



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 8, 2013

Steven V. King, 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. 2C Captains, Inc. DBA Let's Tour Seattle*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-131923

Dear Mr. King:

On October 15, 2013, the Washington Utilities and Transportation Commission (commission) assessed a \$7,900 penalty against 2C Captains, Inc. DBA Let's Tour Seattle (2C Captains) for 79 violations of [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 391 - Qualification of drivers, and Part 396 – Inspection, repair and maintenance.

On October 30, 2013, Charles Russell, owner of 2C Captains, filed an Application for Mitigation of Penalties (mitigation request), requesting a hearing based on the information provided by the company.

For the reasons below, staff opposes mitigation of the penalty.

- **47 violations of [CFR Part 391.45\(b\)\(1\)](#) – Using a driver not medically examined and certified during the preceding 24 months.** Company driver Dick Falkenbury's medical certificate expired on April 21, 2013, and was not renewed until September 6, 2013. Mr. Falkenbury drove on 47 occasions during that time period without medical certification.

In the mitigation request, Mr. Russell states that Mr. Falkenbury received a letter from the Department of Motor Vehicles informing him that he could renew his commercial driver license (CDL) without renewal of his medical certificate if he was only driving intrastate. Mr. Russell states that he asked Mr. Falkenbury to make a copy of the letter; however, Mr. Russell did not include a copy of the letter with the mitigation request.

No mitigation is appropriate. The Washington State Department of Licensing (DOL) is the agency responsible for issuing CDLs. The DOL website clearly states that all CDL holders must meet federal medical certificate requirements. CDL holders operating commercial vehicles intrastate (only within Washington State) do not have to keep medical certificates *on file with the DOL*; however, intrastate drivers must still carry medical certificates when operating a commercial vehicle.¹

As the owner of a regulated passenger transportation company, it is Mr. Russell's responsibility to be familiar with and remain educated about all pertinent regulatory requirements, including those related to driver medical certification.

- **Two violations of [CFR Part 396.3\(b\)](#) – Failing to keep minimum records of inspection and vehicle maintenance (*Critical Violation*).** 2C Captains fails to maintain any written inspection, repair or maintenance records, including due dates and nature of noted inspections or repairs for either bus.

In the mitigation request, Mr. Russell states that he provided commission staff with a folder containing a vehicle maintenance log and a printed list of bills for all vehicle maintenance.

No mitigation is appropriate. CFR Part 396.3(b) – Vehicle inspection and maintenance, requires motor carriers to maintain the following records for each motor vehicle:

- (1) An identification of the vehicle including company number, if so marked, make, serial number, year, and tire size. In addition, if the motor vehicle is not owned by the motor carrier, the record shall identify the name of the person furnishing the vehicle;
- (2) A means to indicate the nature and due date of the various inspection and maintenance operations to be performed;
- (3) A record of inspection, repairs, and maintenance indicating their date and nature; and

¹ See Attachment A – Copy of DOL webpage – Medical certificates and self-certification.

- (4) A record of tests conducted on push-out windows, emergency doors, and emergency door marking lights on buses

This CFR requirement is considered a “critical” regulation by the Federal Motor carrier Safety Administration (FMCSA). Patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.²

During the compliance review inspection, Mr. Russell provided commission staff with a folder containing receipts from an outside vendor who does maintenance on the company’s buses. These receipts failed to indicate tire size, make of vehicle, serial number and in some instances, the year of the vehicle. When staff asked Mr. Russell if he had a written preventative maintenance program and a record of inspections and repairs for the buses, Mr. Russell responded that he had no other maintenance records and takes the buses in when he feels they need servicing. The required vehicle maintenance and inspection records were not present in the folder presented to staff during the inspection; therefore, staff noted violations of the CFR requirement.

In a subsequent telephone conversation with staff, Mr. Russell stated that he had maintenance records on his computer. These records were neither discussed nor produced for staff during the compliance review inspection or after the telephone conversation. Mr. Russell did not provide any maintenance records with the mitigation request.

- **29 violations of CFR Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection reports (DVIR) (*Critical Violation*).** 2C Captains’ drivers fail to complete written DVIRs at the end of each day or each shift. For the month of August 2013, drivers drove on 29 occasions and should have completed a DVIR for each drive.

In the mitigation request, Mr. Russell states that he inspects his vehicles each time he gives the keys to a driver. Mr. Russell and the driver walk around the bus and discuss needed maintenance, sweep out the vehicle and wipe down the seats and windows before the company vehicle is dispatched to pick up a customer.

No mitigation is appropriate. CFR Part 396.11(a) - Equipment provided by motor carrier, states that motor carriers must require every driver to prepare a report in writing

² Appendix B to CFR Part 385—Explanation of safety rating process: <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?contentid=1556>

at the completion of each day's work on each vehicle operated. The report must cover at least the following parts and accessories:

1. Service brakes including trailer brake connections.
2. Parking brake.
3. Steering mechanism.
4. Lighting devices and reflectors.
5. Tires.
6. Horn.
7. Windshield wipers.
8. Rear vision mirrors.
9. Coupling devices.
10. Wheels and rims.
11. Emergency equipment.

In the mitigation request, Mr. Russell makes no mention of drivers completing the required DVIRs after each inspection. This CFR requirement is another regulation considered critical by the FMCSA. This is also a repeat violation. Commission staff previously noted violations of this CFR during a compliance review inspection in 2010. 2C Captains knew or should have known about this requirement.

- **One violation of [CFR Part 396.17\(a\)](#) – Using a commercial vehicle not periodically inspected.** The commercial motor vehicle E450 had not been inspected since June 2012.

In the mitigation request, Mr. Russell states that he purchased bus E450 in 2012 and was under the impression that an inspection is good for two years.

No mitigation is appropriate. CFR Part 396.17(a) - Periodic inspection, states that every commercial motor vehicle must be inspected as required by the CFR. A motor carrier must not use a commercial motor vehicle unless each component identified in the CFR has passed an inspection at least once *during the preceding 12 months* and documentation of such inspection is on the vehicle.

This is also a repeat violation. Commission staff previously noted violations of this CFR during a compliance review inspection in 2010. 2C Captains knew or should have known about this requirement.

Staff recommends no mitigation of the assessed penalty and will testify in support of its recommendation at hearing.

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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.

Sincerely,

A handwritten signature in black ink that reads "David Pratt". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

David Pratt
Assistant Director, Transportation Safety

Enclosure

- Getting a license
- Renewal and updates
- Lost or stolen license
- Enhanced driver license/ ID card (EDL/EID)
- Motorcycles
- Commercial Driver License (CDL)
 - Do I need a CDL?
 - CDLs and endorsements
 - Steps to getting your CDL
 - CDL instruction permit (CDIP)
 - Medical certificates and self-certification**
 - Training requirements
 - Employer registration and certification
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 - Medical waivers
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 - CDL testing
 - Renew or update your CDL
 - Transfer your CDL from another state
 - For CDL training schools
 - CDL suspensions
- ID Cards
- Fees
- Driving record
- Suspended license
- Driving safety and accidents
- Driver licensing offices

Medical certificates and self-certification

All commercial driver license (CDL) holders must meet federal self-certification and medical certificate requirements. To learn more, see:

- [Self-certification](#)
- [Medical certificates](#)

Self-certification Requirements

To confirm who has to keep a medical certificate on file with us, **all CDL holders** must self-certify in person **between January 30, 2012 and January 30, 2014**.

You must visit a [driver licensing office](#) in person to self-certify. Mailed in forms are not accepted. When self-certifying, you may choose one of the following categories:

Type of certification	Self-certify as this type of driver if you...	Current medical certificate must be...
Non-expected interstate commercial driver	<ul style="list-style-type: none"> • Cross state lines while operating a commercial vehicle. • Transport cargo that comes from outside Washington or is going outside Washington State. • Deliver cargo to Washington State ports. <p>Examples:</p> <ul style="list-style-type: none"> • School bus drivers who carry passengers across state lines to events. • Truck drivers who deliver goods across state lines. • Drivers who deliver goods, including logs, to ports in Washington. 	<ul style="list-style-type: none"> • Kept on file with us. and • Carried by the driver when operating a commercial vehicle.
Expected interstate commercial driver	<ul style="list-style-type: none"> • Cross state lines with a school bus transporting students to and from school. • Occasionally transport personal property and not for compensation. • Operate a government vehicle or emergency response vehicle. • Make emergency deliveries of propane or home heating oil. <p>Examples:</p> <ul style="list-style-type: none"> • Drivers crossing state lines for city, county, or state-owned and operated transit organizations. • Truck drivers employed by federal, state, or local government to haul or deliver mail, supplies, or other goods. 	Carried by the driver when operating a commercial vehicle.
Intrastate driver	<ul style="list-style-type: none"> • Don't cross state lines while operating a commercial vehicle. • Transport cargo that always came from and stays within Washington State. <p>Examples:</p> <ul style="list-style-type: none"> • School bus drivers who only transport passengers within Washington. • Truck drivers who only transport and deliver goods to and from Washington addresses. <p>Note: This is the only type of intrastate</p>	Carried by the driver when operating a commercial vehicle.

certification available in Washington. You can't self-certify as an "excepted intrastate driver."

How to self-certify

1. Submit a self-certification form

You must submit a completed self-certification form in person at a [driver licensing office](#). **Mailed in forms won't be accepted.**

2. Submit a medical certificate if necessary

- **Non-excepted interstate drivers** must submit a valid medical examiner's certificate with the self-certification form.
 - The **first time** you self-certify, you must submit your medical certificate **in person**.
 - After that, you may submit your new medical certificate to us before the old one expires:
 - **At a [driver licensing office](#)**
 - **By email:** CDLMED@dol.wa.gov
(This email address accepts only CDL medical and self-certification forms.)
 - **By fax:** 360.570.4915
 - **or**
 - **By mail:**
CDL Medical Unit
Department of Licensing
PO Box 9030
Olympia, WA 98507-9030
- **All other CDL holders** don't need to submit a medical certificate with the completed form.

Fees

There is no fee to self certify. However, if you get a new license to add or remove the **intrastate "U"** restriction, it will cost \$10.

When to self-certify

All CDL holders must submit a self-certification form **between January 30, 2012 and January 30, 2014**:

- **If you'll renew your CDL by January 30, 2014**, you can complete the self-certification form when you renew. You can renew and self-certify your:
 - **CDL up to 1 year** early.
 - **CDL with a hazmat endorsement**, up to **6 months** early.
- **If you're applying for your first CDL**, you'll certify your status as part of that process. If you certify as an **interstate** driver, you must submit your current medical certificate before we can issue you a CDL.
- **If you don't renew by January 30, 2014**, you must go to a [driver licensing office](#) before the deadline to self-certify. If your CDL expires in 2014, 2015, or 2016, we'll send you a reminder notice.

How to change your self-certification

If your certification status changes, submit a new self-certification form **in person** at a [driver licensing office](#).

- You must visit a [driver licensing office](#) to change your self-certification status. **Mailed in forms are not accepted**
- If you change your status to **non-excepted interstate driver**, submit your current medical examiner's certificate with the certification form.
- There is no fee to change your self-certification. However, if you **get a new license** to add or remove the **intrastate "U"** restriction, it will cost \$10.

Medical certificates

Requirements

- New regulations require all commercial driver license (CDL) holders who operate for **interstate commerce** to keep a current medical examiner's certificate on file with us.
- CDL holders who operate a commercial vehicle **only within Washington State** (intrastate) don't have to keep their medical certificate on file with us.

Note: You can [check your status online](#) to confirm we have your medical certificate on record. If you don't see "Medical certification (certified)" in the CDL section when you check online, we don't have your certificate on record yet.

How to submit your medical certificate

There are 4 ways to submit your medical certificate:

- **In person:** At a [driver licensing office](#)
- **By email:** CDLMED@dol.wa.gov
- **By fax:** 360.570.4915
- **or**
- **By mail:**
CDL Medical Unit
Department of Licensing
PO Box 9030

Olympia, WA 98507-9030

We'll process your medical certificate as quickly as possible, but **it may take 7–10 business days** for it to show on your record.

What happens if you miss the deadline

If we don't receive your medical certificate, your CDL **won't be valid for operating a commercial vehicle**. If your license is downgraded, we'll automatically make your CDL valid for operating commercial vehicles again as soon as we receive and process your medical certificate.

Frequently asked questions

What if I don't know what type of commercial driving I'll be doing?

It's safest to certify yourself as a non-expected interstate driver and submit a medical certificate to us. This is the most flexible option, and will allow you to accept jobs that require driving across state lines.

What will happen if I don't self certify before the deadline?

If you don't self-certify, we'll change your CDL record to show "not certified," and you won't legally be allowed to operate a commercial vehicle. You can return your status to normal by submitting a self-certification form and, if required, a copy of your medical certificate.

I'm not an active commercial driver. Can I maintain my CDL without keeping my medical certificate current?

Yes, but only if you self-certify as an intrastate driver **and** don't operate a commercial vehicle. If you start driving again, get your medical certificate updated and, if operating in interstate commerce, submit a new self-certification form and your medical certificate at a [driver licensing office](#).

Is this a federal or a state requirement?

It's both. The Federal Motor Carrier Safety Administration set these licensing standards ([CFR 383.71](#) and [CFR 383.73](#)) and they apply to CDL holders nationwide. All states are required to adopt these new standards, and Washington State adopted these standards as state law in 2011 ([RCW 46.25.010 \(22\)](#)).

Why do we have to do this?

In 2007, federal and state authorities found over 100,000 commercial vehicle drivers were operating illegally without valid medical certificates. Commercial vehicle crash data also shows that more than 3,000 truck crashes per year result from the driver having a heart attack or other physical impairment. Requiring self-certification and valid medical certificates will help to prevent medically unqualified drivers from operating commercial vehicles on our highways.

Questions?

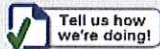
If you have questions about your medical certificate or self-certification, call us at 360.902.3900 or email drivers@dol.wa.gov.

SEE ALSO →

 [CDL: New Federal Requirements](#)

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What we do
Rulemaking activity
News center
Reports and data
Public disclosure
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Replace your license or ID card
Report the sale of vehicle
Get renewal reminders by email
Check the status of a driver license
Get a form
Register to vote (Secretary of State)
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STAY CONNECTED

