

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: TE-171064  
PENALTY AMOUNT: \$200**

H.I.S. International Tours (NY) Inc.  
619 Maynard Avenue South  
Seattle, WA 98104

The Washington Utilities and Transportation Commission (Commission) believes that H.I.S. International Tours (NY) Inc. (H.I.S. International) has committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers and Part 396 – Inspection, Repair, and Maintenance.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

In September 2017, Commission Motor Carrier Safety Investigator Wayne Gilbert conducted a routine safety investigation of H.I.S. International and documented the following critical violations:

- **One violation of Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file on each driver employed.** H.I.S. International failed to maintain a complete driver qualification file for its employee Ayako Okutani.
- **One violation of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected within minimum standards.** The company allowed more than 12 months to pass between required annual inspections of its vehicle. The company inspected its vehicle on May 19, 2016 and not again until September 25, 2017, slightly more than four months late.

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 document driver qualifications or conduct required periodic inspections put the traveling public at risk. An unqualified driver or an undetected vehicle defect 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.

In the company's 2013, application to the Commission for charter authority, Branch Manager Mamoru Tokeshi acknowledged responsibility for understanding and complying with applicable state and federal safety regulations. Commission staff also provided technical assistance to the company in 2013. 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.** H.I.S. International was cooperative and responsive throughout the entire scope of the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company expressed its intention to come into compliance, however staff is unaware of specific steps the company has taken to correct these violations.
6. **The number of violations.** The number of violations is insignificant for a company the size of H.I.S. International.
7. **The number of customers affected.** The company traveled 9,000 miles and reported \$46,089 for the fiscal year ending July 31, 2017. A significant number of customers, as well as members of the traveling public were likely affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if H.I.S. International is likely to repeat these safety violations. However, the company was cooperative and responsive to staff, and expressed an interest in correcting the safety violations documented during the routine safety investigation.
9. **The company's past performance regarding compliance, violations, and penalties.** This is the company's first safety investigation and its first safety penalty. The Commission penalized the company in 2014, 2016, and 2017 for failing to submit timely annual reports.
10. **The company's existing compliance program.** H.I.S. International has no compliance program.
11. **The size of the company.** H.I.S. International is a small company with two drivers and one commercial vehicle.

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.<sup>1</sup> The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also 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 H.I.S. International \$200 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 CFR Parts 391 and 396, calculated as follows:

- One violation of Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file on each driver employed. The Commission assesses a penalty at the statutory amount of \$100 for this critical-type violation.
- One violation of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected within minimum standards. The Commission assesses a penalty at the statutory amount of \$100 for this critical-type violation.

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 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.

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

- 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 November 9, 2017.



GREGORY J. KOPTA  
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT TE-171064

**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.”