



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E. • Lacey, Washington 98503

P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

Date: August 25, 2023

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

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

Re: **TV-220511 and TV-230503 (Consolidated) Miracle Man Movers, LLC**
Evaluation of Safety Management Plan, Recommendations regarding the company's safety rating, and the cancellation of household goods operating authority (THG-068778)

On August 11, 2022, Commission staff (Staff) completed a follow-up safety investigation of Miracle Man Movers, LLC, (Miracle Man Movers or Company) which resulted in a proposed conditional safety rating.

On October 11, 2022, the Commission entered Order 02, Approving Safety Management Plan; Maintaining Safety Rating; Extending Provisional Period; Imposing and Suspending Penalties in Docket TV-220511. Order 02 extended the Company's provisional operating authority for a second time after the Company failed to achieve a satisfactory safety rating following a safety investigation.¹ Further, Order 02 assessed a \$8,000 penalty and suspended a \$5,000 portion of the penalty for two years, and then waived, subject to the conditions:

- (1) Miracle Man Movers must maintain a conditional safety rating;
- (2) Staff must conduct a follow-up investigation at least six months from the date of Order 02;
- (3) The Company may not incur any repeat critical violations of WAC 480-15 upon reinspection; and
- (4) Miracle Man Movers must pay the remaining \$3,000 portion of the penalty that is not suspended.

On June 15, 2023, Staff completed the follow-up investigation as required in Order 02. The findings of this investigation resulted in a proposed conditional safety rating. During the investigation, Staff identified two categories of repeat critical violations.

On July 13, 2023, the Commission issued a Notice of Intent to Cancel; Notice of Prehearing Conference; Complaint for Penalties; and Notice of Brief Adjudicative Proceeding (BAP); Setting Time for Oral Statements in Docket TV-230503. The notice instructed Miracle Man Movers to submit its proposed safety management plan (SMP) no later than July 18, 2023.

¹ Provisional authority initially extended by Order 01 in Docket TV-210128

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 Miracle Man Movers 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, Miracle Man Movers had until August 15, 2023, 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 violations of repeat critical regulations – 49 C.F.R. § 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. Sixty violations of Title 49 C.F.R. § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status. (Critical)
2. Four violations of WAC 480-15-555(1) – Failing to complete a criminal background check for every person the carrier intends to hire.

On August 7, 2023, Miracle Man Movers submitted a SMP prior to the brief adjudicative proceeding.

On August 8, 2023, Staff notified the Company that the SMP was not accepted and provided a detailed response addressing where the SMP was deficient.

On August 8, 2023, the Commission held the scheduled brief adjudicative proceeding. At the hearing Dockets TV-220511 and TV-230503 were consolidated. Staff presented testimony recommending that the \$5,000 suspended penalty from TV-220511 be imposed for repeat critical violations. Staff further recommended the Commission impose \$48,500 in new penalties based on the investigative findings as follows:

- Four violations of WAC 480-15-555(1) for failure to complete a criminal background check for every person the carrier intends to hire. Staff recommend a penalty of \$500 for each occurrence of this repeat critical violation, for a total of \$2,000.
- Fifteen violations of WAC 480-15-590 for failure to meet all conditions for leasing vehicles. Staff recommend a penalty of \$100 for each occurrence of this repeat violation for a total of \$1,500.
- One violation of 49 C.F.R. § 391.11(b)(8) for using a driver who has not taken a road test or who has not been issued a certificate of driver’s road test or presented an operator’s license, or certificate of road test which the motor carrier accepted as equivalent. Staff recommend a \$100 penalty for this repeat violation.

- Four violations of 49 C.F.R. § 391.21(a) for using a driver who had not completed and furnished an employment application. Staff recommend a penalty of \$100 for each occurrence of this violation, for a total of \$400.
- Four violations of 49 C.F.R. § 391.23(a)(2) for failing to investigate driver's performance history with Department of Transportation regulated employers during the preceding three years. Staff recommend a \$100 penalty for this repeat violation.
- Three violations of 49 C.F.R. § 391.45(a) for using a driver not medically examined and certified. Staff recommend a penalty of \$100 for each occurrence of this repeat critical-type violation, for a total of \$300.
- Fourteen violations of 49 C.F.R. § 395.3(b)(2) for permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 70 hours in eight consecutive days. Staff recommend a penalty of \$1,000 for each occurrence of this repeat critical-type violation, for a total of \$14,000.
- Sixty violations of 49 C.F.R. § 395.8(a)(1) for failing to require drivers to make a record of duty status. Staff recommend a penalty of \$500 for each occurrence of this repeat critical violation, for a total of \$30,000.
- One violation of 49 C.F.R. § 395.8(j)(2) for failure to obtain from driver, used for the first time or intermittently, a signed statement giving the total time on duty during the preceding seven days and time at which last relieved from duty. Staff recommend a \$100 penalty for this repeat violation.

Further, Staff testified that the Miracle Man Movers had not submitted an acceptable SMP. Staff notified the presiding administrative law judge that the Company's provisional permit would be cancelled on August 15 and that Staff's scheduling would not allow for review of any further submissions of the SMP prior to the cancellation date. Because of Staff's availability, the administrative law judge directed Staff to allow for an additional week for the Company to submit and have its SMP reviewed and for Staff to submit a final evaluation of the SMP by 5:00 p.m. on August 25.

On August 22, 2023, Miracle Man Movers submitted an updated SMP addressing each violation identified during the safety 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 Miracle Man Movers' SMP and determined it is acceptable and meets the requirements of 49 C.F.R. § 385. The plan demonstrates that the Company has taken appropriate action to develop a compliant safety program and implemented a system, that if followed, should prevent future repeat violations.

Documentation of driver qualifications, hours of service records, criminal background checks, and company policy documents were included in the plan. Additionally, The Company provided evidence that it has created a compliance tracking system along with calendar reminders for future compliance dates.

The Company took all the required steps to bring its safety operations into compliance with Commission regulations. Miracle Man Movers 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 the Commission accept Miracle Man Movers SMP. Staff further recommends that the Commission not cancel the Company's provisional permit and extend the provisional period a third time with conditions:

- (1) Miracle Man Movers sends all employees named in its SMP as responsible for maintaining safety compliance to Commission sponsored household goods industry safety training, either through the Commission's online learning system or the live virtual class provided by Staff, no later than December 31, 2023;
- (2) Staff conduct a follow-up safety investigation at least six months from the date of an Order;
- (3) Miracle Man Movers must obtain a satisfactory safety rating following the investigation;
- (4) Upon reinspection, the Company may not incur any repeat violations of critical regulations; and
- (5) Failing to meet any of these conditions would constitute grounds for cancellation of the Company's provisional permit.

Regarding the penalty recommendation, Miracle Man Movers corrected each violation and took steps to prevent future occurrences. The Company incurred repeat violations despite operating with a previously approved SMP. As a result, Staff reaffirms its recommendation that the Commission impose the \$5,000 suspended penalty in Docket TV-220511 and assess a penalty of \$48,500 for discovered violations. Staff further recommends the Commission suspend a \$26,900 portion of the recommended penalty for a period of two years, and then waive it, subject on the conditions:

- (1) Miracle Man Movers does not incur repeat violations of critical-type regulations within the suspension period; and
- (2) The Company pays the \$21,600 portion of the penalty that is not suspended through a mutually agreeable payment arrangement approved by Staff.