



STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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**Date:** June 25, 2021

**To:** Rayne Pearson, Administrative Law Judge, Administrative Law Division

**From:** Mathew Perkinson, Assistant Director, Transportation Safety Division

**Re:** **TV-210308 and TV-210309 I Heart Movers, LLC**

Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods operating authority (THG068176)

On April 28, 2021, Commission staff (Staff) completed an ordered follow-up safety investigation of I Heart Movers, LLC (IHM or Company) which resulted in a proposed conditional safety rating.<sup>1</sup>

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 IHM the same opportunity as companies that receive a proposed unsatisfactory safety rating to provide evidence, in the form of an approved safety management plan, 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 CFR 385.5 and 385.7. In this case, IHM has until June 25, 2021, to come into compliance with applicable laws and rules by obtaining commission approval of a safety management plan.

**The proposed unsatisfactory safety rating was based on three violations of critical regulations – 391.45(a), 395.8(a)(1), and WAC 480-15-555.**

“**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 violations discovered during investigation:**

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<sup>1</sup> Order 01 in Dockets TV-200627 and TV-200628 (Consolidated)

1. Ten violations of WAC 480-15-555 – Failing to complete a criminal background check for every person the carrier intends to hire.
2. Eighty-two violations of Title 49 CFR § 391.45(a) – Using a driver not medically examined and certified.
3. Ninety violations of Title 49 CFR § 395.8(a)(1) – Failing to require driver to prepare a record of duty status.

In a May 14, 2021, Notice of Intent to Cancel Certificate, the Commission instructed IHM to submit its proposed safety management plan no later than June 10, 2021.

On May 19, 2021, the Commission issued a penalty assessment against IHM in the amount of \$19,600 as a result of violations discovered during the follow-up safety investigation.<sup>2</sup> The penalty includes:

1. A \$1,000 penalty for 10 repeat violations of WAC 480-15-555 for failing to complete a criminal background check for every person the carrier intends to hire.
2. A \$100 penalty for 30 repeat violations of WAC 480-15-590(4) for failing to maintain a rental agreement with the required information about the commercial motor vehicle leased.
3. A \$1,200 penalty for 12 violations of 49 CFR § 391.11(b)(5) for failing to have a valid commercial motor vehicle operator's license issued only by one state of jurisdiction.
4. A \$8,200 penalty for 82 violations of 49 CFR § 391.45(a) for using a driver not medically examined and certified.
5. A \$9,000 penalty for 90 repeat violations of 49 CFR § 395.8(a)(1) for failing to require drivers to prepare a record of duty status.
6. A \$100 penalty for one repeat violation of 49 CFR § 396.17(a) for using a commercial motor vehicle not periodically inspected.

On May 26, 2021, IHM filed with the commission its application for mitigation of penalties. In the request for mitigation, Deavondia Taylor, owner of IHM, admitted the violations and believed that the penalty should be reduced. IHM requested a hearing to present evidence to support the mitigation request.

On June 24, 2021, IHM submitted a safety management plan addressing each violation noted during the investigation. Staff only recommends approving a safety management plan 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.

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<sup>2</sup> Docket TV-210309

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 CFR § 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 CFR § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

### **Summary and Recommendations**

Staff reviewed IHM's safety management plan and concludes it is not sufficient to justify an upgrade to the company's safety rating, and it fails to demonstrate that adequate corrective actions have been taken to address the violations cited during the safety investigation. As required by 49 CFR § 385.17(c), a motor carrier must base its request for upgrade upon evidence that it has taken corrective actions and that its operations currently meet the safety standard and factors specified in 49 CFR § 385.5 and 385.7 and must include a written description of corrective actions taken and other documentation that may be relied upon as a basis for the requested change to the proposed rating.

IHM's plan fails to demonstrate that the Company understands all of the safety regulations that it was found to be in violation of or how to ensure future compliance. IHM addressed each violation discovered and explains why the Company allowed the violations to occur. The plan fails to demonstrate that each violation has been corrected or that the Company has sufficient safety management controls in place to ensure that violations do not occur in the future. Staff provided IHM with a breakdown of where the safety plan is deficient. Because the Company failed to submit an acceptable safety management plan, staff recommends that the Company's proposed safety rating of conditional remain, and the provisional permit be cancelled.

In response to the request for mitigation, the Company corrected many of the violations identified during the safety investigation. Staff recommends reducing the assessed penalty of \$19,600 penalty to \$10,000. Staff recommends the Commission suspend the reduced \$10,000 penalty for a period of two years with conditions that IHM refrains from operating as a household goods carrier without a permit.

The Company made several attempts to bring its safety operations into compliance with Commission regulations by way of a safety management plan. IHM submitted a safety management plan that did not demonstrate that the Company has put controls in place to ensure the Company maintains future compliance with the violations identified during the safety fitness investigation.

Documentation of driver qualifications, hours of service records, support statements, insurance, vehicle leasing, and criminal background check information were included in the plan.