



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Date: January 7, 2021

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

From: Mathew Perkinson, Assistant Director, Transportation Safety Division

Re: TV-200976 and TV-200977 Moving Clear Services LLC

Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods operating authority (THG068753)

On December 3, 2020, Commission staff (staff) completed a routine safety investigation of Moving Clear Services LLC (Moving Clear or Company) which resulted in a proposed conditional safety rating.

Provisional household goods moving 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 Moving Clear 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 CFR 385.5 and 385.7. In this case, Moving Clear has until February 2, 2021, 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 CFR § 395.8(a)(1) and WAC 480-15-555.

“**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 Title 49 CFR § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method.

2. Two violations of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.

On December 18, 2020, the commission issued a penalty assessment against Moving Clear in the amount of \$3,600 as a result of violations discovered during the routine safety investigation.¹ The penalty includes:

1. A \$200 penalty for two violations of WAC 480-15-555 for failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.
2. A \$3,000 penalty for 30 violations of 49 CFR § 391.45(a) for using a driver not medically examined and certified.
3. A \$100 penalty for one violation of 49 CFR § 391.51(a) for failing to maintain driver qualification file on each driver employed.
4. A \$100 penalty for four violations of 49 CFR § 395.8(a)(1) for failing to require a driver to prepare a record of duty status using the appropriate method.
5. A \$100 penalty for one violation of 49 CFR § 396.3(b) for failing to keep minimum records of inspection and vehicle maintenance.
6. A \$100 penalty for one violation of 49 CFR § 396.17(a) for using a commercial motor vehicle not periodically inspected.

In a December 21, 2020, Notice of Intent to Cancel, the commission instructed Moving Clear to submit its proposed safety management plan no later than January 8, 2021.

On December 24, 2020, the Company responded to the penalty, admitting the violations, and paid the \$3,600 penalty in full.

On January 5, 2021, Moving Clear 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 CFR § 385.5 and 385.7. To do so, the plan must demonstrate the company now

¹ TV-200977

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 CFR § 385.5 and 385.7. A corporate officer, partner, or the owner of the company must sign the statement.

Summary and Recommendations

Staff reviewed Moving Clear's safety management plan and concludes it is acceptable and meets the requirements of 49 CFR § 385. Because of the Company's actions, staff recommends the commission not cancel the Company's permit and extend its provisional period until such a time that the Company achieves a satisfactory safety rating. Staff further recommends that Dockets TV-200976 and TV-200977 be consolidated.

Staff confirmed with the Company that it waives its right to a hearing and recommends that the brief adjudicative proceeding scheduled for January 22, 2021, be cancelled.

The Company took all the required steps to bring its safety operations into compliance with commission regulations. Moving Clear 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.

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