

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TV-170723
PENALTY AMOUNT: \$400**

Friendly Mover LLC
5515 109th Street East #J105
Puyallup, WA 98373

The Washington Utilities and Transportation Commission (Commission) believes that Friendly Mover LLC (Friendly Mover) has committed violations of Washington Administrative Code (WAC) 480-15-560 Equipment Safety Requirements and WAC 480-15-570 Driver Safety Requirements, which require household goods carriers to comply with Title 49 CFR Part 393 Parts and Accessories Necessary for Safe Operation, Part 395 Hours of Service of Drivers and Part 396 Inspection, Repair, and Maintenance.

RCW 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 CFR Parts 393, 395 and 396. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In May 2017, Commission Motor Carrier Investigator Wayne Gilbert conducted a compliance review of Friendly Mover and documented the following violations:

- **One violation of Title 49 CFR Part 393.207C – Defective leaf spring.** The right rear leaf spring assembly on the company's 2000 Ford (truck #1) had become loose and had slipped.
- **Thirteen violations of Title 49 CFR Part 395.8(a) – Failing to require driver to prepare a record of duty status using appropriate method.** Employees Joseph Tudela and Jacori Johnson drove on thirteen occasions without making a proper record of duty status.
- **Three violations of Title 49 CFR Part 396.3(b)(1) – Failing to keep a maintenance record that identifies the vehicle, including make, serial number, year, and tire size.** The company failed to keep proper maintenance records for any of its three vehicles.
- **Two violations of Title 49 CFR Part 396.11(c) – Failing to correct safety-related defects listed on vehicle inspection reports.** The company failed to correct two defects listed on inspection reports.

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 monitor driver hours-of-

service, keep detailed vehicle maintenance records or correct vehicle safety defects put the traveling public at risk. A fatigued driver, or a poorly maintained vehicle present 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.

When Friendly Mover applied for household goods moving authority in October 2015, company owner Brian Kelly acknowledged his responsibility to understand and comply with applicable safety regulations. Mr. Kelly attended household goods movers' training in March 2016 and received a copy of "Your Guide to Achieving a Satisfactory Safety Record", a guide for motor carriers provided by the Commission. 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.** Friendly Mover was cooperative and responsive throughout the investigation
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company responded to staff's technical assistance and began to correct violations immediately.
6. **The number of violations.** Staff identified 35 occurrences of 12 record-keeping violations, and 10 equipment violations among the company's three vehicles. For a company the size of Friendly Mover the number of violations is significant.
7. **The number of customers affected.** The company traveled 15,000 miles and reported \$98,000 in gross revenue for 2016. A significant 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 it is likely to repeat these violations, but the company was cooperative and receptive of staff's assistance, and indicated it wished to avoid future violations.
9. **The company's past performance regarding compliance, violations, and penalties.** The company has no history of violations or penalties.
10. **The company's existing compliance program.** Friendly Mover has no formal compliance program.

11. **The size of the company.** Friendly Mover operates three commercial vehicles and has three drivers. The company reported \$98,000 in gross revenue and 15,000 miles traveled in 2016.

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 equipment violation meeting the FMCSA "out-of-service" criteria and for repeat violations of critical regulations found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Friendly Mover \$400 for violations of WAC 480-70-201 Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 393, 395, and 396 calculated as follows:

- One violation of Title 49 CFR Part 393.207C – Defective leaf spring. As an "out-of-service" equipment violation, the Commission assesses a penalty of \$100.
- Thirteen violations of Title 49 CFR Part 395.8(a) – Failing to require driver to prepare a record of duty status using appropriate method. As a first-time violation, the Commission assesses a penalty of \$100 for one violation of this type.
- Three violations of Title 49 CFR Part 396.3(b)(1) – Failing to keep a maintenance record that identifies the vehicle, including make, serial number, year, and tire size. As a first-time violation, the Commission assesses a penalty of \$100 for one violation of this type.
- Two violations of Title 49 CFR Part 396.11(c) – Failing to correct safety-related defects listed on vehicle inspection reports. As a first-time violation, 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.

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

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 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 30, 2017.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-170723

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.”