



# **Compliance Investigation Report**

**Ride the Ducks of Seattle, LLC**

**TE-151906**

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## **PURPOSE, SCOPE, AND AUTHORITY**

### **Purpose**

The purpose of this investigation is to determine if the safety and operating practices of Ride the Ducks of Seattle, LLC (Ride the Ducks or company) comply with state law and the rules of the Washington Utilities and Transportation Commission (commission).

### **Scope**

The investigation focuses on information obtained by commission staff relating to Ride the Ducks' operations. Additional information was obtained or collected by the Federal Motor Carrier Safety Administration (FMCSA) and the National Transportation Safety Board (NTSB) and provided to commission staff. Any information provided by those outside sources is cited in this report.

### **Authority**

Staff undertakes this investigation under the authority of the Revised Code of Washington (RCW) 81.01.010, which adopts RCW 80.01, directing the commission to regulate passenger transportation providers in the public interest, and to adopt such rules and regulations as may be necessary to do so. In addition, RCW 81.04.510 makes it clear that the commission is authorized to conduct such an investigation. Appendix A includes copies of relevant laws, rules and regulations.

## EXECUTIVE SUMMARY

On Sept. 24, 2015, a Ride the Ducks vehicle was involved in a multi-vehicle incident on the Aurora Bridge in Seattle, Washington. The incident resulted in five fatalities and numerous injuries and is currently under investigation by the NTSB.

Ride the Ducks provides specialized land and water tours in amphibious vehicles in Seattle as an excursion service carrier. By law, the commission regulates the provision of these excursion services under RCW 81.70.270. Commission rules require excursion service carriers to comply with all state and local laws and rules governing licensing, vehicle safety, and driver safety. Regulated carriers must also comply with the parts of Title 49 Code of Federal Regulations (CFR) adopted by the commission per Washington Administrative Code (WAC) 480-30-221(1).

On Sept. 28, 2015, the commission ordered an emergency suspension of Ride the Ducks' excursion service carrier authority. The commission instructed its safety compliance staff to conduct a comprehensive investigation into the company's safety practices, including maintenance of vehicles, driver safety, and other operational issues.

This report outlines the results of commission staff's investigation and findings in three categories: company operations, vehicle inspections, and records review.

### **Company Operations**

Commission staff investigated the extent and impact of operational issues such as restricted sight lines, choice of routes, vehicle size, and potential driver distractions – to the extent that these fall within the commission's safety jurisdiction – and determined that Ride the Ducks complies with applicable regulations.

During the course of the investigation, Ride the Ducks publicly announced modifications to its routes and services. The company stated that it will no longer use the Aurora Bridge during its tours. Also, all future tours will include two employees: one responsible for the land and water operation of the Duck vehicle and one responsible for the tour, including tour narration and other entertainment. This represents a change from the current practice of one employee performing both functions.

### **Vehicle Inspections**

Commission staff conducted inspections of the company's 10 "Truck Duck" vehicles. Although the "Truck Duck" vehicles received an overall passing grade, staff found 11 total violations of 49 CFR Part 396 - Inspection, repair, and maintenance:

- One "Truck Duck" vehicle had a cracked tie rod end grease boot, which was repaired by the carrier and the repair was verified by commission staff.

- Ride the Ducks failed to ensure that each of the 10 “Truck Duck” vehicles had a copy of its periodic inspection report on board. Copies of periodic inspections have since been placed on all vehicles by the company, which has been verified by staff.

Commission staff also inspected the company’s eight operational “Stretch Duck” vehicles and found six total violations of 49 CFR Part 396 - Inspection, repair and maintenance, and one violation of 49 CFR Part 393 – Parts and accessories necessary for safe operation:

- Ride the Ducks failed to ensure that each of the “Stretch Duck” vehicles had a copy of its periodic inspection report on board. Copies of periodic inspections have since been placed on all vehicles by the company, which has been verified by staff.
- The hubs on the front axles of Ducks 8 and Duck 21 had minor grease leaks. These defects must be corrected prior to the vehicles being operated again.
- Staff placed Duck 1 out-of-service for having inoperable brake lights. Ride the Ducks’ maintenance staff corrected this condition prior to the end of the inspection. Staff verified this repair.

As of the date of this report, all operational “Truck Duck” vehicles passed commission staff’s inspections. Of the eight “Stretch Duck” vehicles inspected, six passed commission staff’s inspection. The defects found in Duck 8 and Duck 21 must be corrected prior to the vehicles being operated again.

### **Service Bulletin**

The commission asked its safety compliance staff to determine whether Ride the Ducks received a service bulletin (SB 00-14-13) issued by Ride the Ducks International advising of issues with the axle housing, and what steps the company took, if any, to remedy any such defects in its vehicles. The commission’s safety jurisdiction does not extend to service bulletins and to staff’s knowledge there are no federal or state rules that prescribe action on service bulletins; however, commission staff looked into the circumstances surrounding SB 00-14-13 during its investigation.

Ride the Ducks’ maintenance personnel informed commission investigators that the company implemented the recommendations from SB 00-14-13 by conducting daily visual inspections of the wheels on each vehicle during pre-trip inspections, including checking for any vertical canting of the front wheels. Maintenance personnel reported that they observed no canting and therefore took no further action regarding the bulletin.

During its investigation, commission staff visually inspected each front wheel and observed no signs of vertical canting. Ride the Ducks’ maintenance personnel then removed the wheels, brakes, steering components, and waterproof boots to completely expose the axle housings. Commission staff identified no apparent damage to any of the axles or axle housings.

Further investigation revealed that small metal plates had been welded to each front wheel axle housing on three of the “Stretch Duck” vehicles. According to NTSB staff, Duck 6, the vehicle involved in the Sept. 24 incident, also had these welded plates on its front wheel axle housings. NTSB staff informed commission investigators that beginning in 2003, Ride the Ducks International welded these plates to “Stretch Duck” axles prior to selling the vehicles to Ride the Ducks franchises. Commission staff confirmed that Duck vehicles 1, 3, 6, and 8 were all purchased by Ride the Ducks Seattle after 2003.

In order for commission investigators to complete a more in-depth examination, NTSB staff assisted commission investigators by cleaning the welds, which attach the metal plates to the front wheel axle housings, on Duck vehicles 1, 3, and 8 in the presence of commission staff. This revealed small cracks along the welds of the metal plates on all three vehicles. The cracks did not appear to extend into the axle housings but ran the length of the weld.

Ride the Ducks has hired a specialist to evaluate the front axle housings on its “Stretch Duck” vehicles. This specialist will provide recommendations to the company if any action is needed. The company has pledged that it will not operate the “Stretch Duck” vehicles until this evaluation is complete and any recommendations are implemented. Commission staff supports this approach.

### **Records Review**

During the review of Ride the Ducks’ records, commission staff discovered violations of eight CFR parts, which are described in detail in this report.

The compliance review investigation resulted in a proposed *unsatisfactory* safety rating for Ride the Ducks. The factors that contributed to the proposed rating include one violation of an acute regulation and six violations of a critical regulation, as well as two recordable accidents in 2015: one on February 7 involving a Ducks vehicle collision with another vehicle and the Sept. 24 Aurora Bridge incident.

Commission staff found 131 violations of five other critical regulations, but the violations found for each of those regulations did not establish a pattern and therefore were not a factor in determining the proposed safety rating. Staff also found 304 recordkeeping violations of 17 non-acute/non-critical regulations. Specific information about these violations, as well as an explanation of acute and critical regulations and patterns of violations, begins on page 23 of this report.

Ride the Ducks has 45 days to request and receive a change to the proposed *unsatisfactory* safety rating. The request must be based upon evidence that the company has taken corrective actions to address the violations identified and that company operations currently meet the safety fitness standard as specified in 49 CFR Parts 385.5 and 385.7.

Carriers with proposed unsatisfactory safety ratings are generally allowed to operate during this 45-day period. However, if on the 46<sup>th</sup> day the carrier has not adequately complied with these requirements, they are prohibited from operating.

### **Recommendations**

Staff recommends the following:

1. Ride the Ducks' excursion service carrier operating authority should be restored and the company should be allowed to resume operations in its "Truck Duck" vehicles.
2. By Jan. 29, 2016, Ride the Ducks must request and receive a change to its proposed unsatisfactory safety rating. The request must include a written safety management plan, as outlined in recommendation two on page 31 of this report, which provides a detailed description of the corrective actions taken to address each specific violation and outlines how the company will stay in compliance with each requirement in the future.
3. Staff recommends follow-up compliance review investigations of Ride the Ducks in six months, and again in twelve months, to determine if Ride the Ducks is following its safety management plan and to verify compliance with state and federal safety requirements. Staff will conduct vehicle inspections during these visits as well.
4. After two years, staff will conduct another compliance review investigation and issue a safety rating based on the outcome of that investigation.
5. For the "Stretch Ducks" vehicles, commission staff recommends that the company be required to submit the results of the specialist's evaluation of the front axle housings to staff for review. Commission staff will then make a recommendation to the commission about whether to return the "Stretch Ducks" to service.
6. Commission staff also recommends the commission assess administrative penalties. The commission is authorized to penalize Ride the Ducks up to \$1,000 per violation for all violations found during the compliance review investigation, as provided by RCW 81.04.380. Commission staff intends to move to amend the commission's complaint in this matter to seek imposition of administrative penalties against Ride the Ducks.

## PROCEDURAL HISTORY

### Emergency Order

On Sept. 28, 2015, the commission issued Order 01, Notice of Emergency Adjudication and Order Suspending Certificate.<sup>1</sup> The order stated that important governmental interests mandated emergency suspension of the certificate held by Ride the Ducks, pending investigation and inspection of the company's entire fleet of vehicles and drivers. Ride the Ducks agreed to suspend its activities pending the outcome of the commission's investigation. Order 01 set a hearing date of Oct. 1, 2015, to allow the company to respond to the suspension and establish appropriate procedures for conducting the adjudication.

### Complaint

On Sept. 29, 2015, the commission issued a "Complaint for Violations of Vehicle Safety Rules."<sup>2</sup> The complaint outlined staff's allegations that Ride the Ducks violated various sections of 49 CFR and WAC 480-30-221 by operating at least one of its vehicles, Duck 6, in an unsafe manner causing at least five deaths and dozens of injuries in a single incident that occurred on Sept. 24, 2015.

The commission stated that while the cause of the incident had not been identified, many factors may have contributed to it, including the company's maintenance of its vehicles, driver safety, or other operational issues. Commission staff's investigation would look into the company's safety practices, including whether the company received a service bulletin from the vehicle manufacturer advising Ride the Ducks of potential issues with the axle housing and if so, what steps the company took, if any, to remedy the defect in its vehicles.

Staff requested that the commission continue the suspension of the company's certificate pending investigation and inspection of Ride the Ducks' fleet of vehicles and drivers and take appropriate action based on staff's findings.

### Joint Stipulation

On Sept. 30, 2015, commission staff and Ride the Ducks filed a joint stipulation with the following elements:

- Ride the Ducks stipulated to the suspension of its excursion certificate pending conclusion of the commission staff's investigation.
- Commission staff stipulated that, if feasible, it would first investigate the company's "Truck Duck" vehicles, which have a different chassis and axle system than the "Stretch Duck" vehicles. (The vehicle involved in the Sept. 29 incident, Duck 6, was a "Stretch Duck.")

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<sup>1</sup> Order 01, Notice of Emergency Adjudication and Order Suspending Certificate at Appendix B.

<sup>2</sup> Complaint for Violations of Vehicle Safety Rules at Appendix C.



- The parties' objective was to return to service, if appropriate, within 30 days, those "Truck Duck" vehicles that passed regulatory inspection in a satisfactory manner. The parties' objective was also to return to service the "Stretch Duck" vehicles that passed regulatory inspection in a satisfactory manner within a reasonable period of time.
- Within 30 days of the joint stipulation, the parties agreed to confer regarding the status of the investigation and report back to the commission. The parties agreed to propose a hearing schedule at the conclusion of staff's investigation.<sup>3</sup>

The commission held the hearing on Oct. 1, 2015, and subsequently issued Order 02, Order Adopting Joint Stipulation and Continuing Temporary Suspension of Certificate. The order stated that staff's investigation was to cover all safety aspects of the company's operations, including but not limited to the extent and impact of any restricted sight lines, choice of routes, and potential driver distractions. The order also adopted the joint stipulation and gave notice that a status conference would be held on the matter on Nov. 3, 2015.<sup>4</sup>

### **Status Conference**

On Nov. 3, 2015, the commission held a status conference to determine the extent to which Staff had completed or anticipated completing its investigation and to address related procedural issues. Staff described the status of its investigation and estimated that it would complete its final report by early December. Ride the Ducks stated that it would be prepared for a hearing on the issue of whether to continue the suspension within two weeks of the date staff filed its report.

The Commission established a Dec. 15, 2015, deadline for staff to file its investigation report and scheduled an evidentiary hearing for Jan. 5, 2016.

### **Motion to Expedite Hearing**

On Nov. 6, 2015, Ride the Ducks filed a motion to expedite the evidentiary hearing, stating that holding the hearing after the holidays would result in hardships to the company, its employees and their families. Ride the Ducks requested a hearing date of Dec. 16, 2015.<sup>5</sup>

Commission staff filed its response to the motion on Nov. 9, 2015, stating that staff would be prepared to state its position and offer evidence on whether the commission should lift or continue the company's suspension no earlier than Dec. 18, 2015.<sup>6</sup>

On Nov. 10, 2015, the commission issued Order 03 – Order Rescheduling Evidentiary Hearing.<sup>7</sup> The order rescheduled the evidentiary hearing date to Dec. 21, 2015, and stated that the hearing

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<sup>3</sup> Joint Stipulation filed by commission staff and Ride the Ducks at Appendix D.

<sup>4</sup> Order 02 – Order Adopting Joint Stipulation and Continuing Temporary Suspension of Certificate at Appendix E.

<sup>5</sup> Ride the Ducks' Motion of Respondent to Expedite Hearing at Appendix F.

<sup>6</sup> Response of Commission Staff to Motion of Ride the Ducks of Seattle to Expedite Hearing at Appendix G.

<sup>7</sup> Order 03 – Order Rescheduling Evidentiary Hearing at Appendix H.

would be limited to commission consideration of evidence and argument on whether the suspension of Ride the Ducks’ certificate “is necessary to prevent or avoid immediate danger to the public health, safety or welfare.” The commission will establish a procedural schedule to address the remaining allegations in the complaint at a later date.

### **Motion for Protective Order**

On Nov. 20, 2015, Ride the Ducks filed a motion requesting that a protective order be entered that prohibits the disclosure of the company’s financial information, and that any documents submitted in the case first require redaction of financial information.<sup>8</sup>

On Nov. 30, 2015, the commission issued Order 04 – Order Denying Motion for Protective Order.<sup>9</sup> The order outlined the commission’s reasons for denying the protective order requested by Ride the Ducks.

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<sup>8</sup> Motion of Respondent for Protective Order at Appendix I.

<sup>9</sup> Order 04 – Order Denying Motion for Protective Order at Appendix J.

## **BACKGROUND**

### **Company Information**

The commission granted Ride the Ducks authority to operate as an Excursion Service Carrier of Passengers in Oct. 1999 under certificate ES-00146. The company is registered with the US Department of Transportation (USDOT) under number 1905507. Ride the Ducks' unified business identifier number (UBI) is 601947681, according to the State of Washington's Business Licensing Service. The company's registered trade name is Seattle Duck Tours. Ride the Ducks is registered as a corporation with the Secretary of State's office, and has an open account with the state Department of Revenue. The physical and mailing address for the company is 516 Broad Street, Seattle, WA, 98109. Brian Tracey is the President and Chief Executive Officer of the company.

Ride the Ducks provides specialized land and water excursion tours in Seattle in amphibious vehicles. All company drivers are required to hold a commercial driver license (CDL) and a United States Coast Guard Master's license.

Ride the Ducks provided staff with a written overview of its safety program, attached to this investigative report as Appendix K.

## INVESTIGATION

The commission regulates excursion service carriers with respect to safety of equipment, driver qualifications, and safety of operations under RCW 81.70.270. An excursion service carrier is defined as every person engaged in the transportation of persons for compensation over any public highway in this state from points of origin within the incorporated limits of any city or town or area, to any other location within the state of Washington and returning to that origin. The service must not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may be regularly scheduled. Compensation for the transportation offered or afforded must be computed, charged, or assessed by the excursion service company on an individual fare basis per RCW 81.70.020.

Commission rules require excursion service carriers to comply with all state and local laws and rules governing licensing, vehicle safety, and driver safety. Carriers must also comply with the parts of Title 49 CFR adopted by the commission per WAC 480-30-221(1).

Excursion service carriers must maintain all motor vehicles in a safe and sanitary condition and ensure that vehicles are free of defects likely to result in an accident or breakdown per WAC 480-30-221(2). All motor vehicles operated by an excursion service carrier are at all times subject to inspection by the commission or its duly authorized representatives per WAC 480-30-221(5).

The commission is authorized to administer and enforce laws and rules relating to passenger transportation companies. The commission may delegate authority to the commission staff to inspect equipment, drivers, records, files, accounts, books, and documents. The commission may also delegate to its staff the authority to place vehicles and drivers out-of-service per WAC 480-30-241(1).

In Order 02, the commission instructed its staff to conduct a comprehensive investigation covering all safety aspects of the company's operations. This report details the results of staff's investigation and provides recommendations for enforcement action.

### **Compliance Review Investigations**

Through compliance review investigations, commission staff routinely inspects regulated carriers' vehicles, books, and records to ensure companies meet required safety standards. A compliance review investigation, conducted at the carrier's terminal, is an onsite examination of motor carrier operations such as drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers' license requirements, insurance, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. Vehicle inspections may also be conducted.

Commission rules require excursion service carriers to comply with the following parts of 49 CFR:<sup>10</sup>

- Part 40 – Procedures For Transportation Workplace Drug and Alcohol Testing Programs
- Part 382 – Controlled Substance and Alcohol Use and Testing
- Part 379 – Preservation of Records
- Part 380 – Special Training Requirements
- Part 383 – Commercial Driver’s License Standards; Requirements and Penalties
- Part 385 – Safety Fitness Procedures
- Part 390 – Safety Regulations, General
- Part 391 – Qualification of Drivers
- Part 392 – Driving of Motor Vehicles
- Part 393 – Parts and Accessories Necessary for Safe Operation
- Part 395 – Hours of Service of Drivers
- Part 396 – Inspection, Repair, and Maintenance
- Part 397 – Transportation of Hazardous Materials, Driving and Parking Rules

These regulations are designed to protect the health and safety of the traveling public.

During compliance review investigations, commission staff uses 49 CFR Part 385 - Safety Fitness Procedures to determine the overall safety fitness of motor carriers and assigns one of three safety ratings: satisfactory, conditional, or unsatisfactory.

A “satisfactory” safety rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in 49 CFR Part 385.5.<sup>11</sup> To meet the safety fitness standard and receive a satisfactory safety rating, the carrier must demonstrate it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risks associated with:

- a. Commercial driver’s license standard violations (Part 383),
- b. Inadequate levels of financial responsibility (Part 387),
- c. The use of unqualified drivers (Part 391),
- d. Improper use and driving of motor vehicles (Part 392),
- e. Unsafe vehicles operating on the highways (Part 393),
- f. Failure to maintain accident registers and copies of accident reports (Part 390),
- g. The use of fatigued drivers (Part 395),
- h. Inadequate inspection, repair, and maintenance of vehicles (Part 396),

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<sup>10</sup> WAC 480-30-221, Vehicle and driver safety requirements.

<sup>11</sup> 49 CFR Part 385.3, Definitions and acronyms.

- i. Transportation of hazardous materials, driving and parking rule violations (Part 397),
- j. Violation of hazardous materials regulations (Parts 170-177), and,
- k. Motor vehicle accidents and hazardous materials incidents.<sup>12</sup>

A “conditional” safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard and *could* result in the violations listed above.<sup>13</sup>

An “unsatisfactory” safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard and *has* resulted in the violations listed above.<sup>14</sup>

The factors considered in determining the overall safety fitness, and assigning a safety rating, include information from safety reviews, compliance reviews, and other data. The factors may include all or some of the following:

- Adequacy of safety management controls.
- Frequency and severity of regulatory violations.
- Frequency and severity of driver/vehicle regulatory violations identified during roadside inspections.
- Number and frequency of out-of-service driver/vehicle violations.
- Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.
- Frequency of accidents; hazardous materials incidents; accident rate per million miles; indicators of preventable accidents; and whether such accidents, hazardous materials incidents, and preventable accident indicators have increased or declined over time.
- Number and severity of violations of commercial motor vehicle and motor carrier safety rules, regulations, standards, and orders.<sup>15</sup>

### **Ride the Ducks’ Prior Compliance Review History**

Commission staff has conducted four compliance review investigations of Ride the Ducks since the company received excursion service carrier authority in 1999, as follows:

- **October 2003** – Compliance review resulted in a satisfactory safety rating.
- **March 2006** - Compliance review resulted in a satisfactory safety rating.
- **July 2010** - Compliance review resulted in a satisfactory safety rating.
- **January 2013** - Compliance review resulted in a satisfactory safety rating.

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<sup>12</sup> 49 CFR Part 385.5

<sup>13</sup> 49 CFR Part 385.3

<sup>14</sup> *Id.*

<sup>15</sup> 49 CFR Part 385.7 – Factors to be considered in determining a safety rating.

## 2015 Compliance Review Investigation

Commission staff began its 2015 compliance review investigation on Sept. 24, 2015. Staff from the commission and the FMCSA participated in the compliance review investigation:

- Commission Staff: David Pratt – Assistant Director for Transportation Safety; John Foster – Motor Carrier Safety Compliance Supervisor; Wayne Gilbert – Motor Carrier Safety Compliance Investigator; Francine Gagne – Motor Carrier Safety Compliance Investigator; and, Sandra Yeomans – Motor Carrier Safety Compliance Investigator.
- FMCSA Staff: Nolan Rice – Special Investigator.

During typical compliance reviews, commission staff uses random sampling methods to gather records that carriers are required to maintain and to inspect vehicles. Staff determines sample size based on the number of vehicles and drivers the company uses. Staff then reviews and evaluates this sampling of records and vehicles to determine the carrier’s compliance with state and federal laws and rules.

Due to the comprehensive nature of the 2015 compliance review investigation, staff reviewed all records and information related to Ride the Ducks’ drivers and vehicles as well as the vehicles themselves. The results of the investigation are the basis for this report and the findings are incorporated here.<sup>16</sup> The following information describes the results of the compliance review investigation in three categories: company operations, vehicle inspections and records review.

### Company Operations

The commission ordered its safety compliance staff to review specific aspects of the Ride the Ducks’ operations “including but not limited to the extent and impact of any restricted sight lines, choice of routes and potential driver distractions.”<sup>17</sup> Commission staff reviewed these areas of the company’s operations, to the extent that they fall within the commission’s safety jurisdiction, to determine compliance with regulations.

### Driver Line of Sight

The commission has safety jurisdiction related to driver line of sight only as described in 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operation, which outlines the requirements for obstructions to the driver’s field of view and rear-vision mirrors as follows:

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<sup>16</sup> Compliance review investigation report at Appendix L.

<sup>17</sup> Order 02, paragraph 4.

- **393.60(e) Prohibition on obstructions to the driver’s field of view:**
  - 1) Devices mounted at the top of the windshield. Antennas, transponders, and similar devices must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers, and outside the driver’s sight lines to the road and highway signs and signals.
  - 2) Decals and stickers mounted on the windshield. CVSA<sup>18</sup> inspection decals and stickers and/or decals required under Federal or State laws may be placed at the bottom or sides of the windshield provided such decals or stickers do not extend more than 115 mm (4 1/2 inches) from the bottom of the windshield and are located outside the area swept by the windshield wipers, and outside the driver’s sight lines to the road and highway signs or signals.
  
- **393.80 Rear-vision mirrors:**
  - a) Every bus, truck, and truck tractor shall be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear, along both sides of the vehicle. All such regulated rear-vision mirrors and their replacements shall meet, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.
  - b) *Exceptions.*
    - 1) Mirrors installed on a vehicle manufactured prior to January 1, 1981, may be continued in service, provided that if the mirrors are replaced they shall be replaced with mirrors meeting, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.
    - 2) Only one outside mirror shall be required, which shall be on the driver’s side, on trucks which are so constructed that the driver has a view to the rear by means of an interior mirror.
    - 3) In driveway-tow-away operations, the driven vehicle shall have at least one mirror furnishing a clear view to the rear.

During the vehicle inspections, staff found no sight obstructions to the driver’s field of view.

Staff inspected the rear-vision mirrors on each Ride the Ducks vehicle. Each vehicle has two front bow mirrors, two side-view mirrors and a rear-view mirror. Some Duck vehicles have additional mirrors mounted on top of the side-view mirrors. Each vehicle also has two cameras: one on the front of the vehicle; and, one on the rear, with a camera-viewing screen mounted directly to the right of the driver at the bottom of the windshield. Staff verified that the cameras on each vehicle were operational. Ride the Ducks provided a diagram of the driver’s view from each mirror and

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<sup>18</sup> Commercial Vehicle Safety Alliance.



camera.<sup>19</sup> The company's pre-trip inspection procedures direct drivers to check and ensure the mirrors and cameras are positioned for proper visibility.<sup>20</sup>

Commission staff noted no violations of Parts 393.60(e) or 393.80 during the inspections. The commission's safety jurisdiction does not extend beyond these requirements.

### **Company Choice of Routes**

The commission's safety jurisdiction does not extend to an excursion service carrier's choice of routes. The City of Seattle determines the traffic route for sightseeing buses within city limits.<sup>21</sup>

During the Oct. 1, 2015, commission hearing, Patricia Buchanan, attorney for Ride the Ducks, said that Mr. Tracey met with a City of Seattle official shortly after the Sept. 24 incident and said the company's routes will no longer include the Aurora Bridge. Ride the Ducks provided staff copies of its current route and the proposed new route.<sup>22</sup>

### **Driver Distractions**

The commission has safety jurisdiction related to driver distractions only as described in 49 CFR Part 392, Subpart H – Limiting the Use of Electronic Devices, which outlines prohibitions against texting and using hand-held mobile telephones as follows:

- **392.80 Prohibition against texting:**
  - a) Prohibition. No driver shall engage in texting while driving.
  - b) Motor carriers. No motor carrier shall allow or require its drivers to engage in texting while driving.
  - c) Definition. For the purpose of this section only, driving means operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver moved the vehicle to the side of, or off, a highway, as defined in 49 CFR 390.5, and halted in a location where the vehicle can safely remain stationary.
  - d) Emergency exception. Texting while driving is permissible by drivers of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

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<sup>19</sup> Diagram of mirror and camera views from Duck vehicles provided by Ride the Ducks at Appendix M.

<sup>20</sup> Pre-trip inspection requirements for drivers – Ride the Ducks' daily vehicle inspection report at Appendix N.

<sup>21</sup> See Seattle Municipal Code (SMC) 11.14.575 (defining "Sightseeing buses"), Seattle Municipal Code 11.16.320 (Traffic Engineer – Authority Regulations), Seattle Municipal Code 11.16.360 (Traffic Engineer – Authority General), See generally Seattle Municipal Code Title 11 Vehicles and Traffic. This section of the SMC grants authority to the SDOT and its officials to direct traffic patterns for all types of vehicles.

<sup>22</sup> Ride the Ducks' current and proposed routes at Appendix O.

- **392.82 Using a hand-held mobile telephone:**
  - a) (1) No driver shall use a hand-held mobile telephone while driving a CMV.<sup>23</sup>
    - (2) No motor carrier shall allow or require its drivers to use a hand-held mobile telephone while driving a CMV.
  - b) Definitions. For the purpose of this section only, driving means operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.
  - c) Emergency exception. Using a hand-held mobile telephone is permissible by drivers of a CMV when necessary to communicate with law enforcement officials or other emergency services.

Commission staff found no violations of Part 392 Subpart H during the inspections. The commission's safety jurisdiction does not extend beyond these requirements.

On Oct. 8, 2015, Mr. Tracey sent a letter to David Pratt stating that Ride the Ducks intends to make changes to its procedures if and when the company is allowed to operate again. Mr. Tracey stated that all future tours would include two employees: one responsible for the land and water operation of the Duck vehicle; and one responsible for the tour, including tour narration and other entertainment. This is a change from the current practice of one employee performing both functions.<sup>24</sup>

### **Size of Vehicles**

The commission's safety jurisdiction does not extend to the size of vehicles. However, staff found that the "Truck Duck" and "Stretch Duck" vehicles comply with maximum allowable vehicle dimension requirements in RCW 46.44 and SMC 11.60, as follows:<sup>25</sup>

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<sup>23</sup> Commercial Motor Vehicle.

<sup>24</sup> Copy of Mr. Tracey's Oct. 8, 2015, letter at Appendix P.

<sup>25</sup> RCW 46.44 and SMC 11.60 at Appendix A.

<b>Dimension</b>	<b>Maximum Allowed RCW 46.44 &amp; SMC 11.60</b>	<b>Truck Duck</b>	<b>Stretch Duck</b>
<b>Width</b>	8.5 feet (102 inches)	8.5 feet (102 inches)	8.5 feet (102 inches)
<b>Height</b>	14 feet (168 inches)	12.5 feet (150 inches)	11.2 feet (134 inches)
<b>Length</b>	40 feet (480 inches)	33 feet (396 inches)	33 feet (396 inches)

Appendix Q contains examples and photos, including dimensions, of other types of large vehicles currently operating on Seattle streets.

## Vehicle Inspections

Commission staff follows the CVSA North American Standard Inspection Procedures for vehicle inspections.<sup>26</sup> During CVSA inspections, commission staff inspects the following items on each vehicle:

- Brake system
- Coupling devices
- Exhaust system
- Frame
- Fuel system
- Lighting devices (turn signals, brake lamps, tail lamps, head lamps, lamps on projecting loads)
- Safe loading – securement of cargo
- Steering mechanism
- Suspension
- Tires
- Van and open-top trailer bodies
- Wheels and rims
- Windshield wipers
- Emergency exits and/or electrical cable and systems in engine and battery compartments (buses)

If commission staff finds a defect related to any of these items during the inspection, staff notes a violation of the relevant part of the CFR and provides the information to the company. Whenever possible, the company corrects the violation during the inspection and commission staff verifies the correction. In cases where violations are more serious, commission staff may place a vehicle out-of-service until the defect is corrected.

For the 2015 compliance review investigation, commission staff conducted the vehicle inspections in two phases: the “Truck Duck” inspections occurred during the first phase and the “Stretch Duck” inspections occurred during the second phase. A complete listing of all vehicles owned and operated by Ride the Ducks is contained in Appendix R.

<sup>26</sup> The commission adopts by reference the CVSA North American Standard Out-of-Service Criteria, which contains CVSA Inspection Procedures. (WAC 480-30-999)

## Truck Ducks

An inspection team, led by commission Safety Compliance Investigator Gilbert, conducted inspections of the company's ten "Truck Duck" vehicles at the Ride the Ducks facility on Oct. 6 and 7, 2015. Mr. Foster and Ms. Gagne assisted Mr. Gilbert with the inspections.

David Pratt, commission Assistant Director for Transportation Safety, Sandra Yeomans, commission Safety Compliance Investigator, and Mike LaPonte, NTSB Highway Accident Investigator, observed the inspections.<sup>27</sup>

## Violations

All 10 "Truck Duck" vehicles<sup>28</sup> passed a CVSA inspection. Although the "Truck Duck" vehicles received an overall passing grade, commission staff found 11 total violations of 49 CFR Part 396 - Inspection, repair and maintenance, as follows:

- **One violation of 49 CFR Part 396.3(a)(1) - Inspection, repair and maintenance of parts and accessories: tie rod boot cracked – left front.** Duck 10 had a cracked tie rod end grease boot. This part was repaired by the carrier and the repair was verified by commission staff.
- **10 violations of 49 CFR Part 396.17(c) – Periodic Inspection: operating a CMV without proof a periodic inspection.** Ride the Ducks failed to ensure that each of the "Truck Duck" vehicles had a copy of its periodic inspection report on board. Copies of periodic inspections have since been placed on all vehicles, which has been verified by commission staff.

## Stretch Ducks

Mr. Gilbert, Mr. Foster, and Ms. Gagne conducted inspections of the company's eight operational "Stretch Duck" vehicles<sup>29</sup> at the Ride the Ducks facility on Nov. 16 and 17, 2015, following the same inspection procedure utilized for the "Truck Duck" vehicles. Mr. Pratt observed the inspections. Commission staff did not inspect the two remaining "Stretch Duck" vehicles: Duck 6, which was involved in the Sept. 24 incident and is part of the NTSB investigation; and Duck 20, which is a new vehicle that has not yet been put into service.

Additional parties were present for the "Stretch Duck" inspections. NTSB staff observed commission staff's inspections. All other individuals observing these inspections are formal "parties" to the NTSB investigation. Observers included:

- NTSB staff: Pete Kotowski, Investigator in Charge; Brian Bragonier, Vehicle Specialist; and Adrienne Lamm, Materials Engineer

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<sup>27</sup> Mr. Gilbert, Mr. Foster, Ms. Gagne and Mr. LaPonte are certified to conduct CVSA inspections. Commission staff's photos from the "Truck Duck" vehicle inspections are included at Appendix S.

<sup>28</sup> Vehicle numbers 7, 9, 10, 11, 12, 14, 15, 16, 17, 18.

<sup>29</sup> Vehicle numbers 1, 2, 3, 4, 5, 8, 19, 21

- US Coast Guard: Bill Hockensmith, CWO2, Safety Inspector
- Seattle Police Department: Detective Andrew Norton, Chief Investigator
- Ride the Ducks International: Frank English, Manager, Fleet Operations and Safety

## Violations

As described immediately below, five “Stretch Duck” vehicles passed a CVSA inspection and three did not. Of the three that failed inspection, one vehicle was placed out of service by commission staff due to a defective condition involving brake lights. The defective condition was corrected while staff was present. The other violations must be corrected before the vehicles are operated again.

Commission staff found six total violations of 49 CFR Part 396 - Inspection, repair and maintenance, and one violation of 49 CFR Part 393 – Parts and accessories necessary for safe operation, as follows:

- **Four violations of 49 CFR Part 396.17(c) – Periodic inspection: operating a CMV without proof of periodic inspection.** Ride the Ducks failed to ensure that each of the “Stretch Duck” vehicles had a copy of its periodic inspection report on board. Copies of periodic inspections have since been placed on all vehicles, which has been verified by commission staff.
- **Two violations of 49 CFR Part 396.5(b) – Lubrication: oil and/or grease leak.** The hubs on the front axles of Duck 8 and Duck 21 had minor grease leaks. These defects must be corrected prior to the vehicles being operated again.
- **One violation of 49 CFR Part 393.9(a) – Lamps operable, prohibition of obstructions of lamps and reflectors: inoperable required lamp - brake lights.** Staff placed Duck 1 out of service for having inoperable brake lights. Ride the Ducks’ maintenance staff corrected this condition prior to the end of the inspection. Staff verified this repair.

As of the date of this report, all operational “Truck Duck” vehicles passed commission staff’s inspections. Of the eight “Stretch Duck” vehicles inspected, six passed commission staff’s inspection. The defects found in Duck 8 and Duck 21 must be corrected prior to the vehicles being operated again.

## Service Bulletins

In its complaint, the commission asked its safety compliance staff to determine through its investigation whether Ride the Ducks received the service bulletin issued by Ride the Ducks International advising of issues with the axle housing, and what steps the company took, if any, to remedy any such defect in its vehicles.<sup>30</sup>

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<sup>30</sup> Complaint for Violations of Vehicle Safety Rules, paragraph 5.

The service bulletin the commission referred to was identified by the NTSB as a “notice” in a public statement made at a news conference on Sept. 27, 2015. The NTSB stated that the notice (SB 00-14-13), issued by Ride the Ducks International on Oct. 1, 2013, addressed potential axle issues on “Stretch Duck” vehicles. The NTSB reported that the notice contained directions for inspecting and making modifications to the axle, if necessary.

The commission’s safety jurisdiction does not extend to service bulletins and to staff’s knowledge there are no federal or state rules that prescribe action on service bulletins. However, commission staff did look into the circumstances surrounding SB 00-14-13 during its investigation.

An NTSB investigator provided a copy of SB 00-14-13 to commission staff. SB 00-14-13 contains the following information:

**“Reason for release:** To avoid axle fractures and to strengthen the connection where the knuckle housing ball connects to the axle housing.

**Urgency:** As soon as practical and prior to operating in 2014. Until such time this bulletin is reconciled, all maintainers are to add the daily visual inspection of the front wheels.

**Daily Inspection:** Due to the axle knuckle boots covering the connection in question, the visual detection of a failing axle housing is not possible. However, during visual examination, with the (front wheels straight) you identify a wheel or wheels as being (vertically canted) the Duck should be removed from service, the damaged axle housing removed (scrapped) and replaced with an axle housing that has been modified in accordance with this service bulletin.”<sup>31</sup>

The service bulletin included directions for performing the recommended modifications. The bulletin stated that modifications must be performed by qualified personnel using only authorized components specified or provided by Ride the Ducks International.

During the course of the investigation, commission staff asked Ride the Ducks’ maintenance personnel if the company implemented the recommendations from SB 00-14-13. Maintenance personnel indicated that they conduct daily visual inspections of the wheels on each vehicle as part of their pre-trip inspections, including checking for any vertical canting of the front wheels. Ride the Ducks’ maintenance personnel reported that they have not identified any canting to date and took no further action regarding the bulletin.

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<sup>31</sup> Appendix T contains a complete copy of SB 00-14-13.

During the “Stretch Duck” vehicle inspections, commission staff visually inspected each front wheel for signs of vertical canting. No canting was observed. Ride the Ducks’ maintenance personnel removed the wheels, brakes, steering components, and waterproof boots to completely expose the axle housings. Commission staff then completed visual inspections of the axle housings and were unable to identify any damage on any of the axles or axle housings.

Further investigation showed that small metal plates had been welded to each front axle housing on three of the “Stretch Duck” vehicles: Ducks 1, 3, and 8. According to NTSB staff, Duck 6, the vehicle involved in the Sept. 24 incident, also had these welded plates on its front axle housings. NTSB staff informed commission investigators that beginning in 2003, Ride the Ducks International welded these plates to “Stretch Duck” axles prior to selling the vehicles to Ride the Ducks franchises. Commission staff confirmed that “Stretch Duck” vehicles 1, 3, 6, and 8 were all purchased by Ride the Ducks Seattle after 2003.

In order for commission investigators to complete a more in-depth examination, NTSB staff assisted commission investigators by cleaning the welds, which attach the metal plates to the front wheel axle housings, on Duck vehicles 1, 3, and 8, in the presence of commission staff. This revealed small cracks along the welds on four of the metal plates: one weld on the left wheel of vehicle 1, one weld on the left wheel of vehicle 3, and three welds on vehicle 8 (two on the right wheel and one on the left). The cracks did not appear to extend into the axles but ran the length of the weld.<sup>32</sup>

Ride the Ducks has hired a specialist to evaluate the axle housings on its “Stretch Duck” vehicles. This specialist will provide recommendations to the company if any action is needed. The company has pledged it will not operate the “Stretch Duck” vehicles until this evaluation is complete and any recommendations are implemented. Commission staff supports this approach.

## **Records Review**

During a compliance review investigation, commission staff examines records related to drivers’ hours of service, maintenance and inspection, driver qualification, commercial drivers’ license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records, to determine whether the motor carrier meets the safety fitness standard.

Commission staff’s investigation includes the carrier’s compliance with regulations identified as “acute” or “critical” in 49 CFR Part 385.

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<sup>32</sup> Commission staff’s photos from the NTSB “Stretch Duck” axle examinations at Appendix U.

- “Acute” regulations are those identified as such where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier.<sup>33</sup>
- “Critical” regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier’s management controls.<sup>34</sup>

Instances of non-compliance with an acute regulation or patterns of noncompliance with a critical regulation are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.<sup>35</sup> The list of acute and critical regulations is included at Appendix A.

During the review of Ride the Ducks’ records, commission staff discovered violations of eight CFR parts. Staff found one violation of an acute regulation, and six violations of a critical regulation. Staff found 131 violations of five other critical regulations, but the violations found for each of those regulations did not establish a pattern. Staff also found 304 recordkeeping violations of 17 non-acute/non-critical regulations.

The following provides an explanation of each violation type and the total number of violations found.

### *Violation of Acute Regulation*

1. **One violation of 49 CFR Part 383.37(b) – Allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver has a CLP or CDL disqualified by a State, has lost the right to operate a CMV or has been disqualified from operating a CMV.** Driver Jeff Myers’ CDL was inactivated by the Washington State Department of Licensing on April 4, 2015, following the expiration of his medical certificate. Staff found Mr. Myers drove on 11 occasions without a valid CDL.

### *Pattern of Non-Compliance with Critical Regulations*

2. **Six violations of 49 CFR Part 382.305(b)(2) – Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.** Staff found that only 14 random drug tests were completed of the 20 required in 2014.

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<sup>33</sup> 49 CFR Part 385, Appendix B (II)(b) – see Appendix A.

<sup>34</sup> 49 CFR Part 385, Appendix B (II)(c) – see Appendix A.

<sup>35</sup> The FMCSA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers’ adherence to the safety fitness standard in §385.5. Appendix B to 49 CFR Part 385 – Explanation of Safety Rating Process – see Appendix A.



***Other Violations of Critical Regulations - No Pattern Established** (A pattern is more than one violation. When multiple documents are reviewed, the number of violations required to meet a pattern is equal to at least 10 percent of those examined. Appendix B to 49 CFR Part 385 – Explanation of Safety Rating Process)*

3. **One violation of 49 CFR Part 382.305(b)(1) – Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.** Staff found that only three of the four required random alcohol tests were completed in 2014.
4. **One violation of 49 CFR Part 391.45(b)(1) – Using a driver not medically examined and certified during the preceding 24 months.** Driver Jeff Myers’ medical certification expired on April 3, 2015. Staff found that Mr. Myers drove on 11 occasions without current medical certification.
5. **One violation of 49 CFR Part 391.51(b)(7) – Failure to maintain medical examiner’s certificate in driver’s qualification file.** Staff found that the carrier failed to maintain copies of medical examiner’s certificate within driver Adam Clemons’ driver qualification file.
6. **35 violations of 49 CFR Part 395.5(b)(2) – Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 70 hours in eight consecutive days.** Staff examined 1,230 records related to this requirement and found that the carrier allowed 14 drivers to violate the 70-hour rule a total of 35 times. The 35 violations found did not establish a pattern because they did not amount to at least 10 percent of the records examined.
7. **93 violations of 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Staff examined 1,230 records related to this requirement and found that the carrier failed to require drivers to make a record of duty status (log book) when exceeding limitations for short-haul operations. Thirty-one drivers failed to make a record of duty status a total of 93 times. The 93 violations found did not establish a pattern because they did not amount to at least 10 percent of the records examined. This is a repeat violation from the 2012 compliance review inspection. Ride the Ducks knew or should have known how to comply with this requirement.

***Recordkeeping Violations (Non-Acute / Non-Critical Regulations)***

8. **26 violations of 49 CFR Part 380.509(b) – Failing to maintain a copy of the driver’s training certificate in the driver’s personnel or qualification file.** Staff found that the carrier failed to maintain a copy of entry level driver’s training certificates on file in accordance with Part 380.513 for 26 drivers.
9. **Two violations of 49 CFR Part 382.305(i)(3) – Failing to ensure that drivers are tested within the selection period.** Staff found that out of nine random drug and alcohol selections during the second quarter, one driver failed to test as required.
10. **One violation of 49 CFR Part 382.305(k)(2) – Failing to ensure that random testing dates are reasonably spread throughout the calendar year.** Staff found that in 2014, the carrier had drivers entered into its random drug and alcohol pool during all four quarters with selections made in each quarter, but only tested during the first, third and fourth quarters.
11. **One violation of 49 CFR Part 382.601(b) – Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of part 382.601(b).** Staff found that the carrier’s policy is missing required information concerning the effects of alcohol and controlled substances use on an individual’s health, work and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver’s or a co-worker’s); and, available methods of intervening when alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.
12. **One violation of 49 CFR Part 390.15(b)(1) – Failing to keep an accident register in the form and manner prescribed.** Staff found that the carrier’s accident register fails to show city and state of accident, number of fatalities, and whether any hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released.
13. **One violation of CFR 49 Part 390.19(b)(2) – Failing to file the appropriate form under part 390.19(a) (MCS-150, 150B, or 150C) each 24 months according to the schedule.** Staff found that the carrier failed to ensure a current MCS-150 was on file with USDOT. The previous MCS-150 was filed on Jun. 6, 2009.
14. **51 violations of 49 CFR Part 391.21(a) – Using a driver who has an incomplete employment application.** Staff found that the carrier failed to ensure a complete application was on file as applications were missing the date of birth for all employees.

Date of birth is essential to determine driver minimum age requirements for all CDL-licensed personnel.

15. **Three violations of 49 CFR Part 391.23(b) – Failing to maintain a copy of the motor vehicle record(s) obtained in response to the inquiry of each State within 30 days of the date of the driver’s employment begins.** Staff found that the carrier hired three drivers (Patrick Najou, Mizrain Rodriguez-Rubio and Robert Krauthamer) and failed to maintain a copy of each driver’s abstract in the driver’s file within 30 days of hire.
16. **21 violations of 49 CFR Part 391.25(a) – Failing to make an inquiry into the driving record of each driver to the appropriate State agencies in which the driver held a commercial motor vehicle operator’s license at least once every 12 months.** Staff found that the carrier failed to inquire about driver records within 12 months for 21 drivers.
17. **21 violations of 49 CFR Part 391.25(b) – Failing to review the driving record of each driver to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive.** Staff found that the carrier failed to review the driving records for 21 drivers within a 12-month period.
18. **21 violations of 49 CFR Part 391.27(a) – Failing to require drivers the carrier employs to prepare and furnish with a listing of all violations of motor vehicle traffic laws and ordinances at least once every twelve months.** Staff found that the carrier failed to require drivers to complete a listing of all violations of motor vehicle traffic laws at least once every 12 months for 21 drivers.
19. **Two violations of 49 CFR Part 391.51(b)(4) – Failing to maintain the responses of each State agency to the annual driver record inquired required by Part 391.25(a).** Staff found that the carrier failed to maintain an annual drivers abstract for calendar year 2014 for two drivers (Steven Kodish and Dylan Richardson).
20. **51 violations of 49 CFR Part 391.51(b)(9) –Failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners required by 391.23(m) in driver qualification file(s).** Staff found that the carrier failed to place a note in the driver qualification file related to the verification of the medical examiner’s listing for 51 drivers.
21. **One violation of 49 CFR Part 392.2 – Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (RCW 81.70.280 and WAC 480-30-191(3)).** Staff found that the carrier failed to ensure that the Liability Insurance Form E was current and on file with the commission. Ride the Ducks maintained the proper insurance coverage but did not have the current

Form E on file with the commission as required. Insurance history for the last 10 years was obtained from the carrier and reviewed by the investigator. There was no lapse in coverage. However, on Dec. 7, 2015, Ride the Ducks' insurance carrier notified the commission that it intends to cancel the company's insurance policy effective Apr. 15, 2016.

22. **90 violations of CFR 49 Part 396.13(c) – Failing to require driver to sign the last vehicle inspection report when defects or deficiencies were noted.** Staff found that on 90 separate occasions, a daily vehicle inspection report was noted with a discrepancy from the previous day and the carrier failed to have the driver sign stating that the discrepancy was either repaired or did not require repair.
23. **Three violations of CFR 49 Part 396.21(b) – Failing to retain periodic inspection report for 14 months from date of inspection.** Staff found that Duck vehicles 12, 14, and 15 did not have documentation of an annual periodic inspection completed in 2013.
24. **Eight violations of CFR 49 Part 396.25(e) – Failing to retain evidence of brake inspector's qualifications.** Staff found that the carrier had no documentation of brake inspector's qualifications on file for eight employees. The carrier has since corrected this by providing evidence of qualifications.

Ride the Ducks also had two recordable accidents in 2015: one on February 7 involving a Ducks vehicle collision with another vehicle; and, the Sept. 24 Aurora Bridge incident. A recordable accident means an occurrence involving a commercial motor vehicle on a highway that results in a fatality, bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or one or more vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.<sup>36</sup>

**This compliance review investigation resulted in a proposed *unsatisfactory* safety rating for Ride the Ducks.** The factors that contributed to the proposed rating include one violation of an acute regulation and six violations of a critical regulation, as well as the two recordable accidents in 2015.

Commission staff found 131 violations of five other critical regulations, but the violations found for each of those regulations did not establish a pattern and therefore were not a factor in determining the proposed safety rating. Staff also found 304 recordkeeping violations of 17 non-acute/non-critical regulations.

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<sup>36</sup> 49 CFR Part 390.5 – Definitions.

Recordkeeping requirements are in place to ensure that carriers are collecting, reviewing, evaluating, and maintaining important documents to ensure compliance with safety rules.

Carriers have 45 days from the date the proposed unsatisfactory rating was issued to request a change to the safety rating. A carrier's request to change its safety rating must be based upon evidence that the company has taken corrective actions to address the violations identified and that company operations currently meet the safety fitness standard as specified in 49 CFR Parts 385.5 and 385.7.

Carriers with proposed unsatisfactory safety ratings are generally allowed to operate during this 45-day period. However, if on the 46<sup>th</sup> day the carrier has not adequately complied with these requirements, they are prohibited from operating.<sup>37</sup>

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<sup>37</sup> 49 CFR Part 385 outlines the requirements for carriers that receive unsatisfactory safety ratings.

## **STAFF FINDINGS AND RECOMMENDATIONS**

The commission regulates excursion service carriers with respect to safety of equipment, driver qualifications, and safety of operations per RCW 81.70.270.

Commission rules require excursion service carriers to comply with all state and local laws and rules governing licensing, vehicle safety and driver safety. Carriers must also comply with the parts of Title 49 Code of Federal Regulations (CFR) adopted by the commission per WAC 480-30-221(1).

Carriers must maintain all motor vehicles in a safe and sanitary condition and ensure that vehicles are free of defects likely to result in an accident or breakdown per WAC 480-30-221(2). All motor vehicles operated by an excursion service carrier are at all times subject to inspection by the commission or its duly authorized representatives per WAC 480-30-221(5).

The commission is authorized to administer and enforce laws and rules relating to passenger transportation companies. The commission may delegate authority to the commission staff to inspect equipment, drivers, records, files, accounts, books, and documents. The commission may also delegate to its staff the authority to place vehicles and drivers out-of-service per WAC 480-30-241(1).

The commission encourages voluntary compliance with statutes, rules, and commission orders per WAC 480-30-241(2).

The commission enforces statutes, rules, and commission orders through a program emphasizing education and technical assistance and a compliance program including safety compliance reviews of drivers and equipment per WAC 480-30-241(3).

Where necessary to ensure compliance, the commission may pursue administrative actions that the commission believes will best ensure future compliance per WAC 480-30-241(4).

In Order 02, the commission adopted the joint stipulation filed by commission staff and Ride the Ducks, and ordered staff to conduct a comprehensive investigation covering all safety aspects of the company's operations. Through the compliance review investigation, commission staff determined that Ride the Ducks violated WAC 480-30-221 a total of 442 times. All of the violations discovered were avoidable and must be corrected immediately.

## Recommendations

Staff recommends the following:

1. Ride the Ducks' excursion service carrier operating authority should be restored and the company should be allowed to resume operations in its "Truck Duck" vehicles.
2. By Jan. 29, 2016, Ride the Ducks must request and receive a change to its proposed unsatisfactory safety rating. The request must include a written safety management plan that provides a detailed description of the corrective actions taken to address each specific violation and outlines how the company will stay in compliance with each requirement in the future. The plan must also include:
  - a. Identification and designation of company personnel with overall responsibility for ensuring Ride the Ducks is in compliance with USDOT requirements and that safety policies, practices, and rules are being followed. Ride the Ducks must ensure that this person (or persons) is fully trained on the safety requirements and is authorized and required to hold staff accountable for following safety requirements.
  - b. A description of company expectations for its staff related to safety requirements.
  - c. A statement verifying the review of the company's current training programs and a description of any updates. Staff recommends Ride the Ducks provide refresher training for all staff, including drivers, mechanics, office staff, and other support staff, focusing on the areas where violations were discovered and emphasizing the importance of compliance.
  - d. A statement verifying the review and update of the company's policies and procedures to ensure a corrective action plan for staff that do not comply with safety requirements.

When commission staff confirms that Ride the Ducks' safety management plan meets these requirements, the company's safety rating will be upgraded to "conditional" and that rating will stay in place until the next rated compliance review investigation.

3. Staff recommends follow-up compliance review investigations of Ride the Ducks in six months, and again in twelve months, to determine if Ride the Ducks is following its safety management plan and to verify compliance with state and federal safety requirements. Staff will conduct vehicle inspections during these visits as well.
4. After two years, staff will conduct another compliance review investigation and issue a safety rating based on the outcome of that investigation.

5. For the “Stretch Ducks” vehicles, commission staff recommends that the company be required to submit the results of the specialist’s evaluation of the front axle housings to staff for review. Commission staff will then make a recommendation to the commission about whether to return the “Stretch Ducks” to service.
  
6. Commission staff also recommends the commission assess administrative penalties. The commission is authorized to penalize Ride the Ducks up to \$1,000 per violation for all violations found during the compliance review investigation, as provided by RCW 81.04.380. Commission staff intends to move to amend the commission’s complaint in this matter to seek imposition of administrative penalties against Ride the Ducks.



**Reference Materials – *provided by Ride the Ducks of Seattle***

- Safety Management System for Captains, Maintenance and Safety Personnel
- Captain-Crew Safety and Maintenance Personnel Training Manual
- Ride the Ducks – 2015 Tour Development Training Manual
- Ride the Ducks of Seattle – Sample Tour Script 2014
- Ride the Ducks Captain Training Guide
- Ride the Ducks Captain Training schedule
- Ride the Ducks Train the Trainer Guide
- Student Guide to Seattle Ducks – focus is on water portion of tour
- Ride the Ducks 2015 Technical Training Manual
- Power Point slides to support training materials