



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Date: January 24, 2024

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

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

Re: TV-230989 Nicholas Hylan d/b/a Hylan Moving

Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods operating authority (THG-069573)

On December 1, 2023, Commission staff (Staff) completed a routine safety investigation of Nicholas Hylan d/b/a Hylan Moving (Hylan 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 Hylan 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 (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 Title 49 Code of Federal Regulations (49 C.F.R.) § 385.5 and 385.7. In this case, Hylan Moving has until January 31, 2024, to come into compliance with applicable laws and rules by obtaining Commission approval of a SMP.

The proposed conditional safety rating was based on violations of one critical regulation – 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 violation discovered during investigation:

1. Thirty violations of 49 C.F.R. § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method.

In a January 9, 2024, Notice of Intent to Cancel, the Commission instructed Hylan Moving to submit its proposed SMP no later than January 16, 2024 .

On January 12, 2024, the Commission issued a penalty assessment against Hylan Moving in the amount of \$4,200 because of violations discovered during the safety investigation. The penalty includes:

1. A \$3,800 penalty for 38 violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified.
2. A \$100 penalty for one violation of 49 C.F.R. § 391.51(a) for failing to maintain driver qualification file on each driver employed.
3. A \$100 penalty for thirty violations of 49 C.F.R. § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method.
4. 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.
5. A \$100 penalty for one violation of 49 C.F.R. § 396.17(a) for using a commercial motor vehicle not periodically inspected.

On January 17, 2024, Hylan Moving 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.

On January 22, 2024, Hylan Moving filed its response to the penalty assessment, admitting the violations, and requesting that the penalties be mitigated based on corrective action illustrated in the Company's SMP.

On January 23, 2024, Hylan Moving submitted a "Waiver of Hearing" letter to the docket.

Summary and Recommendations

Staff reviewed Hylan Moving's SMP and determined it is acceptable and meets the requirements of 49 C.F.R. § 385.

Compliant documentation of a driver qualification file, hours of service records, and vehicle maintenance documents were included in the SMP.

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

1. The Commission does not cancel Hylan Moving's provisional permit;
2. Maintain the Company's safety rating of conditional; and
3. The Commission extends Hylan Moving's provisional period until such a time that Hylan Moving achieves a satisfactory safety rating, or the Commission finds good cause to cancel the Company's operating authority.

In response to the Company's mitigation request, Hylan Moving provided Staff with evidence that it corrected each violation and implemented procedures to prevent future occurrences. Staff recommends that the \$4,200 assessed penalty be reduced to \$2,100. Further, staff recommends \$1,100 of the reduced penalty be suspended for two years and then waived, with the following conditions:

1. Hylan Moving maintains a conditional safety rating;

2. Staff perform a follow-up safety investigation at least six months from the date of the order;
3. The Company does not incur repeat violations of critical regulations upon reinspection; and
4. Hylan Moving pays the \$1,000 portion of the penalty that is not suspended.

Staff has verified with the Company that it waives its right to a hearing and is recommending that the Brief Adjudicative Proceeding scheduled for January 30, be cancelled.