



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

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March 11, 2016

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. Good & Goods, LLC d/b/a The Original Cannabus*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TE-160223

Dear Mr. King:

On February 24, 2016, the Washington Utilities and Transportation Commission (commission) issued Penalty Assessment TE-160223 against Good & Goods, LLC d/b/a The Original Cannabus (Cannabus) in the amount of \$1,700, for seventeen violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion carriers to comply with CFR Part 391 – Qualifications of Drivers, CFR Part 395 – Driver Hours of Service and CFR Part 396 – Inspection, repair and maintenance, as follows:

- **Seven violations of CFR Part 391.45(a) – Using a driver not medically examined and certified.** Cannabus used a driver, Anthony Domish, who had not been medically examined and certified. Mr. Domish drove on seven occasions.
- **One violation of CFR Part 391.51(a) – Failing to maintain a driver qualification file on each driver employed.** The company failed to create or maintain a driver qualification file for driver Anthony Domish.
- **Seven violations of CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Anthony Domish drove and failed to make a record of duty status on seven occasions.

- **One violation of CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** The company failed to keep minimum records of vehicle inspection and maintenance.
- **One violation of CFR Part 396.17(a) – Using a vehicle not periodically inspected.** The company does conduct periodic (annual) inspections on its vehicle.

On March 9, 2016, the carrier filed with the commission its application for mitigation of penalties (Mitigation Request). David Good, owner of Cannabus, admitted the violations but asked that the penalties be reduced for the reasons set out in the response.

Cannabus operates as a charter/excursion carrier under permit number CH-065556. On February 17, 2016 Motor Carrier Safety Investigator Sandra Yeomans conducted a compliance review inspection, which is an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as “acute” or “critical.”¹ Violations of acute regulations are those 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 unusually higher than average accident rates.² Ms. Yeomans found 18 total violations, all of which were first-time violations.

The commission's Enforcement Policy, however, provides that some commission requirements are so critical to safe operations that the commission may issue penalties for a first-time violation, even if staff has not previously provided technical assistance on specific issues.³ Of the 18 violations found, 17 were of critical regulations.

In the Mitigation Request, Mr. Good requests a non-specified reduction in or complete dismissal of the assessed penalty based on the following factors. Staff's response to each factor is included below.

1. **Mitigation Request:** CFR 391.45(a) Using a driver not medically examined and certified. Immediately following the compliance review, driver Anthony Domish was examined and was certified by a nationally registered medical examiner. The carrier now keeps a copy of the medical certificate in the driver's qualification file.

1 Code of Federal Regulations, [Appendix B to Part 385—Explanation of safety rating process](#)

2 *Id.*

3 Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

Staff Response: The carrier corrected this violation. Staff recommends mitigation of the \$700 penalty to \$350.

2. **Mitigation Request:** CFR 391.51(a) Failing to maintain a driver qualification file on each driver employed. Cannabus stated that it now maintains a driver qualification file for its driver Anthony Domish.

Staff Response: The carrier stated that it has created and now maintains a driver qualification file for its driver, however the carrier provided no information as to whether or not the file is compliant with CFR 391.51(b) with regard to required contents. Staff recommends no mitigation of this penalty.

3. **Mitigation Request:** CFR 395.8(a) Failing to require driver to make record of duty status. Cannabus believes it falls under the short haul exemption and the driver is not required to keep records of duty status. Regardless of the exemption, driver Anthony Domish will keep written records of driving time and mileage for all trips.

Staff Response: The carrier is correct that under the short haul exemption the driver is not required to keep a record of duty status provided the carrier maintains accurate and true time records. Staff recommends mitigation of the \$700 penalty to \$350.

4. **Mitigation Request:** CFR 396.3(b) Failing to keep minimum records of inspection and vehicle maintenance. The carrier stated that records of inspection and maintenance existed but it had failed to make them available at the time of the compliance review. In the future the driver will require the mechanics to sign the company's inspection/maintenance form every time a repair or inspection is made.

Staff Response: Staff appreciates the steps the carrier has taken to correct this violation, however the carrier's response is vague and does not adequately address the requirements of CFR 396.3(b). The regulation is very clear with respect to the content of required inspection and maintenance records and the carrier's response does not indicate whether or not its new procedure meets the requirements of the regulation. Staff recommends no mitigation of this penalty.

5. **Mitigation Request:** CFR 396.17(a) Using a vehicle not periodically inspected. The carrier is now using the Driver's Vehicle Inspection Report found on page 191 in "Your Guide to Achieving a Satisfactory Safety Record" to document the required periodic inspection.

Staff Response: The Driver's Vehicle Inspection Report found on page 191 in "Your Guide to Achieving a Satisfactory Safety Record" does not fulfill the requirements of the periodic (annual) inspection conducted by a qualified inspector as required by CFR 397.17(a). Staff recommends no mitigation of this penalty.

In its Mitigation Request, Cannabus provided clear and convincing evidence that two of the five violation types have been corrected and steps have been taken to prevent future violations. For the remaining three violation types, the company's response was vague or incorrect and the company failed to provide evidence that it has corrected the violations.

Cannabus is a small company with one driver and one vehicle. For a significant portion of 2015 its only vehicle was out of service with mechanical issues. Cannabus reported \$11,172 in gross revenue and 1000 miles traveled in 2015.

Staff recommends mitigation of the penalty amount from \$1,700 to \$1,000. Staff will provide additional technical assistance to ensure the company understands how to comply with safety regulations.

If you have any questions, please contact Mike Turcott, Compliance Investigator, Transportation Safety, at 360-664-1174, or by e-mail at miturcot@utc.wa.gov.

Sincerely,

David Pratt
Assistant Director, Transportation Safety

Enclosures