


ATTACHMENT #5

POST-ACCIDENT COMPLIANCE REVIEW

(11 Pages)

UNITED STATES DEPARTMENT OF TRANSPORTATION

	US DOT # 90053	Legal: ASSOCIATED WHOLESALE GROCERS INC Operating (DBA):																						
MC/MX #:		Federal Tax ID: 48-0614866 (EIN)																						
Review Type: Compliance Review (CR)																								
Scope: Principal Office		Location of Review/Audit: Company facility in the U. S.		Territory:																				
Operation Types <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;">Interstate</td> <td style="width:15%;">Intrastate</td> <td colspan="3"></td> </tr> <tr> <td>Carrier: HM</td> <td>N/A</td> <td colspan="3">Business: Corporation</td> </tr> <tr> <td>Shipper: N/A</td> <td>N/A</td> <td colspan="3">Gross Revenue: \$6,853,519,000.00 for year ending: 12/27/2008</td> </tr> <tr> <td>Cargo Tank:</td> <td>N/A</td> <td colspan="3"></td> </tr> </table>					Interstate	Intrastate				Carrier: HM	N/A	Business: Corporation			Shipper: N/A	N/A	Gross Revenue: \$6,853,519,000.00 for year ending: 12/27/2008			Cargo Tank:	N/A			
Interstate	Intrastate																							
Carrier: HM	N/A	Business: Corporation																						
Shipper: N/A	N/A	Gross Revenue: \$6,853,519,000.00 for year ending: 12/27/2008																						
Cargo Tank:	N/A																							
Company Physical Address: 5000 KANSAS AVENUE KANSAS CITY, KS 66106																								
Contact Name: Rob Jones Phone numbers: (1) 913- 288-1020 (2) 417-875-4505 Fax E-Mail Address:																								
Company Mailing Address: 5000 KANSAS AVENUE KANSAS CITY, KS 66106																								
Carrier Classification Private Property																								
Cargo Classification Refrigerated Foods Other: Charcoal																								
Hazardous Materials ORM-D Carried Non-Bulk																								
Does carrier transport placardable quantities of HM? No Is an HM Permit required? N/A																								
Driver Information <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;"></td> <td style="width:10%;">Inter</td> <td style="width:10%;">Intra</td> <td colspan="2">Average trip leased drivers/month: 0</td> </tr> <tr> <td>< 100 Miles:</td> <td></td> <td></td> <td colspan="2">Total Drivers: 305</td> </tr> <tr> <td>>= 100 Miles:</td> <td>305</td> <td></td> <td colspan="2">CDL Drivers: 305</td> </tr> </table>						Inter	Intra	Average trip leased drivers/month: 0		< 100 Miles:			Total Drivers: 305		>= 100 Miles:	305		CDL Drivers: 305						
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	Owned	Term Leased	Trip Leased		Owned	Term Leased	Trip Leased																	
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Power units used in the U.S.: 215 Percentage of time used in the U.S.: 100																								





ASSOCIATED WHOLESALE GROCERS INC
U.S. DOT #: 90053

Review Date:
07/10/2009

Part A

Questions about this report or the Federal Motor Carrier Safety or Hazardous Materials regulations may be addressed to the Federal Motor Carrier Safety Administration at:

Address not available

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Rob Jones

Title: Corporate Environmental Safety

Name:

Title:





Part B Violations

1 FEDERAL	Primary: 40.11(a) Secondary: 382.105	Discovered 16	Checked 19	Drivers/Vehicles In Violation 16 Checked 19
<p>Description Failing to ensure that controlled substances and or alcohol testing complies with the procedures set forth in 49 CFR Part 40.</p> <p>Example Driver [REDACTED] was involved in a DOT recordable accident on 5/08/09. Driver [REDACTED] was directed to take a DOT post accident alcohol/controlled substance test even though he did not receive a citation. The motor carrier did not follow the procedures set forth in the FMCSR regulations and should not have used a federal custody control form to meet the requirements of the company's drug and alcohol testing.</p>				
2 FEDERAL	Primary: 40.47(a) Secondary: 382.105	Discovered 12	Checked 16	Drivers/Vehicles In Violation 12 Checked 16
<p>Description Using a DOT custody and control form to perform non-DOT test.</p> <p>Example [REDACTED] test date 6/22/09, trip date 6/22/09. Involved in a reportable DOT accident. Driver Long was not issued a traffic citation for the accident. Driver [REDACTED] should not have been tested using the DOT federal custody control form.</p>				
3 FEDERAL ACUTE	Primary: 382.215	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1 Checked 1
<p>Description Using a driver known to have tested positive for a controlled substance.</p> <p>Example Driver [REDACTED] was selected for a random drug test during the first quarter of 2008. The urine sample was collected on 01/24/08 resulting is a positive verified by MRO Norman Weber on 01/28/08. Driver [REDACTED] was not removed from performing safety sensitive functions and the motor carrier failed to require him to report to a SAP. Driver [REDACTED] drove in interstate commerce on 7/03/09.</p>				
4 FEDERAL CRITICAL	Primary: 382.301(a)	Discovered 2	Checked 9	Drivers/Vehicles In Violation 2 Checked 9
<p>Description Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.</p> <p>Example Driver [REDACTED] - Trip date 10/27/08. Driver [REDACTED] was removed from safety sensitive functions and the random testing pool on 6/26/08. Driver [REDACTED] was returned to work performing safety sensitive functions and the random testing pool on 10/01/08. Driver [REDACTED] was not tested in accordance with the DOT regulations after being out of the random testing pool 30 days.</p>				
5 FEDERAL	Primary: 382.401(c)(6)	Discovered 2	Checked 6	Drivers/Vehicles In Violation Checked
<p>Description Failing to maintain semi-annual laboratory statistical summaries of urinalysis required by 40.29(g)(6).</p> <p>Example Three terminals were checked. The Kansas City terminal did not have the 2008 semi-annual summaries. Driver [REDACTED] had a random test on 01/24/08.</p>				





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Part B Violations

6 FEDERAL	Primary: 390.15(b)(1)	Discovered 2	Checked 11	Drivers/Vehicles In Violation	Checked
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Description

Failing to keep an accident register in the form and manner prescribed.

Example

On 5/08/09, driver [REDACTED] reportable accident was not entered on the accident register.

7 FEDERAL	Primary: 391.25(a)	Discovered 3	Checked 50	Drivers/Vehicles In Violation	Checked 50
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Description

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.

Example

Driver [REDACTED] last MVR is dated 2/16/08. On 07/06/09 driver [REDACTED] drove in interstate commerce.

8 FEDERAL	Primary: 395.8(f)	Discovered 2	Checked 210	Drivers/Vehicles In Violation	Checked 17
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Description

Failing to require driver to prepare record of duty status in form and manner prescribed.

Example

On 6/15/09, driver [REDACTED] did not show a change of duty status indicating his stop for a roadside inspection.

9 FEDERAL	Primary: 396.9(d)(3)	Discovered 3	Checked 20	Drivers/Vehicles In Violation	Checked 20
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Description

Failing to maintain completed inspection form for 12 months from the date of inspection at the carrier's principal place of business.

Example

On 6/15/09, at 3:40 p.m., driver [REDACTED] received a Missouri roadside inspection.

Safety Fitness Rating Information:		OOS Vehicle (CR): 0	
Total Miles Operated	18,315,234	Number of Vehicle Inspected (CR): 0	
Recordable Accidents	15	OOS Vehicle (MCMIS): 7	
Recordable Accidents/Million Miles	0.82	Number of Vehicles Inspected (MCMIS): 35	

Your proposed safety rating is : CONDITIONAL	Rating Factors			Acute	Critical
	Factor 1:	S	0	0	
	Factor 2:	U	1	1	
	Factor 3:	S	0	0	
	Factor 4:	S	0	0	
	Factor 5:	S	0	0	
	Factor 6:	S	-	-	

This rating will become the final rating 60 days from the date indicated on a forthcoming official notice from the Federal Motor Carrier Safety Administration headquarters in Washington, D.C.

However, if this rating improves a previous Unsatisfactory rating, it will become effective on the date of the official notice from the FMCSA headquarters.





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07/10/2009

Part B Violations

Corrective actions must be taken for the violations (deficiencies) listed on Part B of this review. Title 49 CFR Sections 385.15 and 385.17 provide for administrative review and a change to a safety rating based on corrective actions, respectively. A request for a change to a safety rating under section 385.17 may be made at any time. A request for administrative review under section 385.15 must be made within 90 days of the date of the proposed safety rating issued under section 385.11(c) or a final safety rating issued under section 385.11(b), or within 90 days after denial of a request for a change in rating under section 385.17.
Null





Part B Requirements and/or Recommendations

1. If you have any questions about this report or other questions, please contact the Federal Motor Carrier Safety Administration at 1303 SW First American Place, Suite 200, Topeka, KS 66604. The office phone number is 785-271-1260.
2. If you do not have a current copy of the Federal Motor Carrier Safety Regulations, you can access the FMCSA web site by going to - fmcsa.dot.gov. The web site provides regulations and other information for motor carriers and drivers. It will also guide you to HM regulations hazmat.gov.
3. If you have access to the internet, please use DataQs (<http://dataqs.fmcsa.dot.gov>) to file your data challenge. This system will track the status of your request from initiation to resolution and notify you when the challenge is resolved.
4. Always have a new driver or a driver who has been out of your random testing pool for more than 30 days take a pre-employment test. A new driver must be retested if more than 30 days has passed since the pre-employment test and the actual hire date. Do not allow the driver to drive until the MRO has verified a negative test.
5. Ensure that all new drivers are immediately placed on a random selection list. Terminated drivers shall be removed from the random selection list. Check list to make sure that all drivers that require a CDL and might drive are on the random testing list.
6. Never allow a driver who has tested positive for controlled substance or .04 % or more for alcohol to drive. The driver is to be immediately removed from the truck when you are notified by the MRO that a test is positive. The driver may not drive any commercial motor vehicle (CMV) whose GVWR is 10,001 pounds or more. The driver must be evaluated by a substance abuse professional before the driver is allowed to drive a CMV. Employers are required to provide a substance abuse professional (SAP) list to a driver who tested positive for drugs or alcohol.
7. The original or a copy of the roadside inspection report shall be retained by the motor carrier or other entity who is responsible for the inspection for a period of twelve months from the date of the inspection report. The original or a copy of the inspection report shall be retained where the vehicle is either housed or maintained. Document and refer in the vehicle maintenance file any repairs that are found during the roadside inspection.
8. Part 391.25. Each motor carrier shall, at least once every 12 months, make an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.
9. NOTICE: On March 30, 2004, FMCSA published a final rule requiring employers to review a candidate's safety performance history data within 30 days of hiring a new driver. The final rule enables prospective employers to obtain and use more complete driver safety performance history during the hiring process. Prospective employers are required to, at a minimum, investigate a driver's employment information, accident record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 year. All previous employers are required to respond to the investigating employer within 30 days of receiving the investigation request.

For more information on these regulations, please access FMCSA's Web site at www.fmcsa.dot.gov. Read Parts 391.23 and 391.53.

10. Part 392.16. A commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly. Instruct all of your drivers to buckle-up. Encourage the passengers to do the same.
11. Post accident drug/alcohol testing may be required for a driver requiring a CDL. The driver must be tested when involved in a fatal accident. The driver will be tested if involved in an accident that requires a disabled vehicle to be towed or an injury accident when a person's injuries require immediate medical attention away from the scene AND





Part B Requirements and/or Recommendations

the driver is given a citation for a moving violation that arises from the accident. A company post accident drug/alcohol testing policy may be used if a USDOT post accident is not required. HOWEVER, you can not use the federal custody control forms. Review Part 382.303 of the FMCSR for all of the requirements.

12.

Part 390.15. Record reportable accidents only. Motor carriers shall maintain for a period of three year after an accident occurs, an accident register containing at least the following information: A list of accidents containing for each accident: Date of accident, City or town in which or most near where the accident occurred and the State in which the accident occurred, Driver name, Number of injuries, Number of fatalities, and Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released. Copies of all accident reports required by State or other governmental entities or insurers.

13. You have three terminals and each is responsible for complying with the FMCSR. You must make sure that all three terminals are consistently complying with the FMCSR and company policies.





Part C

Reason for Review: Other Fatal crash
Planned Action: Prosecution KS-2009-0066-US1167
Safestat Category: H

Parts Reviewed Certification:

325	382	383	387	390	391	392	393	395	396	397	398	399	171	172	173	177	178	180
	✓	✓	✓	✓	✓	✓	✓	✓	✓				✓	✓		✓		

Prior Reviews

8/6/2003
3/23/1994

Prior Prosecutions

Unsat/Unfit Information

Is the motor carrier of passengers subject to the safety fitness procedures contained in 49 CFR part 385 subpart A, AND does it transport passengers in a commercial motor vehicle?

Does carrier transport placardable quantities of hazardous materials? No

Unsat/Unfit rule: 60-Day - no Interstate Passengers or Placardable I

Corporate Contact: Rob Jones

Special Study Information:

Corporate Contact Title: Corporate Environmental Safety

Remarks:

Associated Wholesale Grocers (AWG) is a private interstate motor carrier. AWG is a Co-Op that is owned by grocery store members. The carrier's PPB is 5000 Kansas Ave., Kansas City, KS 66110. The carrier has three terminals. They are located at Kansas City, KS, Springfield, MO and Ft. Worth, TX. The CR took place at the Springfield and Kansas City terminals. A fatal crash in which ten people died was the reason for the CR. The carrier's last CR was 3/23/94 and it received a satisfactory rating. SafeStat placed the carrier in category H and no total score. The SEA scores were: accident - 57, driver - 10, and vehicle - 72. Documents for the CR were provided by each terminal manager. The carrier representatives were very cooperative. An acute and a critical violation were discovered in Part 382. An enforcement case will be written for allowing a positive driver to drive. An enforcement case for failing to do pre-employment test will not be written. Special Agent Mike Brewster assisted with the CR. NSTB Senior Transportation Specialist Gary Van Etten, 1515 W. 190th St., Suite 555, Gardena, CA 90248, office phone 310-380-5459 arrived on 6/30/09. Corporate Environmental Safety & Health Manager Rob Jones obtained Ft. Worth and Kansas City files. The Ft. Worth files was sent to the Kansas City terminal. The carrier has made a very good effort to be in compliance with the FMCSR.

A carrier truck was involved in a ten fatality accident on the Oklahoma Turnpike on 6/26/09. The driver and the truck were based at the Springfield, MO terminal. Contact was made with the Kansas City, KS corporate office. The carrier has three terminals. Each terminal manager maintains all files at their location. The corporate office does not keep any DQ, drug/alcohol, HOS, vehicle maintenance files at its location.

On 06/30/09, SA Brewster and my self went to the Springfield, MO terminal. We met with Director of Transportation Bill Tandy, Corporate Environmental Safety & Health Manager Rob Jones, Transportation Manager Todd Smith, and Transportation Supervisor Dennis Harris. All were very cooperative.

██████████ was the driver involved in the fatal crash. Mr. ██████████ DOB was ██████████ He is 76 years old. The carrier does not have an age limit. Mr. ██████████ has been employed with AWG since 01/21/1992. Mr. ██████████ had driven motor coaches prior to being employed by AWG. His job description was driving the truck and counting the load as it was unloaded. The stores have fork lifts and he seldom helped unload. He was described as being a very dependable driver. He did not have any personnel write-ups. He has not had any roadside inspections. His Missouri CDL expires on ██████████. Missouri re-issues a CDL every three years when a driver turns 70. Mr. ██████████ did not have any accidents prior to the 6/26/2009 accident.

Mr. ██████████ is a qualified driver. The carrier pays for the medical exams and it retains the long form. The Springfield terminal has Concentra Medical Centers, 1308 N Glenstone, Springfield, MO 65802, phone # 417-864-4100 do all of the



Enforcement Case Report

Case #: KS-2009-0066-US1167
U.S. DOT #: 90053
EIN #: 48-0614866
Subject: Associated Wholesale Grocers Inc
 5000 Kansas Avenue
 Kansas City, KS 66106

Violations	Violation Description	Number Discovered	Number Documented
382.215	Using a driver known to have tested positive for a controlled substance.	1	1

Investigation Assigned	6/30/2009	Reviewed by: Jonathan Weiner
Investigation Completed	7/10/2009	Title: FPS
Date NOC Served	8/14/09	Date: 8/11/09

Safety Investigator's Signature *Jonathan Weiner*

Code #: US1167

UNIFORM FINE ASSESSMENT

Subject Information

Name: ASSOCIATED WHOLESALE GROCERS INC

Case #: KS-2009-0066-US1167

Review/Inspection Date: 7/10/2009

Gross Revenue:

Case Type: CR or CR/SCR

Prior Cases: 0

History(FMCSR): No Enforcement History

Factor 6 Rating: Satisfactory

Number of Drivers: 305

Power Units: 215

Fleet Mileage: 18,315,234

Penalty Information

Statutory Criteria Adj. Score : 52%
Maximum Fine Possible: \$11,000
Maximum Fine Possible Cap: \$5,720
Adjusted Gross Revenue: \$131,752,870
Gross Revenue Cap: \$68,511,490
Absolute Cap: \$200,000
Recommended Penalty: \$5,720 (\$5,150 to \$6,290)
Assessed Penalty: \$4,400
Within Range? No

Violations Documented

Primary #: 382.215

Category: Non-Recordkeeping High

Recommended Penalty: \$4,400.00

of Records Checked: 1

Number Documented: 1

of Violations Discovered: 1

Documented Fine Total: \$4,400.00

Normalized # of Violations: 1

History: No Enforcement History

Extent: 100% **(Special Case: 1 checked - 1 violation found)**

Gravity: Violation which could reasonably cause or contribute to an accident

Activity: Should have known of the activity

Rule: Did know of the rule

Description: Using a driver known to have tested positive for a controlled substance.