

**STATE OF WASHINGTON**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

***1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 ● Olympia, Washington 98504-7250***

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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](http://apps.leg.wa.gov/wac/default.aspx?cite=480-30-221), 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)**](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=0b1fe33ac2b897c35a7612005006ddf1&ty=HTML&h=L&r=PART&n=49y5.1.1.2.34#49:5.1.1.2.34.5.11.4) **– 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]](#footnote-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)**](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=0b1fe33ac2b897c35a7612005006ddf1&ty=HTML&h=L&r=PART&n=49y5.1.1.2.39#49:5.1.1.2.39.0.13.2) **– 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
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]](#footnote-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)**](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=0b1fe33ac2b897c35a7612005006ddf1&ty=HTML&h=L&r=PART&n=49y5.1.1.2.39#49:5.1.1.2.39.0.13.6) **– 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 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)**](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=0b1fe33ac2b897c35a7612005006ddf1&ty=HTML&h=L&r=PART&n=49y5.1.1.2.39#49:5.1.1.2.39.0.13.10) **– 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.

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

Enclosure

Attachment A







1. See Attachment A – Copy of DOL webpage – Medical certificates and self-certification. [↑](#footnote-ref-1)
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> [↑](#footnote-ref-2)