December 12, 2014

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. Adam’s Moving and Delivery Service, LLC.*

Commission Staff’s Response to Application for Mitigation of Penalties

Docket TV-143801

Dear Mr. King:

On November 17, 2014, the Washington Utilities and Transportation Commission (commission) issued Penalty Assessment TV-143801 against Adam’s Moving and Delivery Service, LLC. (Adam’s Moving) in the amount of $4,500, for one violation of WAC 480-15-560, which requires household goods carriers to comply with CFR Part 396 – Inspection, repair and maintenance, and 44 violations of Washington Administrative Code (WAC) 480-15-570, which requires household goods carriers to comply with parts of Title 49, Code of Federal Regulations (CFR), including Part 391 - Qualification of drivers as follows:

* **$100 for one violation of WAC 480-15-560 –Failing to require driver to prepare a vehicle inspection report.**  Five drivers did not prepare daily vehicle inspection reports on 53 separate occasions. This is a critical regulation but these are first-time violations, so the Commission assessed a penalty of $100 for one violation of this type. Future violations of this regulation will result in penalties assessed for each violation.
* **$4,400 for** **44 violations of WAC 480-15-570 – Using a driver not medically examined and certified**. Four of Adam’s Moving’s drivers drove a total of 44 days without a valid medical certification. The commission grants no leeway with this type of violation.

On December 5, 2014, Adam’s Moving filed with the commission its application for mitigation of penalties (Mitigation Request). Adam French, owner of Adam’s Moving, admitted the violations but asked that the penalty amount be reduced for the reasons set out in the response.

Adam’s Moving operates as a household goods carrier under permit number HG-62045. On October 16, 2014, Motor Carrier Safety Inspector Alan Dickson conducted a compliance review inspection at the carrier’s terminal. Compliance reviews are an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as “acute” or “critical.”[[1]](#footnote-1) Acute regulations are identified where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates.[[2]](#footnote-2) Mr. Dickson found 104 total violations; 97 of these included violations of critical regulations.

In the Mitigation Request, Mr. French requests leniency in the assessed penalty based on the following factors. Staff’s response to each factor is included below:

**Adam’s Moving Mitigation Request:** Mr. French did notattend the portion of the November 18, 2013, household goods training session that covered safety requirements.

**Staff Response:** Mr. French chose not to attend the entire November 18, 2013 household goods training. Mr. French admits that if had attended he would have been aware of the regulation. At the portion of the training Mr. French did attend he was provided a copy of the commission publication called “Your Guide to Achieving a Satisfactory Safety Record” (Guide). This Guide provides information on medical certification requirements.

Technical assistance about safety requirements has also been provided to Adam’s Moving several times in the past. In 2005, commission Motor Carrier Safety Inspector Leon Macomber provided technical assistance on driver record requirements[[3]](#footnote-3) and provided Mr. French a copy of the Guide. Additionally, in May 2006 during a compliance review Mr. Macomber found that one driver was not medically examined and certified. A violation was noted and Mr. French was provided a copy of the compliance review report showing that violation.[[4]](#footnote-4)

As a regulated household goods moving company, it is Mr. French’s responsibility to be familiar with, and remain educated about, all laws, rules and requirements. Staff recommends no mitigation.

**Adam’s Moving Mitigation Request**: According to Mr. French, all violations and issues have been corrected, Mr. French noted that he takes these very seriously, and he took immediate steps to comply.

**Staff Response**: On October 30, 2014, Mr. French provided copies of current medical examiner’s certificates for four drivers. Mr. French submitted a compliance plan November 10, 2014, and on staff’s advice submitted a more detailed plan November 14, 2014. Mr. French has implemented changes that he believes will bring Adam’s Moving into compliance during future compliance reviews.

While staff appreciates Mr. French’s efforts to comply with commission requirements after the most recent compliance review. Staff recommends no mitigation.

As stated in the penalty assessment, the commission could have assessed up to $9,700 in penalties against Adam’s Moving for the violations found in the compliance review. Instead, based on the specific factors outlined in the penalty assessment, the commission assessed $4,500 in penalties. In its Mitigation Request, Adam’s Moving did not provide any new information that supports further mitigation of the penalty; therefore, staff recommends the request be denied. Staff does not oppose payment arrangements on the penalty amount.

If you have any questions, please contact Pam Smith, Compliance Investigator, Transportation Safety, at 360-664-1320, or by e-mail at psmith@utc.wa.gov.

Sincerely,

David Pratt

Assistant Director, Transportation Safety

Enclosures

1. Code of Federal Regulations, [Appendix B to Part 385—Explanation of safety rating process](http://www.fmcsa.dot.gov/regulations/title49/section/385.Appendix%20B%20to%20Part%20385) [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. Dec. 14, 2005 technical assistance memo, enclosed. [↑](#footnote-ref-3)
4. May 28, 2006 Part B of compliance review, enclosed. [↑](#footnote-ref-4)