



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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September 2, 2020

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Wise Choice Movers, LLC*
Commission Staff's Response to Application for Mitigation of Penalties
Docket TV-200711

Dear Mr. Johnson:

On August 18, 2020, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against Wise Choice Movers, LLC, (Wise Choice or Company) in the amount of \$5,000 for violations of Washington Administrative Code (WAC) 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 396 – Inspection, Repair and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts 49 CFR Part 391 – Qualification of Drivers and 49 CFR Part 395 – Hours of Service of Drivers, as follows:

- **Forty-six violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Wise Choice allowed drivers Steven Spruel, Mark Marshall, and Danny Plotner to operate a commercial motor vehicle without a valid medical certificate on 46 occasions between February 24 and March 22, 2020.
- **Three violations of 49 CFR § 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 CFR § 391.27.** The Company failed to maintain a list or certificate of all violations of motor vehicle traffic laws and ordinances for drivers Steven Spruel, Mark Marshall, and Danny Plotner.
- **Three violations of 49 CFR § 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 49 CFR § 391.23(m) in driver qualification file(s).**

Wise Choice failed to verify the medical examiners listed on the medical certificates of drivers Steven Spruel, Mark Marshall, and Danny Plotner with the national registry.

- **Sixty violations of 49 CFR § 395.8(a)(1) – Failing to require driver to make a record of duty status.** The Company failed to require drivers Steven Spruel and Danny Plotner to complete a record of duty status on 60 occasions between June 1 and June 30, 2020.
- **One violation of 49 CFR § 396.25(d) – Failing to ensure that each brake inspector meets the minimum qualifications.** Wise Choice failed to ensure that its brake inspector Peter Fernandez met the minimum qualifications.

On August 20, 2020, Wise Choice filed with the Commission its application for mitigation of penalties. In the request for mitigation, Shane Wise, owner of Wise Choice, admits the violations, asks that the penalties be reduced, and describes steps the Company took to prevent future occurrences, as follows:

- **49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Wise Choice obtained valid medical certificates for all its drivers prior to the routine safety investigation and has since implemented a new calendaring system to prevent lapses in medical certification.
- **49 CFR § 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 CFR § 391.27.** Wise Choice states it created an annual reminder to inspect its drivers' records to ensure that there are not recent violations pertaining to motor vehicle laws and ordinances. In addition, Wise Choice states that if driver violations are identified, the Company will document the violations in the respective driver qualification file.
- **49 CFR § 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 49 CFR § 391.23(m) in driver qualification file(s).** Wise Choice states it established a new procedure to verify each driver's medical certificate through the National Registry of Certified Medical Examiners and will place a note in the driver qualification file to comply with this regulation.
- **49 CFR § 395.8(a)(1) – Failing to require driver to make a record of duty status.** Wise Choice states it updated its timecards, which will result in maintaining complete and accurate records of duty status.
- **49 CFR § 396.25(d) – Failing to ensure that each brake inspector meets the minimum qualifications.** Wise Choice obtained evidence verifying that its brake inspector meets the minimum qualifications and has been ASE certified. The Company states that the brake inspector has signed both documents that are required by Commission regulations and maintains those records in its files.

In response to the request for mitigation, the Company corrected each violation and took steps to prevent future occurrences. Staff addresses the penalties below.

- The Commission assessed a “per category” penalty of \$100 for the violations of 49 CFR § 391.51(b)(6), 49 CFR § 391.51(b)(9), and 49 CFR § 395.8(a)(1); as opposed to assessing penalties per occurrence. For this reason, staff recommends no mitigation of these penalties.
- The Commission assessed penalties of \$100 for one occurrence of 49 CFR § 396.25(d) and \$4,600 for 46 occurrences of 49 CFR § 391.45(a). While these are repeat violations, the Company has corrected the violations and put safety controls in place to prevent future occurrences. For these reasons, staff recommends each penalty be reduced by half.

Staff recommends the penalty of \$5,000 be reduced to \$2,650. If you have any questions, please contact Jason Hoxit, Compliance Investigator, Transportation Safety, at (360) 867-8305, or by email at Jason.Hoxit@utc.wa.gov.

Sincerely,

 Digitally signed by Sharp,
Jason (UTC)
Date: 2020.09.02
07:32:09 -07'00'

Jason Sharp
Motor Carrier Safety Supervisor, Transportation Safety