

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES**

**PENALTY ASSESSMENT: TE-170713
PENALTY AMOUNT: \$1,600**

ALCLS, LLC
1918 South Markwell Court
Spokane, WA 99223

The Washington Utilities and Transportation Commission (Commission) believes that ALCLS, LLC (ALCLS) has committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which requires charter and excursion companies to comply with Title 49 CFR Part 382 – Controlled Substances and Alcohol Use and Testing, and Part 395 – Hours of Service of Drivers.

Revised Code of Washington (RCW) 81.04.530 allows a penalty of \$1,500 for failing to comply with the controlled substances and alcohol use and testing requirements of Title 49 CFR Part 382. RCW 81.04.405 allows penalties of \$100 for each violation of Part 395. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In April 2017, Commission Motor Carrier Investigator Sandi Yeomans conducted a compliance review of ALCLS and documented the following violations:

- **One violation of Title 49 CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations.** Because ALCLS operates a 20-passenger Hummer, the company must have an alcohol and/or controlled substances testing program. ALCLS had no such program.
- **Eleven violations of Title 49 CFR Part 395.8(a) – Failing to require a driver to prepare a record of duty status using appropriate method.** On eleven occasions driver Rose Zaring failed to complete hours of service records with start and stop times and total hours per trip.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that fail to provide an alcohol and/or controlled substances testing program when required, or who fail to require its drivers to record hours of service put the traveling public at risk. An impaired or fatigued driver presents serious safety concerns.

2. **Whether the violation is intentional.** Considerations include:

- Whether the company ignored Commission staff's previous technical assistance; and
- Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

In its 2004 application for charter and excursion authority, ALCLS owner Rose Zaring affirmed that she had a copy of and understood the applicable motor carrier safety regulations. Commission staff provided new entrant technical assistance to the company. And since 2004, the company has had five compliance review investigations with no similar violations. Staff believes the company knew, or should have known, about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** During the compliance review ALCLS was cooperative and responsive, and corrected many of the violations immediately. Ms. Zaring became angry and confrontational toward staff during the closing interview, but later submitted a responsive 15-day letter which outlined steps taken to correct violations.
5. **Whether the company promptly corrected the violations and remedied the impacts.** After the closing interview, ALCLS submitted its 15-day letter which indicated the company was now enrolled in a drug and alcohol testing consortium and has established procedures to correctly report hours of service.
6. **The number of violations.** For a company the size of ALCLS, the number of violations noted in the compliance review investigation is significant.
7. **The number of customers affected.** The company traveled 5,494 miles and reported \$39,400 in gross revenue for 2016. A small but not insignificant number of customers, as well as the traveling public, were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if the company is likely to repeat these violations, but the company was cooperative and receptive of staff's assistance.
9. **The company's past performance regarding compliance, violations, and penalties.** Staff has conducted five compliance review investigations since the company began operations in 2004 and this is the company's first penalty assessment.
10. **The company's existing compliance program.** ALCLS has no formal compliance program.

11. **The size of the company.** ALCLS operates one commercial vehicle and has one driver. The company reported \$39,400 in gross revenue and 5,494 miles traveled in 2016.

These are first-time violations, but the Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for other first-time violations of critical regulations that do not meet the criteria for mandatory penalties. The Commission will assess penalties for any repeat violations of critical regulations found in future compliance investigations, including for each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize ALCLS \$1,600 for violations of WAC 480-30-221 Driver Safety Requirements, which adopts CFR Parts 382 and 395, calculated as follows:

- One violation of Title 49 CFR Part 382.115(a) – Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations. The Commission assesses the statutory penalty of \$1,500.
- Eleven violations of Title 49 CFR Part 395.8(a) – Failing to require a driver to prepare a record of duty status using appropriate method. As first-time violations, the Commission assesses a penalty of \$100 for one violation of this type.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective June 19, 2017.

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-170713

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violation occurred and enclose \$ _____ in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”