



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Date: May 5, 2023

To: Andrew O'Connell, Administrative Law Judge, Administrative Law Division

From: Jason Sharp, Motor Carrier Safety Supervisor, Transportation Safety Division

Re: **TV-230198 David Lu d/b/a Grandmas Boy Moving Co**
Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods operating authority (THG-069740)

On April 11, 2022, the Washington Utilities and Transportation Commission (Commission) entered Order 01 in consolidated Dockets TV-220149 and TV-220150, approving David Lu d/b/a Grandmas Boy Moving Co's (David Lu or Company) safety management plan (SMP) and extended the Company's provisional period after receiving a conditional safety rating following a routine safety investigation.

On March 20, 2023, Commission staff (Staff) completed a follow-up safety investigation of David Lu which resulted in a proposed conditional safety rating.

Provisional household goods companies must achieve a satisfactory safety rating prior to receiving permanent status. As the Company has yet to achieve a satisfactory safety rating, the Commission afforded David Lu the same opportunity as companies that receive a proposed unsatisfactory safety rating to provide evidence, in the form of an approved SMP, showing that the company took corrective action to address the identified violations.

Commission rules prohibit motor carriers from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A company may request a change in its safety rating based on evidence that it has taken corrective actions to address the identified violations, and that its operations currently meet the safety standard and factors in 49 C.F.R. § 385.5 and 385.7. In this case, David Lu has until May 19, 2023, to come into compliance with applicable laws and rules by obtaining Commission approval of a SMP.

The proposed conditional safety rating was based on one violation critical regulations – 49 C.F.R. § 395.8(a)(1).

“Critical” regulations are those identified as such where non-compliance relates to management and operational controls. These are indicative of breakdowns in a company's management controls. Patterns of non-compliance with a critical regulation are linked to inadequate safety management controls and higher than average accident rates.

Critical violation discovered during investigation:

1. Twenty-three violations of Title 49 C.F.R. § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status.

On April 3, 2023, the Commission issued a penalty assessment against David Lu in the amount of \$2,500 because of violations discovered during the safety investigation. The penalty includes:

1. A \$100 penalty for one violation of WAC 480-15-555(1) for failing to conduct or retain paperwork containing criminal background checks or hiring an individual with a disqualifying conviction for a household goods carrier in the state of Washington.
2. A \$100 penalty for one violation of WAC 480-15-555(2) for failing to maintain evidence of background check for the term of employment and three years after termination.
3. A \$2,300 penalty for 23 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status.

On April 18, 2023, David Lu filed with the Commission its application for mitigation of penalties. In the request for mitigation, the Company admitted to the violations, stated that it had implemented corrective actions, and requested the penalty be reduced.

In an April 20, 2023, Notice of Intent to Cancel, the Commission instructed David Lu to submit its proposed SMP no later than April 27, 2023 .

On May 4, 2023, David Lu submitted a SMP addressing each violation noted during the investigation. Staff only recommends approving a SMP that addresses the following seven items:

1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. It must also include corrective actions that address other violations noted during the investigation.
2. Identify why the violations were permitted to occur.
3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.
4. Outline actions taken to ensure that similar violations do not reoccur in the future. The plan must demonstrate that the company's operations currently meet the safety standard and factors specified in 49 C.F.R. § 385.5 and 385.7. To do so, the plan must demonstrate the company now has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.
5. If the request includes actions that will be conducted in the near future, such as training, reorganization of departments, purchasing of computer programs, etc., companies must include a detailed description of the activity or training and a schedule of when that activity will commence and when it will be completed.
6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that the company believes supports its request.

7. Include a written statement certifying the company will operate within federal and state regulations and the company's operation currently meets the safety standard and factors specific in 49 C.F.R. § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

On May 4, 2023, David Lu submitted a Waiver of Hearing letter to the docket.

Summary and Recommendations

Staff reviewed David Lu's SMP and determined it is acceptable and meets the requirements of 49 C.F.R. § 385. The plan demonstrates that the Company has taken appropriate action to develop a compliant safety program and implemented a system, that if followed, should prevent future repeat violations.

Documentation of driver qualification onboarding forms, maintenance, hours of service records, U.S. Department of Transportation registration records, and criminal background documents were included in the plan.

The Company took all the required steps to bring its safety operations into compliance with Commission regulations. David Lu submitted a SMP that addresses each violation, identifies how the violations occurred, describes the steps taken to correct them, and put controls in place to ensure the Company maintains compliance.

With the acceptance of the SMP, Staff recommends the Commission: (1) not cancel David Lu's provisional permit, (2) maintain the Company's conditional safety rating, and (3) extend the provisional operating authority again for good cause, until such a time that the Company receives a satisfactory safety rating, or the Commission finds good cause to cancel David Lu's operating authority.

In response to the application for mitigation, David Lu incurred repeat violations despite prior technical assistance and suspended penalties. Staff recommends no mitigation of the \$2,500 penalty. Staff acknowledges the Company corrected each violation and took steps to prevent future occurrences, making considerable progress with its safety programs since its initial safety investigation. Staff recommends that \$2,000 of the assessed penalty be suspended for two years on following conditions:

1. David Lu maintains a conditional safety rating;
2. Staff perform a follow-up safety investigation at least six months from the date of the order;
3. David Lu may not incur any repeat violations of critical regulations upon reinspection; and
4. The Company pay the \$500 portion of the penalty that is not suspended within 10 days of the order or enters into a mutually agreeable payment arrangement with Staff.

Staff has verified with the Company that it waives its right to a hearing and is recommending that the Brief Adjudicative Proceeding scheduled for May 11, 2023, be cancelled.