



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Date: July 28, 2022

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

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

Re: TV-220417 Mr. Muscles Moving Company LLC
Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods operating authority (THG069221)

On June 1, 2022, Commission staff (Staff) completed a routine safety investigation of Mr. Muscle Moving Company LLC, (Mr. Muscles 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 Mr. Muscles 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, Mr. Muscles has until July 29, 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 two violation of critical regulations – WAC 480-15-555 and 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 violations discovered during investigation:

1. Three 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.
2. Thirty violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status.

In a June 28, 2022, Notice of Intent to Cancel; Notice of Hearing; Complaint for Penalties; and Notice of Prehearing Conference, the Commission instructed Mr. Muscles to submit its proposed SMP no later than July 8, 2022.

At the scheduled hearing on July 22, 2022, Staff testified to the violations discovered during the safety investigation and recommended a \$8,000 penalty as follows:

1. A \$1,000 “per occurrence penalty” for five violation of RCW 81.80.075(1) for performing regulated household goods moves without having the required permit from the Commission, for a total of \$5,000.
2. A \$100 “per occurrence” penalty for three violations of WAC 480-15-555 for failing to conduct or retain criminal background checks as required, for a total of \$300
3. A \$100 “per occurrence” penalty for 23 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified, for a total of \$2,300.
4. A \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain a driver qualification file for each driver employed.
5. A \$100 “per category” penalty for 30 violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status.
6. A \$100 penalty for one violation of 49 C.F.R. § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
7. A \$100 penalty for one violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

Staff further testified that Mr. Muscles had not submitted an acceptable SMP and recommended the Commission continue with the cancellation process. The Company was instructed to submit its final SMP by no later than July 28, 2022.

On July 28, 2022, Mr. Muscles 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 Mr. Muscles' SMP and concludes it is acceptable and meets the requirements of 49 C.F.R. § 385. The SMP 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.

The Company took all the required steps to bring its safety operations into compliance with Commission regulations. Mr. Muscles submitted a SMP that addresses each violation, identifies how the violations occurred, describes the steps taken to correct or is in the process of correcting them, and put controls in place to ensure the Company maintains compliance.¹

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

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

¹ Company vehicle VIN: 1HTSCNKM8MH364626 did not pass a periodic inspection on July 13, 2022, and is currently undergoing repairs prior to the vehicle being re-inspected. Repair order included in SMP.

satisfactory safety rating, or the Commission finds good cause to cancel Mr. Muscles' operating authority.

In response to the penalty recommendation, Staff acknowledges that Mr. Muscles has corrected or in the process of correcting the violations and took steps to prevent future occurrences. Staff recommends that the Commission assess Staff's recommended penalty of \$8,000, suspending \$6,000 for a period of two years before being waived, on the conditions: (1) Mr. Muscles' owner, Lex Conner, attend the Commission provided household goods virtual training schedule for August 24, 2022, (2) Staff conducts a follow-up safety investigation at least six months from the date of the Order, (3) Mr. Muscles may not incur any repeat critical violations upon reinspection, (4) the Company maintains a conditional safety rating, and (5) Mr. Muscles pays the \$2,000 portion of the penalty that is not suspended within 10 days of the Order or enters into a mutually agreeable payment arrangement with Staff.