



STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
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Date: April 9, 2019

To: Rayne Pearson, Director, Administrative Law

From: Mathew Perkinson, Assistant Director, Transportation Division

Re: TV-190112 Whidbey Logistics LLC d/b/a Whidbey Moving and Storage
Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of its household goods operating authority (HG032768)

On February 21, staff completed a routine safety investigation of Whidbey Logistics LLC d/b/a Whidbey Moving and Storage which resulted in a proposed *unsatisfactory* safety rating.

Federal law incorporated into the commission's rules prohibit motor carriers like Whidbey Logistics LLC from operating beginning on the 61st day after the date of the notice of a proposed unsatisfactory rating. A company may request a change to 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.

Whidbey Logistics LLC has until April 23, 2019, 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 – 383.37(a), 391.45(a), 391.51(b)(2), 395.8(a)(1), 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 violation discovered during investigation:

1. Twenty-four violations of Title 49 CFR Part 383.37(a) – Employer knowingly allowed an employee to operate a commercial motor vehicle (CMV) when the driver does not have a current commercial learner’s permit or commercial driver license (CDL).

Critical violations discovered during investigation:

1. Thirty-six violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.
2. Two violations of Title 49 CFR Part 391.51(b)(2) – Failing to maintain inquiries into driver’s driving record in driver’s qualification file.
3. Thirty violations of Title 49 CFR Part 395.8(a)(1) – Failing to require driver to prepare a record of duty status.
4. Three violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.
5. Four violations of WAC 480-15-555 – Failing to acquire criminal background checks of prospective employees.

Whidbey Logistics LLC received notice of its proposed unsatisfactory safety rating and information explaining the requirements it was to meet in its safety management plan on February 21, 2019. The 60 day period to request and receive a safety rating upgrade ends April 23, 2019.

In a February 27, 2019, Notice of Intent to Cancel Certificate, the commission instructed the company to submit its proposed safety management plan no later than April 2, 2019.

On April 3, 2019, Whidbey Logistics LLC owner Matthew Freeborn submitted a safety management plan addressing each violation noted during the investigation.

Evaluation of Safety Management Plan

- 1. The plan must address each acute, critical, or serious violation discovered during the most recent investigation. Corrective actions to address other violations noted during the investigation must also be included.**
 - The safety management plan addresses all violations noted during the most recent investigation. The plan includes remedies that display that the company understands all of the regulations of which it was found to be in violation.
- 2. Identify why the violations were permitted to occur.**
 - Whidbey Logistics LLC explains that the company is under new ownership and that a lack of knowledge of the DOT and UTC regulations prior to the investigation were contributing factors to violation of safety rules.
- 3. Discuss the actions taken to correct the deficiency or deficiencies that allowed the violations to occur. Include actual documentation of this corrective action.**
 - Whidbey Logistics LLC has taken corrective action to correct all violations noted in the investigation.

- Whidbey Logistics LLC created a “New Hire Check List” that includes qualification requirements for drivers as well as requirements to do background checks on all new hire employees. All drivers have been medically certified by a medical examiner on the National Registry.
 - Whidbey Logistics LLC now requires each driver whether paid by the hour or salary to log their hours of service. The company now has log books in place to record hours of service when short haul exemptions are not met.
 - Whidbey Logistics LLC created vehicle maintenance binders and each vehicle received a Department of Transportation annual vehicle inspection report.
 - Whidbey Logistics LLC has all required commercial drivers in a random controlled substance and alcohol testing pool and has updated the written drug policy and supplied it to its drivers.
- 4. Outline actions taken to ensure that similar violations do not reoccur in the future. YOU MUST DEMONSTRATE THAT YOUR OPERATIONS CURRENTLY MEET THE SAFETY STANDARD AND FACTORS SPECIFIED IN 49 CFR 385.5 and 385.7. To do so, you must demonstrate that you now have adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements.**
- Whidbey Logistics LLC’s plan implements new policies and procedures that incorporates forms supplied by the commission. The company implemented a new hire check list, review intervals, and use of company software to set up reminders for future actions. The safety management plan illustrates that the company comprehends what the appropriate corrective actions and systems are needed to minimize the likelihood of reoccurring violations.
 - Matthew Freeborn attended commission sponsored household goods training on February 20, 2019.
- 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.**
- Whidbey Logistics LLC’s owner Matthew Freeborn states that he hired a new general manager who is enrolled in the April 17, 2019, commission training.
- 6. Include any additional documentation relating to motor carrier safety and the prevention of crashes that you believe supports your request.**
- No additional documentation was submitted.
- 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.**

- The plan states that there Whidbey Logistics LLC will operate in compliance with the Federal Motor Carrier Safety Regulations and Hazardous Material Regulations. Matthew Freeborn certifies that the company operations currently meet the safety standards and factors specified in 49 CFR 385.5 and 385.7.

Summary and Recommendations

- Whidbey Logistics LLC submitted a safety management plan that addresses each violation, identifies how they occurred, describes the steps taken to correct them, and put controls in place to ensure the company maintains compliance.
- Staff reviewed Whidbey Logistics LLC's proposed safety management plan and concludes it is acceptable and meets the requirements of 49 CFR, Part 385. The reasons for staff's position are listed above.
- Staff recommends the commission upgrade the safety rating of Whidbey Logistics LLC to *conditional*.