

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-180862

PENALTY AMOUNT: \$2,200

Jose Ibarra Martinez
d/b/a Ibarra Moving
2214 S. 67th Ave
Yakima, WA 98908

The Washington Utilities and Transportation Commission (Commission) believes that Jose Ibarra Martinez d/b/a Ibarra Moving (Ibarra Moving or Company) 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 396 – Inspection, Repair, and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopt CFR Part 391 – Qualifications of Drivers, and CFR Part 395 – Hours of Service 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 October 4, 2018, Commission Motor Carrier Investigator Jason Sharp completed a routine safety investigation of Ibarra Moving and documented the following violations:

- **Sixteen violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** Ibarra Moving allowed employee Jose Ibarra Martinez to drive on 16 separate occasions without having been medically examined and certified. The violations occurred during a six month period between April 2, 2018, and September 11, 2018.
- **One violation of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed.** Ibarra Moving failed to maintain a driver qualification file for driver Jose Ibarra Martinez.
- **Thirty violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status.** Ibarra Moving allowed employee Jose Ibarra Martinez to drive without making a record of duty status on 30 occasions between July 1, 2018, and July 30, 2018. The Company's time records were incomplete and did not qualify for the short haul exemption.
- **One violation of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected.** Ibarra Moving failed to have an annual inspection performed on its commercial motor vehicle.

- **Three violations of WAC 480-15-555 – Failing to acquire criminal background check of prospective employee.** Ibarra Moving failed to acquire criminal background checks for its part-time employees Jesus Flores, Leonard Andraca, and Ramon Lopez.

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 fail to maintain driver qualification records, fail to create records of duty status, use a commercial vehicle that has not been periodically inspected, and use a driver that has not been medically examined and certified put the traveling public at risk. A potentially unqualified or fatigued driver, a driver with an undetected medical condition, or a vehicle with an unknown equipment defect all 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 June 22, 2016, the Commission received the Company's application for household goods moving authority. In the application, Jose Ibarra Martinez, owner of Ibarra Moving, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On August 11, 2016, Jose Ibarra Martinez 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.** Ibarra Moving was cooperative and responsive throughout the investigation.
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.** Staff identified seven violation types with a total of 53 occurrences.

7. **The number of customers affected.** The Company reported 10,000 miles traveled 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 Ibarra Moving is likely to repeat these safety violations.
9. **The Company's past performance regarding compliance, violations, and penalties.** This is the Company's first routine safety investigation. On June 29, 2017, Ibarra Moving was penalized \$250 in Docket TV-170535 for failing to file its 2016 annual report or pay 2017 regulatory fees.
10. **The Company's existing compliance program.** Owner Jose Ibarra Martinez is responsible for the Company's safety compliance program.
11. **The size of the Company.** Ibarra Moving is a small company with one driver and one commercial motor vehicle. The Company reported \$56,500 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.¹ 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 Ibarra Moving \$2,200 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:

- Sixteen violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified. These are first-time violations of a fundamental safety requirement. The Commission assesses penalties in the amount of \$100 per occurrence, for a total of \$1,600.
- One violation of Title 49 CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed. This is a first-time violation. The Commission assesses a penalty in the amount of \$100 for this violation.

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

- Thirty violations of Title 49 CFR Part 395.8(a) – Failing to require driver to make a record of duty status. These are first-time violations. The Commission assesses penalties in the amount of \$100 per violation type, for a total of \$100.
- One violation of Title 49 CFR Part 396.17(a) – Using a commercial motor vehicle not periodically inspected. This is a first-time violation. The Commission assesses a penalty in the amount of \$100 for this violation.
- Three violations of WAC 480-15-555 – Failing to acquire criminal background check of prospective employee. These are first-time violations of a fundamental safety requirement. The Commission assesses penalties in the amount of \$100 per occurrence, for a total of \$300.

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 through evidence presented at a hearing or in writing. Or, if there is a reason for the violation(s) that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the 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 to contest the violation(s) or for mitigation of the penalty 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 November 2, 2018.

RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-180862

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 \$2,200 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.”