



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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May 3, 2017

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. Safe-To-Go-Movers, LLC d/b/a
James & John Movers*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-170233

Dear Mr. King:

On February 23, 2017, Motor Carrier Safety Investigator Sandi Yeomans conducted a compliance review investigation, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."¹ Acute regulations are identified where non-compliance is so severe as to require immediate corrective action 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 documented 103 violations of critical regulations, all of which were first-time violations, resulting in a satisfactory safety rating.

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy provides that some Commission requirements are so essential 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. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.³

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.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of CFR Part 391 and CFR Part 395. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

Safe-To-Go-Movers, LLC d/b/a James & John Movers (Safe-To-Go-Movers or Company) operates as a household goods carrier under permit number HG-66130. In its application for household goods moving authority filed with the Commission in September 2015, James Mwangi acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules and regulations. On March 17, 2016, Dartanion Cox, an employee representing Safe-To-Go-Movers, attended household goods training provided by Commission Staff (Staff), and Mr. Cox acknowledged that training was received regarding motor carrier safety regulations.

On April 19, 2017, the Commission issued Penalty Assessment TV-170233 against Safe-To-Go-Movers in the amount of \$10,200 for 103 critical violations of Washington Administrative Code (WAC) 480-15-570 Driver Safety Requirements, which requires household goods carriers to comply with Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers, and CFR Part 395 – Hours of Service of Drivers, as follows:

- **One hundred one violations of CFR 391.45(a) – Using a driver not medically examined and certified.** Safe-To-Go-Movers allowed employee William Baker to drive on 101 occasions from August 1 to December 12, 2016, without having been medically examined and certified.
- **Two violations of CFR 395.8(a) – Failing to require driver to make a record of duty status.** Safe-To-Go-Movers allowed employees James Mwangi and William Baker to drive without making a record of duty status while not under short haul exemption on two separate occasions. The violations occurred on December 12, 2016, and January 5, 2017.

On April 27, 2017, Safe-To-Go-Movers filed with the Commission its application for mitigation of penalties. James Mwangi, general manager and owner of Safe-To-Go-Movers, admits the violations, provides an explanation of the corrective action steps taken by the Company pertaining to the medical certification violations, and asks that the penalties be reduced for reasons set out in his response. Staff found the Company's response to both violations incomplete, and provides its response below:

- **Mitigation Request: CFR 391.45(a) – Using a driver not medically examined and certified.** Safe-To-Go-Movers states that the medical card for William Baker was missing during the compliance review and the Company has been unsuccessful at obtaining a copy of Mr. Baker's medical certificate after he relocated to California in December of 2016.

Safe-To-Go-Movers states that it has updated its records maintenance procedures to maintain both an electronic copy and a hard copy of its drivers' licenses and medical certificates, so that in a situation where a driver loses or misplaces their medical

certificate, the Company can issue an electronic copy instead of potentially losing the office's hard copy.

Staff response: It is the Company's responsibility to ensure that its drivers have current medical certification, that Safe-To-Go-Movers maintains a copy of its drivers medical certificate in the driver qualification file, and that the Company not allow its drivers to operate a commercial motor vehicle when medical certification cannot be verified. Safe-To-Go-Movers was unable to provide Mr. Baker's medical certificate due to what it claims were unexpected circumstances, but the Company did put new management controls in place immediately after the first-time violations were discovered to prevent future occurrences of this fundamental safety requirement. It is for this reason that Staff recommends a reduction of this penalty.

The assessed penalty is \$10,100 for 101 occurrences of this violation. Staff recommends the penalty be reduced \$5,000, for a total of \$5,100.

- **Mitigation Request: CFR 395.8(a) – Failing to require driver to make a record of duty status.** Safe-To-Go-Movers' request for mitigation did not address this violation. In the Company's 15-day response letter to the Commission, Safe-To-Go-Movers states that it has not been involved in a move since the compliance review which required its drivers to make a record of duty status. The Company states that going forward it will require its drivers to make a record of duty status when applicable.

Staff response: Safe-To-Go-Movers failed to document any new procedures that it has established to comply with this safety requirement.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

Safe-To-Go-Movers is a small company that currently operates four commercial motor vehicles and employs one part-time driver. The Company reported \$129,329 in gross revenue and 16,800 miles traveled in 2016. Staff recommends that the penalty of \$10,200 be reduced to \$5,200.

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

Sincerely,



David Pratt
Assistant Director, Transportation Safety