



STATE OF WASHINGTON  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 664-1160 • TTY (360) 586-8203

November 9, 2012

David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P. O. Box 47250  
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Miller Schmer, Inc. DBA Seattle Express*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TE-121692

Dear Mr. Danner:

On October 29, 2012, the Washington Utilities and Transportation Commission (commission) issued Penalty Assessment TE-121692 against Miller Schmer, Inc. d/b/a Seattle Express (Miller Schmer) in the amount of \$1,000 for ten violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and driver safety requirements, which requires passenger transportation companies to comply with Title 49, Code of Federal Regulations (CFR), including Part 382 - Controlled substances and alcohol use testing, Part 383 - Commercial driver's license requirements, and Part 391 - Qualifications of drivers.

On November 8, 2012, Miller Schmer filed with the commission its request for mitigation (Mitigation Request). Miller Schmer admitted the alleged violations, but asked that the penalty amount be reduced, or in the alternative, that the company be given a payment plan to satisfy the penalty.

In his Mitigation Request, Miller Schmer Vice President Matt Schmer states that he was overwhelmed with work and did not pay close enough attention to his drivers to ensure they had proper commercial driver's licenses (CDL) and current medical certificates. Mr. Schmer states he was aware of the pre-employment drug testing requirement, but let it slip because of



workload. Mr. Schmer also states he was unaware that he had to have the negative pre-employment drug test result back prior to the employee beginning work.

This is not the first time Miller Schmer violated requirements related to pre-employment drug tests or driver medical certification. In 2005, during a compliance review of Miller Schmer, commission staff noted five violations of CFR Part 382.301(a) - Using a driver before receiving a negative pre-employment controlled substance test result and five violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.<sup>1</sup> At that time, Mr. Schmer committed to addressing these violations.<sup>2</sup> Miller Schmer knew or should have known how to comply with these requirements.

Mr. Schmer's stated inattention to driver safety requirements because of increased workload is not a reasonable excuse for failing to comply. During roadside enforcement, when commission staff finds that a driver is operating a passenger-carrying vehicle without possessing a valid CDL or medical certificate, the violation is considered severe enough and the danger to the public is considered great enough that the driver is declared unqualified to drive and is placed out-of-service.<sup>3</sup> Miller Schmer knew or should have known how to comply with these requirements.

The commission's rules governing safety requirements for passenger transportation are designed to protect the health and safety of the traveling public. It is the policy of the Transportation Safety section to recommend that the commission assess penalties for any violations related to keeping the public safe from unqualified drivers, such as drivers who drive without required CDLs, current medical certification, or proof a negative pre-employment drug test.

Commission staff has provided more than adequate information and assistance to Miller Schmer on how to comply with federal and state laws and rules. Staff will conduct a follow-up review within six months to determine if the company's safety management program has improved. If staff finds repeat violations related to driver qualifications or if Miller Schmer receives a conditional or unsatisfactory safety rating at the re-check inspection, staff will recommend the commission take additional enforcement action against Miller Schmer, up to and including additional penalties and possible suspension of the company's operating authority.

Staff recommends the Mitigation Request be denied. Staff has no objection to the commission granting Miller Schmer a payment plan as requested by the company.

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<sup>1</sup> March 2005 compliance review report at Attachment A.

<sup>2</sup> March 2005 letter from Matt Schmer at Attachment B.

<sup>3</sup> The Commercial Vehicle Safety Alliance (CVSA) identifies violations that render commercial motor vehicle operators unqualified to drive or out-of-service – Attachment C.

David W. Danner  
November 9, 2012  
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If you have any questions, please contact Betty Young, Compliance Investigator, Transportation Safety, at 360-664-1202, or by e-mail at [byoung@utc.wa.gov](mailto:byoung@utc.wa.gov).

Sincerely,


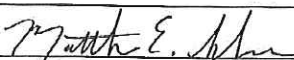


David Pratt  
Assistant Director, Transportation Safety

Enclosures

# Attachment A

## WASHINGTON UTILITIES & TRANSPORTATION COMMISSION

	<b>US DOT #</b>	<b>Legal:</b> MILLER SCHMER INC <b>Operating (DBA):</b> SEATTLE EXPRESS	
<b>MC/MX #:</b>		<b>State #:</b> CH460	<b>Federal Tax ID:</b> 65-1217761 (EIN)
<b>Review Type:</b> Compliance Review (CR)			
<b>Scope:</b> Principal Office		<b>Location of Review/Audit:</b> Company facility in the U. S. <b>Territory:</b>	
<b>Operation Types</b>	<b>Interstate</b>	<b>Intrastate</b>	<b>Business:</b> Corporation <b>Gross Revenue:</b> \$161,283.00 <b>for year ending:</b> 12/31/2004
<b>Carrier:</b>	N/A	Non-HM	
<b>Shipper:</b>	N/A	N/A	
<b>Cargo Tank:</b>	N/A		
<b>Company Physical Address:</b>			
7207 180 Street SE Snohomish, WA 98296			
<b>Contact Name:</b> Matt Schmer		<b>Phone numbers:</b> (1) 206 793-8430      (2)	<b>Fax:</b> 360 668-1037
<b>E-Mail Address:</b>			
<b>Company Mailing Address:</b>			
7207 180 Street SE Snohomish, WA 98296			
<b>Carrier Classification</b>			
Private Passenger, Business			
<b>Cargo Classification</b>			
Passengers			
<b>Does carrier transport placardable quantities of HM?</b> No			
<b>Is an HM Permit required?</b> N/A			
<b>Driver Information</b>			
	<b>Inter</b>	<b>Intra</b>	<b>Average trip leased drivers/month:</b> 0
<b>&lt; 100 Miles:</b>		5	<b>Total Drivers:</b> 5
<b>&gt;= 100 Miles:</b>			<b>CDL Drivers:</b> 4
<b>Equipment</b>			
	<b>Owned</b>	<b>Term Leased</b>	<b>Trip Leased</b>
Minibus, 16+	3	0	0
			Van, 9-15
			2
			0
			0
QUESTIONS regarding this report or the Federal Motor Carrier Safety rules may be addressed to: WUTC  ATTN: John Foster, PO Box 47250, Olympia, WA 98504-7250 Ph. (360) 664-1238, Fax #360) 586-1150, email: jfoster@wutc.wa.gov			
<b>This report will be used to assess your safety compliance.</b>			
<b>Person(s) Interviewed</b>			
<b>Name:</b> Matt Schmer		<b>Title:</b> Vice President	
<b>Name:</b> Fred Miller		<b>Title:</b> President	
<b>Reported By:</b>		<b>Title:</b>	<b>Code:</b> WA0518 <b>Date:</b> 3/1/2005
<b>Received By:</b> 		<b>Title:</b> Vice President	

	SEATTLE EXPRESS (MILWAUKEE) SCHMER INC dba			Review Date:
	U.S. DOT #:	State #:	CH460	03/01/2005

**Part B Violations**

1 STATE	Primary: 382.103(b)	Discovered 5	Checked 5	Drivers/Vehicles	
	CFR Equivalent: 382.103(b)			In Violation 5	Checked 5

**Description**  
Failing to implement a random program that includes more than the driver/employer in the random testing selection pool.  
**Example**  
Matt Schmer, Trip date 2-28-2005  
No random program is in place.

2 STATE CRITICAL	Primary: 382.301(a)	Discovered 5	Checked 5	Drivers/Vehicles	
	CFR Equivalent: 382.301(a)			In Violation 5	Checked 5

**Description**  
Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.  
**Example**  
Matt Schmer, Trip date 2-28-2005  
No preemployment test have been conducted

3 STATE	Primary: 382.603	Discovered 2	Checked 2	Drivers/Vehicles	
	CFR Equivalent: 382.603			In Violation 2	Checked 2

**Description**  
Failing to ensure persons designated to determine that drivers undergo reasonable suspicion testing receive 60 minutes training for alcohol and/or 60 minutes of training for controlled substances.  
**Example**  
Matt Schmer, Trip date 2-28-2005  
No supervisor has received training.

4 STATE	Primary: 383.35(b)	Discovered 5	Checked 5	Drivers/Vehicles	
	CFR Equivalent: 383.35(b)			In Violation 5	Checked 5

**Description**  
Failing to request employment history information for the 10 years preceding the date of the application for employment.  
**Example**  
Matt Schmer, Trip date 2-28-2005

5 STATE	Primary: 391.11(b)(6)	Discovered 5	Checked 5	Drivers/Vehicles	
	Secondary: 391.11(a) CFR Equivalent: 391.11(b)(6)			In Violation 5	Checked 5

**Description**  
Failing to require driver to furnish list of motor vehicle traffic violations each 12 months.  
**Example**  
Matt Schmer, Trip date 2-28-2005

Received by *Matt E. Schmer* Title *Vice President* Date *3-1-05*



SEATTLE EXPRESS (MIL) SCHMER INC dba

U.S. DOT #:

State #: CH460

Review Date:

03/01/2005

## Part B Violations

6 STATE	Primary: 391.21(a) CFR Equivalent: 391.21(a)	Discovered 5	Checked 5	Drivers/Vehicles In Violation 5	Checked 5
<b>Description</b> Using a driver who has not completed and furnished an employment application. Matt Schmer, Trip date 2-28-2005					
7 STATE	Primary: 391.23(a) CFR Equivalent: 391.23(a)	Discovered 5	Checked 5	Drivers/Vehicles In Violation 5	Checked 5
<b>Description</b> Failing to investigate driver's background. <b>Example</b> Matt Schmer, Trip date 2-28-2005					
8 STATE	Primary: 391.25(a) CFR Equivalent: 391.25(a)	Discovered 2	Checked 5	Drivers/Vehicles In Violation 2	Checked 5
<b>Description</b> Failing to make an inquiry into the driving record of each driver to the appropriate State agencies in which the driver held a commercial motor vehicle operator's license at least once every 12 months. <b>Example</b> Matt Schmer, Trip date 2-28-2005					
9 STATE	Primary: 391.25(b) CFR Equivalent: 391.25(b)	Discovered 2	Checked 5	Drivers/Vehicles In Violation 2	Checked 5
<b>Description</b> Failing to review the driving record of each driver to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive. <b>Example</b> Matt Schmer, Trip date 2-28-2005					
10 STATE CRITICAL	Primary: 391.45(a) Secondary: 391.11(a) CFR Equivalent: 391.45(a)	Discovered 5	Checked 5	Drivers/Vehicles In Violation 5	Checked 5
<b>Description</b> Using a driver not medically examined and certified. <b>Example</b> Matt Schmer, Trip date 2-28-2005					
11 STATE	Primary: 391.51(b)(2) CFR Equivalent: 391.51(b)(2)	Discovered 5	Checked 5	Drivers/Vehicles In Violation 5	Checked 5
<b>Description</b> Failing to maintain inquiries into driver's employment record in driver's qualification file. <b>Example</b> Matt Schmer, Trip date 2-28-2005					

*Matt E. Schmer*  
Received by

*Vice President*  
Title

*5-1-05*  
Date

	<b>SEATTLE EXPRESS (MIL) SCHMER INC dba</b>	Review Date:
	U.S. DOT #:	State #: CH460

**Part B Violations**

12 STATE CRITICAL	Primary: 395.8(a) CFR Equivalent: 395.8(a)	Discovered 150	Checked 150	Drivers/Vehicles In Violation	Checked 5
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**Description**  
Failing to require driver to make a record of duty status.  
**Example**  
Matt Schmer, Trip mdate 2-28-2005  
Carrier does not keep records of duty status that require all required information.

13 STATE	Primary: 396.3(b)(2) CFR Equivalent: 396.3(b)(2)	Discovered 5	Checked 5	Drivers/Vehicles In Violation	Checked 5
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**Description**  
Failing to have a means of indicating the nature and due date of the various inspection and maintenance operations to be performed.  
**Example**  
Carrier does not maintain a written maintenance program

14 STATE	Primary: 396.3(b)(4) CFR Equivalent: 396.3(b)(4)	Discovered 4	Checked 4	Drivers/Vehicles In Violation	Checked 4
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**Description**  
Failing to keep a record of tests conducted on pushout windows, emergency doors, and emergency door marking lights on buses.  
**Example**  
Carrier does not conduct push out window test

15 STATE	Primary: 396.13(c)	Discovered 150	Checked 150	Drivers/Vehicles In Violation	Checked 5
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**Description**  
Falling to require reviewing driver to sign vehicle inspection report when defects or deficiencies were noted and maintain certification of the driver's review.  
**Example**  
Carrier uses a Driver Vehicle Inspection Report that does not contain signature blocks for a reviewing driver OR for a mechanic's certification.

<b>Safety Fitness Rating Information:</b>		OOS Vehicle (CR): 0			
Total Miles Operated	115,222	Number of Vehicle Inspected (CR): 0			
Recordable Accidents	0	OOS Vehicle (MCMIS): 0			
Recordable Accidents/Million Miles	0.000	Number of Vehicles Inspected (MCMIS): 4			

Received by

Vice President  
Title

5-1-05  
Date


	SEATTLE EXPRESS (MIL/ SCHMER INC dba)	Review Date:
	U.S. DOT #:	State #: CH460

**Part B Violations**

Your proposed safety rating is :

**UNSATISFACTORY**

Rating Factors		Acute	Critical
Factor 1:	S	0	0
Factor 2:	U	0	2
Factor 3:	U	0	2
Factor 4:	S	0	0
Factor 5:	N	0	0
Factor 6:	S	-	-

  
 Received by \_\_\_\_\_

*Vice President*  
 Title \_\_\_\_\_

*5-1-05*  
 Date \_\_\_\_\_



**ATTACHMENT B**

105071

**SEATTLE EXPRESS  
206-793-8430**


**RECEIVED**  
MAR 07 2005  
WASH. UT. & TP. COMM

**RESPONSE REPORT**

**RECEIVED**  
MAR 07 2005  
CONSUMER AFFAIRS

I, Matt Schmer will take action in response to the following violations with the Federal Motor Carrier Safety Regulations.

1. Set up a random program testing pool with American Diagnostic.
2. All drivers will go in for a pre-employment drug test to American Diagnostic.
3. I will go in for training for reasonable suspicion testing.
4. Request employment history for past ten years for each employee.
5. Get a 3 year motor traffic violations report from DMV.
6. Get complete employment application for each employee.
7. Investigate driver's background.
8. Request driving record for each employee from DMV.
9. Do a review with driver to ensure driver meets minimum requirements.
10. Get medical reports for each driver.
11. Check driver employment history by contacting former employers.
12. Have driver maintain daily duty status.
13. Set up a preventive maintenance program.
14. Record tests for push out windows and emergency doors.
15. Have driver fill out a daily inspection report signed and if defects occur have it noted and when fixed signed by supervisor and next day driver of the vehicle.

 3-3-05

Matt Schmer  
Seattle Express  
206-793-8430

cc: John Foster

## ATTACHMENT C

### PART I

#### NORTH AMERICAN STANDARD DRIVER OUT-OF-SERVICE CRITERIA

##### POLICY STATEMENT

The purpose of this part is to identify violations that render the commercial motor vehicle operator unqualified to drive or out-of-service. The necessity for all enforcement personnel to implement and adhere to these standards is: (1) a matter of law; (2) perceived as necessary by the society we are charged with protecting, and (3) a professional obligation if substantial enhancement in the safety of commercial motor vehicle operators is to be achieved.

Except where state, provincial, territorial, or federal laws preclude enforcement of a named item, motor carrier safety enforcement personnel and their jurisdictions shall comply with these out-of-service violation standards.

**OUT-OF-SERVICE VIOLATION:** Violations under this category preclude further operation of a commercial motor vehicle by its driver for a specified period of time or for some violations until a required condition is met. An example of the former standard is hours of service violations.

FMCSR code references in the *North American Standard Out-of-Service Criteria* are simply recommendations to help inspectors find an appropriate citation. Other violation codes may be more suitable for a specific condition.

## 1. DRIVER'S AGE

Is not at least 21 years of age. (391.11(b)(1), see exemptions 390.3(f) and 391.2) **Declare driver out-of-service.**

## 2. OPERATOR'S/CHAUFFEUR'S LICENSE OR PERMIT (NON-CDL)

- a. Vehicle 26,000 lbs. or less GVWR not designed to transport 16 or more passengers or placarded loads of hazardous materials. Is not licensed for the type of vehicle being operated. (391.11(b)(5)) **Declare driver out-of-service.** (*Out-of-service action to be initiated only upon home jurisdiction license verification.*)

NOTE: "Is not licensed" includes, but is not limited to: improper class, expired, cancelled, revoked, disqualified, suspended, or withdrawn.

- b. Endorsements and Restrictions

Operating a commercial vehicle without proper endorsement or in violation of restrictions. (391.11(b)(5)) **Declare driver out-of-service.**

NOTE: Canadian operator's license endorsements are included in the class. Transporting dangerous goods requires a training certificate. **Declare driver out-of-service if not in possession.**

NOTE: Mexican drivers must have a Category E license to transport hazardous materials. All other endorsements are included in the class. **Declare driver out-of-service if not in possession.**

## 3. CDL

- a. License

Does not possess a valid CDL issued by his/her state or jurisdiction of domicile. (383.23(a)(2)) **Declare driver out-of-service.** (*Out-of-service action to be initiated only upon home jurisdiction license verification.*)

NOTE: "Does not possess a valid CDL" includes, but is not limited to: improper class, expired, cancelled, revoked, disqualified, suspended, or withdrawn.

NOTE: Canadian operators not possessing a valid Provincial or Territorial license of the correct class. **Declare driver out-of-service.**

NOTE: Mexican operators who do not possess a valid Licencia Federal. (Can be recognized by the medallion in the upper left hand corner containing the Mexican national symbol of an eagle with a serpent. The words Licencia Federal de Conductor and logo SCT are also on the front of the license.) **Declare driver out-of-service.**

**b. Learner's Permit**

- (1) Is not accompanied by the holder of a valid CDL. (383.23(c)(1)) **Declare driver out-of-service.**
- (2) Does not hold a valid automobile drivers license or have a valid operator's status allowed by licensing jurisdiction. (383.23(c)(2)) **Declare driver out-of-service.**
- (3) Operating a commercial motor vehicle transporting hazardous materials as defined in 383.5. (383.23(c)(3)) **Declare driver out-of-service.**

**c. Endorsements and Restrictions**

Operating a commercial vehicle without proper endorsements or in violation of restrictions. (383.23(a)(2)) **Declare driver out-of-service.**

NOTE: Canadian operator's license endorsements are included in the class. Transporting dangerous goods requires a training certificate. **Declare driver out-of-service if not in possession of training certificate.**

NOTE: Mexican drivers must have a Category E license to transport hazardous materials. All other endorsements are included in the class.

**d. Classification**

Does not possess proper class of license for vehicle being operated. (383.91(a)) **Declare driver out-of-service.**

**\*4. DRIVER MEDICAL/PHYSICAL REQUIREMENTS**

**a. Skill Performance Evaluation Certificate**

No skill performance evaluation in possession, when required.  
(391.49(j)) **Declare driver out-of-service.**

**\*b. Medical Certificate**

(1) Operating a commercial vehicle without corrective lenses or hearing aid as indicated on the driver's medical certificate.  
(391.11(b)(4)) **Declare driver out-of-service.**

(2) When an inspector has knowledge and/or evidence that a driver is/is not in possession of a valid medical certificate, and is not in possession of any and all required exemptions for the following conditions: vision, hearing, insulin-using diabetes, epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle. (391.41(a)(1)) **Declare driver out-of-service.**

(3) Operating a passenger-carrying vehicle without a valid medical certificate in possession. (391.41(a)) **Declare driver out-of-service.**

*Inspection Bulletin 2010-07 - Enforcement of Medical Certificate on Passenger Carrying Vehicle Drivers*

\* (4) Operating a property-carrying vehicle without a valid medical certificate in possession. If the driver fails to produce a medical certificate or has an expired medical certificate and has a previous history of failing to produce a medical certificate, or having an expired medical certificate, the driver shall be placed out-of-service. (391.41(a)) **Declare driver out-of-service.**

NOTE: Canadian operators possessing a valid Provincial or Territorial license of the proper class includes a valid Medical Certificate.

NOTE: Mexican operators possessing a valid Licencia Federal de Conductor of the proper class includes a valid Medical Certificate.