



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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 COMMISSION

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Received
 Records Management

Date: May 6, 2022

To: Michael Howard, Administrative Law Judge, Administrative Law Division

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

Re: TV-220168 and TV-220169 Marsik Movers LLC

Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods mover operating authority (THG-068754)

On March 9, 2022, Commission staff (Staff) completed a routine safety investigation of Marsik Movers LLC, (Marsik Movers 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 Marsik Movers the same opportunity as companies that receive a proposed unsatisfactory safety rating to provide evidence, in the form of an approved safety management plan (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, Marsik Movers has until May 6, 2022, to come into compliance with applicable laws and rules by obtaining Commission approval of a SMP.

The proposed conditional safety rating was based on four violations of critical regulations – 49 C.F.R. § 391.51(a), 395.8(a)(1), 396.17(a), 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:

1. Two violations of Title 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed.
2. Thirty-seven violations of Title 49 C.F.R. § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status.

3. Two violations of Title 49 C.F.R. § 396.17(a) – Using a commercial motor vehicle (CMV) not periodically inspected.
4. Four violations of WAC 480-15-555 – 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.

In a March 29, 2022, Notice of Intent to Cancel, the Commission instructed Marsik Movers to submit its proposed SMP no later than April 19, 2021.

On April 5, 2022, the Commission issued a penalty assessment against Marsik Movers in the amount of \$700 due to violations discovered during the safety investigation. The penalty includes:

1. A \$400 penalty for four violations of WAC 480-15-555 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 two violations of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification file on each driver employed.
3. A \$100 penalty for 37 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status.
4. A \$100 penalty for two violations of 49 C.F.R. § 396.17(a) for using a CMV not periodically inspected.

On May 3, 2022, Marsik Movers and Staff participated in the scheduled brief adjudicative proceeding (BAP). During the BAP, Staff testified that the Company's SMP was close to acceptance, but that Marsik Movers had not submitted an acceptable SMP. Staff testified that it would continue to work with the Company and recommended that a final evaluation of Marsik Movers' SMP be submitted to the dockets by no later than 5:00 p.m. on May 6, 2022.

On May 5, 2022, the Company paid the \$700 penalty in full.

On May 5, 2022, Marsik Movers 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.

Summary and Recommendations

Staff reviewed Marsik Movers' SMP and concludes 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 qualifications, maintenance, federal registration information, hours of service records, and criminal background documents were included in the plan.

The Company took the required steps to bring its safety operations into compliance with Commission regulations. Marsik Movers 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.

Staff recommends the Commission not cancel the Company's permit and extend the provisional period for good cause.