



STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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**Date:** February 24, 2022

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

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

**Re:** **TV-220014 and TV-220015 Bigfoot Moving Service LLC**

Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of provisional household goods mover operating authority (THG-068973)

On January 6, 2022, Commission staff (Staff) completed a routine safety investigation of Bigfoot Moving Service LLC, (Bigfoot 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 Bigfoot 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 C.F.R. § 385.5 and 385.7. In this case, Bigfoot Moving has until March 7, 2022, to come into compliance with applicable laws and rules by obtaining commission approval of a safety management plan.

**The proposed conditional safety rating was based on two violations of critical regulations – 49 C.F.R. § 391.51(a) and 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 violations discovered during investigation:**

1. Four violations of 49 C.F.R. § 391.51(a) – Failing to maintain driver qualification file on each driver employed.
2. One hundred twenty violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status.

In a January 19, 2022, Notice of Intent to Cancel, the Commission instructed Bigfoot Moving to submit its proposed safety management plan no later than February 15, 2022.

On January 26, 2022, the Commission issued a penalty assessment against the Company in the amount of \$4,200 because of violations discovered during the safety investigation. The penalty includes:

1. A \$4,000 penalty for 40 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
2. A \$100 penalty for four 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 120 violations of 49 C.F.R. § 395.8(a)(1) for failing to require driver to make a record of duty status.

On February 23, 2022, Bigfoot 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 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 February 23, 2022, Bigfoot Moving filed with the Commission its response to the penalty assessment, contesting 40 violations of 49 § C.F.R. 391.45(a). Bigfoot Moving requested the Commission decide the matter based on information the Company provided in its safety management plan and supporting statement.

### **Summary and Recommendations**

Staff reviewed Bigfoot Moving's safety management plan 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 repeat violations.

Staff recommends that Dockets TV-220014 and TV-220015 be consolidated.

Documentation of driver qualifications, maintenance, and hours of service records were included in the plan.

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

Staff recommends the Commission not cancel the Company's permit and extend the provisional operating authority for good cause, until such a time that the Company receives a satisfactory safety rating.

In response to the contest to the 40 violations of 49 C.F.R. 391.45(a), the Company notified Staff in the safety management plan that driver Maurice Boulton had medical certification during the period sampled. Bigfoot Moving states that it erred by not locating the medical certificate until compiling its response to the violations and failed to present it during the safety investigation. A copy of the medical certificate was included in the plan. While the medical certificate was not provided to Staff during the investigation, Staff acknowledges that Boulton compliant with the regulation. Staff recommends that the \$4,000 penalty for 40 violations of § 391.45(a) be removed from the assessed penalty.

The Company corrected each violation and took steps to prevent future occurrences. Staff recommends reducing the assessed penalty of \$4,200 to \$200.

Staff confirmed with the Company that it waives its right to a hearing and recommends that the brief adjudicative proceeding scheduled for March 1, 2022, be cancelled.