

MEMORANDUM

January 4, 2017

TO: David Pratt, Assistant Director, Transportation Safety

FROM: Mike Turcott, Compliance Investigator, Transportation Safety

SUBJECT: Compliance Review Investigation, Blue Sky Outfitters, Inc.
Docket TE-161267

In November 2016, Special Investigator Wayne Gilbert conducted a compliance review of Blue Sky Outfitters, Inc, a small company in Cashmere, WA. The company operates one vehicle with one driver and provides white water rafting excursions and winery tours. In its 2014 and 2015 annual reports the company reported travelling 1,800 and 1,500 miles, respectively. In the compliance review, for 2015 the company reported \$700,000 in revenue and 125,816 miles traveled. It is unknown how much of the company's 2015 revenue was attributable to the company's regulated passenger transportation services, and staff learned that the 2015 mileage figure was actually the odometer reading on the company vehicle.

Investigator Gilbert contacted Blue Sky Outfitters on October 6, 2016 to arrange for this compliance review investigation and to request necessary documents. Blue Sky Outfitters failed to provide requested records either prior to or on the day of the investigation appointment. Because of the lack of records, staff was able to identify only one date for which there was evidence of a trip provided for compensation.

In the compliance review Mr. Gilbert identified five critical violations of FMCSA rules:

- One violation of CFR 391.51(a) – Failing to maintain driver qualification file on each driver employed.
- One violation of CFR 395.8 – Failing to require driver to make a record of duty status on October 23, 2016.
- One violation of CFR 395.8(k)(1) – Failing to preserve driver's record of duty status and supporting documents for six months.
- One violation of CFR 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.
- One violation of CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected on October 23, 2016.

Blue Sky Outfitters began providing wine tours in 2006, but did not obtain charter authority until 2012. In his application for charter and excursion authority, Blue Sky Outfitters owner Brad Sarver acknowledged his responsibility to understand and comply with applicable motor carrier safety rules. Commission staff provided extensive technical assistance to Mr. Sarver in October 2012. Staff believes the company knew, or should have known about these requirements.

Under the Commission's enforcement policy, these critical-type violations are penalized only when they "rise to critical" as a pattern of violations, or when there have been previous occurrences noted. The company's small size and lack of record keeping actually worked in its favor by concealing patterns of violations.

The annual income and mileage reported by Blue Sky Outfitters suggests many more trips than the one documented in the compliance review. Because of the company's apparent indifference toward safety regulations, the lack of record keeping, and the ongoing nature of these violations, staff believes a significant penalty is appropriate. A meaningful penalty serves as a sanction for past violations and as a deterrent against future violations.

Staff recommends a formal complaint against Blue Sky Outfitters for five violations of WAC 480-30-221 Vehicle and Driver Safety Requirements with a maximum penalty of \$1,000 per violation.

Company docket history:

TE-121512	Application for Charter and Excursion Certificate
TE-141053	Penalty Assessment for failure to furnish annual report
TE-151008	Penalty Assessment for failure to furnish annual report
TE-161267	Investigation of violations of WAC 480-30-221 Vehicle and Driver Safety Requirements