison table is printed in Appendix A to this order.

I. THE REGULATIONS

The core provisions of Regulation Nos. 61 and 62-06, and the core federal vehicle marking provisions adopted by Regulation No. 64, are as follows.

A. Regulation No. 61

Regulation No. 61-01 requires each WMATC carrier to display on both sides of each revenue vehicle the carrier's name and trade name, the vehicle owner's name if different from the carrier's, and the carrier's permanent or temporary WMATC number.

Regulation No. 61-02 requires that the markings be in sharp color contrast with the background and legible during daylight hours from a distance of fifty feet. Markings three inches in height are deemed to meet the legibility requirement. The Commission has held

that markings only two inches in height do not.¹ The practice of Commission staff when inspecting vehicles has been to fail vehicles with markings less than two and one-half inches in height.

Regulation No. 61-02 further states that the markings must be permanent, except that leased vehicles and vehicles operated under a temporary WMATC number may be marked with the use of removable displays.

Regulation No. 61-03 recommends but does not require that the words "operated by" precede the carrier's name.

B. Regulation No. 62

Regulation No. 62-06 stipulates that leased vehicles must be marked with the use of removable displays that comply with Regulation No. 61. The display must be removed before the vehicle is returned to the lessor.

C. Federal Provisions Adopted by Regulation No. 64

Section 390.21(a) of Title 49, Code of Federal Regulations, states that the following vehicle marking requirements apply to commercial motor vehicles, which in the case of passenger vehicles include vehicles designed or used to transport nine or more persons, including the driver.²

Section 390.21(b) requires display of the legal name or single trade name of the carrier operating the vehicle, the carrier's USDOT number, and the words "operated by" in front of the carrier's name if another name also appears on the vehicle.

Section 390.21(c) requires that the markings appear on both sides of the vehicle, contrast sharply in color with the background, and be legible during daylight hours from a distance of fifty feet.

Section 390.21(d) permits the use of a removable device.

Section 390.21(e) governs the markings on vehicles operated under the lessor's authority.

Section 390.21(f) governs the markings on vehicles in driveway services.

¹ In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5007 (Jan. 23, 1997).

² Vehicles designed or used to transport between 9 and 15 persons, including the driver, need only display the carrier's USDOT number if the carrier's operations are confined to a 75 mile radius. 66 Fed. Reg. 2,756 (Jan. 11, 2001).

II. DISCUSSION

We note at the outset that both the Commission's legibility standard in Regulation No. 61-02 and the legibility standard in 49 C.F.R. § 390.21(c) are in agreement. Both require that the required markings appear on both sides of the vehicle, contrast sharply in color with the background, and be legible during daylight hours from a distance of fifty feet.

We also note the inapplicability of 49 C.F.R. § 390.21(f). That section, as noted above, only applies to driveway vehicles. Regulation No. 64 adopts only FMCSRs pertaining to passenger vehicles.

Finally, we note that the apparent conflict between 49 C.F.R. § 390.21(e), governing the markings on vehicles operated under a lessor's authority, and Article XI, Section 11(b), of the Compact, prohibiting any person from leasing any other person's operating authority, need not be resolved by a Commission rulemaking inasmuch as construing a regulation to countermand an express statutory prohibition would not be a reasonable construction of the regulation. Proposed Regulation No. 61-05 resolves the issue, in any event, by excluding the federal motor vehicle marking requirements from adoption under Regulation No. 64.

A. Conflicts Addressed in this Rulemaking

Regulation No. 61-02 states that removable displays may be used on leased vehicles, but Regulation 62-06 states that removable displays must be used on leased vehicles. The federal counterpart adopted by Regulation No. 64, 49 C.F.R. § 390.21(d), permits the use of removable displays and does not appear to be restricted to leased vehicles.

Regulation No. 61-01(b) states that the vehicle owner's name must appear on the vehicle if different from the carrier's name. Preceding the carrier's name with the phrase "operated by" is recommended under Regulation No. 61-03, but not required. The federal counterpart adopted by Regulation No. 64, 49 C.F.R. § 390.21(b), does not require display of the owner's name but does require that the phrase "operated by" precede the carrier's name if another name appears on the vehicle.

Regulation No. 61-01(a) requires that both the carrier's legal name and the carrier's trade name, if any, must be displayed. The counterpart adopted by Regulation No. 64, 49 C.F.R. § 390.21(b), gives the carrier the option of displaying one or the other.

Before proposing amendments to resolve these conflicts, we briefly review the purposes of vehicle markings.

B. Purposes of Vehicle Markings

The vehicle markings required by Regulation No. 61 help assign responsibility, and facilitate recovery of compensation, for damage and injuries caused by carriers operating under WMATC authority. Such

markings facilitate the processing of customer complaints, as well. The Federal Motor Carrier Safety Administration (FMCSA) has this to say on the importance of vehicle markings.

The FMCSA believes it is important that [vehicles] be properly marked before they are placed into service on the highway. Such markings will assist State officials conducting roadside inspections and accident investigations in attributing important safety data to the correct motor carrier. It will also ensure the public has an effective means to identify motor carriers operating in an unsafe manner.

65 Fed. Reg. 35287, 35288 (June 2, 2000).

It is important that the Commission's vehicle marking requirements continue to promote these purposes without burdening carriers with unnecessary restrictions. The following proposed amendments are designed to resolve the existing conflicts among the three regulations while accomplishing those objectives.

C. Proposed Amendments

We propose to amend Regulation No. 61-02 to: (1) allow each carrier the choice of displaying the carrier's legal name or WMATC approved trade name; (2) allow omission of the vehicle owner's name; (3) require that the phrase "operated by" precede the carrier's name if another name also appears on the vehicle; (4) place the burden on carriers to establish that markings less than two and one half inches in height meet the legibility standard; (5) restrict the use of removable displays on leased vehicles to short-term rentals; and (6) expressly bar the application of federal marking requirements that otherwise would apply through Regulation No. 64.

We propose to amend Regulation No. 62-06 by deleting the mandate that all leased vehicles be identified by means of removable displays.

These amendments would harmonize WMATC marking requirements with federal marking requirements to the extent permitted under the Compact while promoting the purposes of Regulation No. 61.

The use of removable displays would continue to be permitted only with respect to leased vehicles and vehicles operated under a temporary WMATC number. Given the recent history of improper use of removable displays,³ the use of removable displays on leased vehicles

³ Commission staff have confiscated removable displays during the course of investigating three separate carriers this year. In two of the investigations, the offending carrier was using the signs to improperly operate under the authority of another carrier. In the

would be restricted to short-term rentals (not more than thirty days in one year) employed as substitutes for permanent vehicles undergoing repairs, temporary fleet supplements and similar purposes.

Carriers operating leased vehicles will have ninety days to comply with the new requirements.

For a comparison of the key attributes of the current and proposed regulations, see the table in the appendix to this order.

The proposed amendments would not restrain the Commission from requiring a carrier to remove information from, or display additional information on, its revenue vehicles as the public interest warrants.⁴

III. PROPOSED AMENDED REGULATIONS

If the amendments proposed above are adopted unchanged and in their entirety, Regulation No. 61 and Regulation No. 62-06 will read as follows.

61. Marking of Revenue Vehicles

61-01. The following information must appear on both sides of each vehicle used to transport passengers under WMATC authority:

- (a) the carrier's legal name or trade name appearing on the carrier's certificate of authority, or otherwise approved by the Commission for use in the Metropolitan District, preceded by the phrase "Operated By" if some other name also appears on the vehicle; and
- (b) "WMATC" followed by either the carrier's certificate of authority number or, if applicable, the carrier's temporary authority or approval number.

61-02. The markings required by this regulation must contrast sharply in color with the background and be legible during daylight hours from a distance of fifty feet. Markings less than two and one-half inches in height are presumed not to be legible from fifty feet. The markings must be kept and maintained in a manner preserving the required legibility.

third investigation, the carrier was using signs to operate under authority that had been conditionally granted and then denied when the conditions were not timely satisfied.

⁴ E.g., In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5007 (Jan. 23, 1997) (carrier ordered to remove unauthorized trade name from vehicles where trade name confusingly similar to commonly-controlled carrier whose WMATC authority had been revoked).

61-03. The markings required by this regulation must be permanent, except that vehicles operated under temporary authority or approval and vehicles leased for not more than thirty days in any calendar year may be marked with the use of removable displays that otherwise meet the requirements of this regulation.

61-04. Markings placed on a vehicle in compliance with this regulation must be removed when the vehicle is permanently withdrawn from revenue operations.

61-05. The Federal Motor Carrier Safety Regulations adopted and incorporated by reference pursuant to Regulation No. 64 shall not include commercial motor vehicle marking requirements.

62. Lease of Equipment

. . .

62-06. Vehicle Markings. The vehicle markings on a leased vehicle must comply with Regulation No. 61 and must be removed before the vehicle is returned to the lessor.

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 Nos. 61 and 62.

2. That Commission staff shall publish a single notice of this proceeding in a newspaper of general circulation in the Metropolitan District, no later than January 31, 2003.

3. That any person desiring to comment on the amendments proposed in this order shall file an original and four copies of such comment at the office of the Commission, 1828 L Street, N.W., Suite 703, Washington, DC 20036-5104, no later than February 28, 2003.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER AND MCDONALD:



William H. McGilvery
Executive Director

APPENDIX A TO ORDER NO. 7015

**Vehicle Marking Requirements
Comparison of Existing and Proposed Regulations**

	<u>Legal/Trade Name</u>	<u>Owner's Name</u>	<u>"Operated By"</u>	<u>Minimum Height</u>	<u>Removable Display On Leased Vehicle</u>
Reg 61	Both	Required	Recommended	2-3"	May
Reg 62	N/A	N/A	N/A	N/A	Must
Reg 64	Either	Optional	Required	None	May
Proposed	Either	Optional	Required	2.5"	Short-term Only

* The entries for Reg 64 are drawn from 49 C.F.R. § 390.21, as adopted by Commission Regulation No. 64.