



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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April 17, 2019

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. InMove LLC*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-190082

Dear Mr. Johnson:

On March 21, 2019, the Washington Utilities and Transportation Commission (commission) issued a penalty assessment against InMove LLC (InMove or company) in the amount of \$9,800 for violations of Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 CFR Part 396 – Inspection, Repair, and Maintenance; and WAC-480-15-570, Driver Safety Requirements, which adopts Title 49 CFR Part 391 – Qualifications of Drivers, and Title 49 CFR Part 395 – Hours of Service of Drivers, as follows:

- **Five violations of WAC 480-15-555 – Failing to acquire criminal background checks of prospective employees.** The company failed to acquire criminal background checks on five prospective employees: Michael Floyd, Josh Fry, Linard Feaster, Marcus Smith, and Melanie Morris.
- **Eighty-nine violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** The company allowed its drivers Marcus Smith and Michael Floyd to drive without having been medically examined and certified on 89 occasions during the six months preceding the safety investigation.
- **One violation of Title 49 CFR Part 391.51(b)(9) – General requirements for driver qualification files.** The company failed to note the medical examiner verification in driver Marcus Smith's driver qualification file.

- **Three violations of Title 49 CFR Part 395.8(e) – False record of duty status.** On three occasions, the company allowed its driver, Marcus Smith, to make false records of duty status.
- **One violation of Title 49 CFR Part 396.3(a)(1) – Brake system pressure loss.** Staff discovered a severe air leak in the right rear wheel of fleet vehicle 004 that caused a brake system pressure loss.
- **Two violations of Title 49 CFR Part 396.11(a) – Driver vehicle inspection reports.** The company failed to require drivers Marcus Smith and Michael Floyd to prepare driver vehicle inspection reports.

On March 25, 2019, InMove filed with the commission its application for mitigation of penalties. In the request for mitigation, Melanie Morris, owner of InMove, admitted the violations, stated she believed that the penalty should be reduced, and requested a hearing to present evidence to an administrative law judge for a decision. Ms. Morris stated, “For the 89 violations of Title 49.. this is a first time violation and we request that the \$8,900 penalty be reduced significantly, not for each occurrence. Our Company has no prior safety violations or accidents.”

Companies are required to submit a request for mitigation within 15 days of receiving the notice of penalties, and must provide reasons to support the request for mitigation or hearing, otherwise the commission can deny the request.

Commission staff (staff) believes the company’s request for a hearing is unnecessary. In its application for mitigation, the company admitted the violations but only provided an explanation for the 89 violations of CFR Part 391.45(a). However, in its 15-day compliance letter to motor carrier staff, InMove thoroughly described steps taken to correct all of the violations and prevent future occurrences. For this reason staff recommends mitigation of the penalties as follows:

- **Mitigation Request: WAC 480-15-555 - Failing to acquire criminal background checks of prospective employees.** InMove stated that this violation occurred because the company was not aware this needed to be completed for non-driver employees. The company corrected this violation by completing background checks for all employees. InMove stated it has integrated a new background check form into its new hire paperwork to ensure that background checks are run on all new employees moving forward.

Staff response: It is InMove’s responsibility to be aware of all requirements. InMove acknowledged its responsibility to understand and comply with applicable regulations on numerous occasions prior to the investigation.

The company, however, corrected these violations and established new procedures to prevent future occurrences of this requirement. The assessed penalty is \$500 for five occurrences of this violation. Staff recommends the penalty be reduced by half, to \$250.

- **Mitigation Request: Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** InMove stated that this violation occurred because the operations team had inadequate protocols in place to ensure that drivers renewed their medical cards on time. This was corrected by having the driver examined and keeping a current medical certificate on file. InMove stated that they have subscribed to a DOT compliance service which sends alerts to the InMove operations team before medical certifications expire, reminding staff to have drivers submit updated documentation. The system continues to send alerts until the proper documentation is completed and uploaded into a compliance portal.

Staff response: It is InMove's responsibility to ensure its drivers are medically examined and certified, and that the company not allow its drivers to operate a motor vehicle without medical examination and certification.

The company promptly corrected these first-time violations and established new procedures to prevent future occurrences of this violation. The assessed penalty is \$8,900 for 89 occurrences of this violation. Staff recommends the penalty be reduced by half, to \$4,450.

- **Mitigation Request: Title 49 CFR Part 391.51(9) – General requirements for driver qualification files.** InMove stated that this violation occurred because the medical examiner actually had verification, but a page was missing from the file. This was corrected by submitting the missing page from the file. InMove stated that in the future they will check all compliance paperwork more carefully before submitting.

Staff response: It is InMove's responsibility to ensure all files are complete. InMove addressed the violation and took measures to prevent future occurrences. Because this is a repeat violation, staff recommends no mitigation of this \$100 penalty.

- **Mitigation Request: Title 49 CFR Part 395.8(e) – False record of duty status.** InMove stated that this violation occurred because some data entry errors occurred while they were transitioning from a manual to an electronic record duty tracking system. This was corrected by updating their records and ensuring that all hours will be logged electronically in the future.

Staff response: It is InMove's responsibility to ensure its data entries are correct and accurate. The company promptly corrected these first-time violations and established new procedures to prevent future occurrences of this violation. Because the assessed penalty is \$100 for one violation of this type, staff recommends no mitigation of this penalty.

- **Mitigation Request: Title 49 CFR 396.3(a)(1) – Brake system pressure loss.** InMove did not address this violation in its 15-day letter and its mitigation request.

Staff response: It is InMove's responsibility to ensure its vehicles are in compliance with safety requirements. Because the company failed to address this violation in its mitigation request, staff recommends no mitigation of this \$100 penalty.

- **Mitigation Request: Title 49 CFR Part 396.11(a) – Driver vehicle inspection reports.** InMove stated that this violation occurred because an employee who was not a driver was operating the vehicle on an unauthorized basis and therefore was not trained to complete proper paperwork on the vehicle. This was corrected by logging the incident in the employee's file and taking disciplinary action. InMove stated it has trained its employees on the driver policies and it will, in the future, more closely monitor who drives the vehicles.

Staff response: It is InMove's responsibility to ensure its employees are aware the tasks that they are authorized to perform. InMove addressed the violation and took preventive measures to ensure future compliance. Because the assessed penalty is \$100 for one violation of this type, staff recommends no mitigation of this penalty.

InMove is a small company with one full time driver and two motor vehicles. The company reported \$410,352 in gross revenue for 2017.

Staff recommends the penalty of \$9,800 be reduced to \$5,100. Staff is also sensitive to the company's financial situation and understands the impact a significant penalty has on a small business. For these reasons, staff further recommends that \$2,550 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: 1) staff conducts a non-rated follow-up safety investigation in two years or as soon thereafter as practicable to review the company's safety management practices, 2) the company not incur any repeat critical violations, and 3) InMove pays the \$2,550 portion of the penalty that is not suspended.

If you have any questions, please contact Brian Braun, Compliance Investigator, Consumer Protection, at (360) 664-1129, or by email at brian.braun@utc.wa.gov.

Sincerely,



Bridgit Feeser
Assistant Director, Consumer Protection