

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-180287

PENALTY AMOUNT: \$22,900

WISE CHOICE MOVERS, LLC
21129 State Route 9
Woodinville, WA 98072

The Washington Utilities and Transportation Commission (Commission) believes that Wise Choice Movers, LLC (Wise Choice or Company) has committed violations of Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 393 – Parts and Accessories Necessary for Safe Operation, and Part 396 – Inspection, Repair, and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts CFR Part 391 – Qualifications of Drivers.

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.

On March 29, 2018, Commission Motor Carrier Investigator Sandi Yeomans completed a routine safety investigation of Wise Choice and documented the following violations:

- **Two hundred nineteen violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Wise Choice allowed employees Mark Marshal, Codey Ince, Danny Plotner, Steven Spruel, and Shane Wise to drive on 219 separate occasions without having been medically examined and certified. The violations occurred during a six month period between Sept. 1, 2017, and Feb. 25, 2018.
- **One violation of Title 49 CFR Part 393.11 – No or defective lighting devices or reflective material as required.** Commission staff discovered one commercial motor vehicle with a defective back up light and no brake lights.¹
- **One violation of Title 49 CFR Part 393.201(a) – Frame cracked, loose, sagging, or broken.** Commission staff discovered one commercial motor vehicle with the wood spacer on the frame rotten, parts missing, and the section dislodged.²
- **Four violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** Wise Choice failed to maintain minimum records of inspection and vehicle maintenance for its four commercial motor vehicles.

¹ Fleet number 20.

² *Id.*

- **One violation of Title 49 CFR Part 396.5(b) – Leaking wheel (grease) seal.** Commission staff discovered one commercial motor vehicle with a leaking wheel hub seal.³
- **Four violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle that is subject to a mandatory state inspection program without having the commercial motor vehicle inspected under that program.** Wise Choice failed to have an annual inspection performed on its four commercial motor vehicles.
- **Five violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire.** Wise Choice failed to acquire criminal background checks for its employees Mark Marshal, Codey Ince, Danny Plotner, Steven Spruel, and Shane Wise.

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 very serious and potentially harmful to the public. Companies that use drivers not medically examined and certified, fail to maintain minimum records of inspection and vehicle maintenance, or that use a commercial motor vehicle not periodically inspected put the traveling public at risk. A driver with an undetected medical condition or a commercial motor vehicle with unknown vehicle defects such as defective lighting devices, defective frame components, or a leaking wheel seal present very serious safety concerns.

In addition, companies utilizing employees with unknown criminal histories raise concerns about the security of the customers' belongings, as well as their personal safety.

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.

On Jan. 31, 2012, the Commission received the Company's application for household goods moving authority. Brandon Wise, owner of Wise Choice, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules in the application.

On May 21, 2012, Commission Motor Carrier Investigator Bruce Grimm completed a routine safety investigation of Wise Choice that resulted in a conditional safety rating. Staff provided technical assistance to Brandon Wise during this routine safety investigation.

³ Fleet number 26.

On July 11, 2012, Brandon Wise attended household goods training provided by Commission staff and acknowledged receiving training regarding motor carrier safety regulations.

On Sept. 22, 2012, Commission Motor Carrier Investigator Bruce Grimm completed a follow-up safety investigation that resulted in a satisfactory safety rating. Staff provided technical assistance to Brandon Wise during this routine safety investigation.

On Nov. 13, 2012, the Commission received the Company's application to transfer its household goods permit from Brandon Wise d/b/a Wise Choice Movers, to Wise Choice Movers, LLC. In the application, Brandon Wise acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On March 18, 2015, Steven Spruel, an employee with Wise Choice, attended household goods training provided by Commission staff and acknowledged receiving training regarding motor carrier safety regulations.

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.** Wise Choice was very cooperative and responsive throughout the investigation and expressed a desire to come into compliance with motor carrier safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company made corrections throughout the investigation as they were identified by Commission staff.
6. **The number of violations.** Commission staff identified 14 violation types with a total of 257 occurrences. Two vehicles were also placed out of service.
7. **The number of customers affected.** The Company traveled 62,196 miles in 2017. A significant number of customers as well as members of the traveling public were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Wise Choice is likely to repeat these safety violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is Wise Choice's third routine safety investigation since May 2012. On Aug. 8, 2013, Wise Choice was penalized \$325 in Docket TV-131009 for failing to file its 2012 annual report or pay 2013 regulatory fees.
10. **The Company's existing compliance program.** Brandon Wise is responsible for the Company's safety compliance program.

11. **The size of the Company.** Wise Choice is a small company with five drivers and four commercial motor vehicles. The Company reported \$685,082 in gross revenue in 2017.

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.⁴ 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, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Wise Choice \$22,900 for violations of WAC 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements; and WAC 480-15-570, Driver Safety Requirements, calculated as follows:

- Two hundred nineteen violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. These are first-time violations of fundamental safety requirements. The Commission assesses penalties of \$100 per violation, for a total of \$21,900.
- One violation of Title 49 CFR Part 393.11 – No or defective lighting devices or reflective material as required. This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty of \$100 per violation, for a total of \$100.
- One violation of Title 49 CFR Part 393.201(a) – Frame cracked, loose, sagging, or broken. This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty \$100 per violation, for a total of \$100.
- Four violations of Title 49 CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. These are first-time violations, and thus the Commission assesses penalties of \$100 per violation type, for a total of \$100.
- One violation of Title 49 CFR Part 396.5(b) – Leaking wheel (grease) seal. This is a first-time violation of a fundamental safety requirement. The Commission assesses a penalty of \$100 per violation, for a total of \$100.
- Four violations of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle that is subject to a mandatory state inspection program without having the commercial motor vehicle inspected under that program. These are first-time violations, and thus the Commission assesses penalties of \$100 per violation type, for a total of \$100.

⁴ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- Five violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire. These are first-time violations of fundamental safety requirements. The Commission assesses penalties of \$100 per violation, for a total of \$500.

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

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

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 April 24, 2018.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-180287

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 violations occurred and enclose \$22,900 in payment of the penalty.
- 2. **Contest the violations.** I believe that some or all of the alleged violations 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 violations, 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.”