



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E. • Lacey, Washington 98503

P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

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COMMISSION

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Received
Records Management

Date: December 8, 2020

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

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

Re: TV-200875 and TV-200876 Ed's Moving and Storage, Inc.
Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods operating authority (THG019094)

On October 12, 2020, Commission staff (staff) completed a routine safety investigation of Ed's Moving and Storage, Inc. (Ed's Moving or Company) 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 Ed's Moving 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, Ed's Moving has until December 14, 2020, 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 six violations of acute and critical regulations – 49 CFR § 382.115(a), 391.45(a), 391.51(a), 396.3(b), 396.17(a), and WAC 480-15-555.

“**Acute**” regulations are those identified as such where non-compliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier.

“**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.

Acute violations discovered during investigation:

1. One violation of 49 CFR § 382.115(a) – Failing to implement a controlled substance and/or an alcohol testing program on the date the employer begins commercial motor vehicle operations.

Critical violations discovered during investigation:

2. One hundred forty-three violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.
3. Five violations of 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed.
4. Five violations of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.
5. Five violations of 49 CFR § 396.17(a) – Using a commercial motor vehicle not periodically inspected
6. Thirteen violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire.

On October 28, 2020, the commission issued a penalty assessment against Ed’s Moving in the amount of \$17,500 as a result of violations discovered during the routine safety investigation.¹ The penalty includes:

1. A \$1,300 penalty for 13 violations of WAC 480-15-555 for failing to complete a criminal background check for every person the carrier intends to hire.
2. A \$1,500 penalty for one violation of 49 CFR § 382.115(a) for failing to implement a controlled substance and/or alcohol testing program on the date the employer begins commercial motor vehicle operations.
3. A \$100 penalty for one violation of 49 CFR § 383.23(a) for allowing a driver to operate a commercial motor vehicle without a valid CDL.
4. A \$14,300 penalty for 143 violations of 49 CFR § 391.45(a) for using a driver not medically examined and certified.

¹ TV-200876

5. A \$100 penalty for five violations of 49 CFR § 391.51(a) for failing to maintain a driver qualification file on each driver employed.
6. A \$100 penalty for five violation of 49 CFR § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
7. A \$100 penalty for five violation of 49 CFR § 396.17(a) for using a commercial motor vehicle not periodically inspected.

In a November 16, 2020, Notice of Intent to Cancel, the commission instructed Ed's Moving to submit its proposed safety management plan no later than November 30, 2020.

On December 1, 2020, Ed's Moving filed with the commission its application for mitigation of penalties. In the request for mitigation, the Company admitted the violations and believed that the penalty should be reduced. Ed's Moving requested a hearing to present evidence to support the mitigation request.

On December 7, 2020, Ed's Moving 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.
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 Ed's Moving's safety management plan and concludes it is acceptable and meets the requirements of 49 CFR § 385. Because of the Company's actions, staff recommends the commission not cancel the Ed's Moving's permit and extend its provisional period until such a time that the Company achieves a satisfactory safety rating. Staff further recommends that Dockets TV-200875 and TV-200876 be consolidated.

Staff confirmed with the company that it waived its right to a hearing in both dockets and the brief adjudicative proceeding schedule for December 8, 2020 was cancelled.

During the review of the safety management plan, staff identified through Department of Licensing records that driver Joshua Hoover was medically certified during the scope of the investigation. Though the company failed to produce evidence of the driver being medically certified, staff recommends that 27 violations of 49 CFR § 391.45(a), calculating to \$2,700, be removed from the penalty assessment. Staff recommends reducing the initial penalty assessment of \$17,500 to \$14,800.

In response to the request for mitigation, the Company corrected each violation and took steps to prevent future occurrence. Staff recommends mitigating the reduced penalty of \$14,800 to \$7,600. Staff further recommends that \$3,800 of the penalty be suspended for a period of two years before being waived, on the conditions that: (1) staff conducts a follow-up safety investigation at least six months from the date of an Order, (2) the Company may not incur any repeat violations of acute or critical regulations, and (3) Ed's Moving pays the \$3,800 portion of the penalty that is not suspended.

The Company took all the required steps to bring its safety operations into compliance with commission regulations. Ed's Moving submitted a safety management plan 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.

Documentation of driver qualifications, vehicle maintenance, insurance, and criminal background check information were included in the plan.