

Chapter RR 4

WATER CARRIERS

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RR 4.03 Requirements for a certificate of public convenience and necessity.

Note: Chapter OCT 6 was renumbered chapter RR 6, Register, May, 1996, No. 485, effective June 1, 1996.

RR 4.01 Definitions. For purposes of this chapter:

(1) "Office" means the office of the commissioner of railroads.

(2) "Water carrier" means a common carrier of passengers or property by water as set forth in s. 195.45, Stats.

History: Cr. Register, August, 1986, No. 368, eff. 9-1-86; am. (1), Register, May, 1996, No. 485, eff. 6-1-96.

RR 4.02 Water carrier application. (1) APPLICATION FOR A CERTIFICATE. Application for a certificate of convenience and necessity to operate as a water carrier shall be filed with the office by deposit in the mail or in person upon the forms prescribed for that purpose provided by the office.

Note: The office can be contacted at the Office of the Commissioner of Railroads, Hill Farms State Office Building, 4822 Madison Yards Way, Suite S633, P.O. Box 7854, Madison, WI 53707-7854, (608) 267-0276.

(2) **FILING FEE.** An application for a certificate of public convenience and necessity shall be accompanied by a nonrefundable filing fee of \$40. This fee shall be paid by cash, check or money order made payable to the office of the commissioner of railroads.

(3) **PUBLICATION OF NOTICE.** Upon an initial determination by the Office that the basic entry requirement set out in s. RR 4.03 may be satisfied, the applicant shall be furnished with copies of the official notice that application has been made which the applicant shall publish in a newspaper of general circulation in each county through or in which the proposed service shall be rendered. Prior to publication, the applicant shall examine the notice and notify the office of applicant's approval of the form and content of the notice or submit a revised notice to the office.

(4) **CONTENTS OF NOTICE.** The notice shall contain:

- (a) The correct legal name of the applicant;
- (b) The applicant's address;
- (c) An accurate and complete description of the operations and transportation services proposed to be rendered in sufficient detail to give full notice to the public and other water carriers;

(d) A statement to the effect that a certificate to engage in the proposed operations and transportation services may be granted without hearing unless a petition for hearing is made by an interested party and is filed with the office within 20 days of publication of the notice provided for in sub. (3).

(5) **PROOF OF PUBLICATION.** Proof of publication from the newspaper in which the notice was published shall be filed with the office within 10 days after publication. The applicant shall file a receipt from the newspaper showing the publication fees have been paid and a copy of the notice.

History: Cr. Register, August, 1986, No. 368, eff. 9-1-86; am. (1), (2), (3), Register, May, 1996, No. 485, eff. 6-1-96.

RR 4.03 Requirements for a certificate of public convenience and necessity. (1) BASIC ENTRY REQUIREMENTS. In order to obtain a certificate of public convenience and

necessity which authorizes service under s. 195.45, Stats., the applicant shall prove:

- (a) That the proposed operations or transportation services to be performed are in the public interest;
- (b) There is a present and future public need for the proposed service;
- (c) The applicant has and will have the financial ability to conduct the proposed operations; and
- (d) The applicant is otherwise fit to conduct the proposed operation.

(2) **NOTICE OF HEARING.** Where an application is protested and a petition for hearing is filed with the office pursuant to s. RR 4.02 (4) (d), the matter may be set for hearing and the parties notified in the manner prescribed in s. RR 1.03.

(3) **NEED FOR THE PROPOSED SERVICE.** Where no petition for hearing is received pursuant to s. RR 4.02 (4) (d), the applicant shall submit verified statements from representative shippers or passengers who expect to use the proposed service in order to prove that a public need exists for the proposed service. The sponsors must state the following information:

- (a) For what purpose or occasion they expect to use the proposed service.
- (b) To and from what points they expect to use the proposed service.
- (c) How often they expect to use the proposed service.
- (d) For freight shippers only, the volumes of product they expect to ship using the proposed service.
- (e) Any additional information which may explain how the proposed service will meet needs that are not currently being met by existing service.

(4) **VERIFICATION OF SPONSOR STATEMENTS.** Statements filed under sub. (3) shall be signed and verified by the sponsoring individual, or an authorized employee thereof who is knowledgeable about the sponsor's business and operations. The office may require the sponsor to supply additional information, and may reject statements that, in the judgement of the office, lack authenticity.

(5) **FINANCIAL FITNESS.** To determine financial capability, the office shall assess the applicant's overall liquidity, capital structures and profitability, based on the most recent income statement and balance sheet available. The office shall consider the following ratios in assessing the applicant's overall financial capability.

(a) **Liquidity**

1. Current ratio :
$$\frac{\text{Current assets}}{\text{Current liabilities}}$$

2. Quick ratio :
$$\frac{\text{Current assets less merchandise inventory}}{\text{Current liabilities}}$$

3. Working capital ratio :
$$\frac{\text{Current assets less current liabilities}}{\text{Average daily operating expenses}}$$

(b) Capital structure

1. Capitalization ratio :
$$\frac{\text{Net capitalized assets}}{\text{Total capitalization including long-term debt}}$$

2. Debt to equity ratio :
$$\frac{\text{Long-term debt}}{\text{Long-term debt plus equity}}$$

(c) Profitability

1. Operating ratio :
$$\frac{\text{Operating expenses}}{\text{Operating revenues}} \times 100$$

2. Return on stockholder's equity :
$$\frac{\text{Net income after interest and taxes}}{\text{Stockholder's equity less intangibles}}$$

3. Return on net transportation investment :
$$\frac{\text{Net operating income}}{\text{Average net investment plus working capital}}$$

(6) APPLICANTS PERFORMANCE. The office shall evaluate each applicants financial capability individually on the basis of overall performance in the 3 major categories set out in sub. (5).

Applicants need not prove sufficiency under each ratio to be considered financially capable. Applicants shall have the opportunity to submit additional relevant information addressing deficiencies in any of the areas identified by the office. The staff of the office shall advise applicants requesting assistance in providing the necessary financial information.

(7) GENERAL FITNESS. Applicants shall state in writing that they have a general knowledge of applicable state statutes and rules and that they intend to comply with them. Proof of past failure to comply with those laws may constitute sufficient grounds upon which to restrict a grant of authority or deny an application.

(8) BURDEN OF PROOF. Applicants shall make an initial showing that the entry requirements set forth in sub. (1) have been met. If the application is protested and a hearing is held, the burden shifts to the objector to present evidence tending to disprove a material element of the applicant's initial showing. Objectors challenging the application based on lack of need for the proposed service shall make an affirmative showing that existing service is sufficient to meet the public convenience and necessity.

History: Cr. Register, August, 1986, No. 368, eff. 9-1-86; am. (2), (3), Register, May, 1996, No. 485, eff. 6-1-96.