

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-190694

PENALTY AMOUNT: \$6,100

Iron Man Movers and Storage, Inc.
135 Kelly Road
Bellingham, WA 98226

The Washington Utilities and Transportation Commission (Commission) believes that Iron Man Movers and Storage, Inc., (Iron Man Movers or Company) violated Washington Administrative Code (WAC) 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 391 – Qualifications of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On July 11, 2019, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Iron Man Movers and documented the following violations:

- **Sixty-one violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Iron Man Movers allowed Eric Stewart to drive without having been medically examined and certified on 61 occasions between January 25, 2019, and June 18, 2019.

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

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Household goods moving companies that use drivers not medically examined and certified put their customers, customers' belongings, and the traveling public at risk. These violations present serious safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored Commission staff's (Staff) 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 September 21, 2017, Staff completed a routine safety investigation of Iron Man Movers which resulted in a proposed "Conditional" safety rating. During the review,

Staff documented 305 violations of 49 CFR § 391.45(a), and provided the Company technical assistance.

On February 15, 2018, Eric Stewart and Susan Stewart, owners of Iron Man Movers, attended household goods training provided by Staff, and acknowledged receiving training pertaining to motor carrier safety regulations.

On April 10, 2018, Staff completed a focused safety review of Iron Man Movers. This was a non-rated safety investigation that resulted in the Company receiving technical assistance.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Iron Man Movers did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative and made corrections throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company corrected the violations as they were identified by Staff. Specific to the violations of using a driver not medically examined and certified, Iron Man Movers has removed Eric Stewart from all driving duties, and this responsibility has been reallocated to a different employee.
6. **The number of violations.** Staff identified seven violation types with a total of 73 individual occurrences.
7. **The number of customers affected.** The Company employs two drivers and operates three vehicles. Iron Man Movers traveled 26,720 miles in 2018. These violations present a serious safety risk to the public.
8. **The likelihood of recurrence.** Staff identified process breakdowns within Iron Man Movers. Staff provided specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff, and took immediate action to correct the violations; however, these are repeat violations from the September 21, 2017, safety investigation.
9. **The Company's past performance regarding compliance, violations, and penalties.** On May 29, 2015, the Company was penalized \$100 in Docket TV-150908 for failing to file its annual report and pay regulatory fees by the deadline.

On July 12, 2017, Iron Man Movers was penalized \$21,100 in Docket TV-170205 for violations of Chapter 480-15 WAC and Tariff 15-C found during an investigation into the Company's business practices. The Commission suspended a \$10,600 portion of the penalty for a period of two years, subject to conditions. Iron Man Movers has paid the

non-suspended portion of the penalty in full.

On November 8, 2017, Iron Man Movers was penalized \$37,100 in Docket TV-171005 for violations of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570 discovered during a routine safety investigation. The Commission suspended a \$25,100 portion of the penalty for a period of two years, subject to the condition that the Company pays the \$12,000 non-suspended portion of the penalty in accordance with the payment arrangements outlined in Order 02. Iron Man Movers is current with its payment arrangements, and is on schedule to have the non-suspended portion of the penalty paid in full on February 7, 2020.

10. **The Company's existing compliance program.** Eric Stewart is responsible for the Company's safety compliance program. On July 22, 2019, Eric Stewart and Susan Stewart submitted to Staff a corrective action plan addressing the violations discovered during the routine safety investigation, and detailed policies and procedures the Company is implementing to correct the process breakdowns.
11. **The size of the Company.** Iron Man Movers operates three vehicles and employs two drivers. The Company reported \$160,362 in gross revenue for 2018.

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 Iron Man Movers \$6,100, calculated as follows:

- Sixty-one violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. This is a repeat violation of a fundamental safety requirement. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$6,100.

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. Alternatively, 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 the penalty through evidence presented at a hearing or in writing. The Commission will grant a

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

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 violation(s).
- Admit the violations but request mitigation of the penalty amount.

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 Lacey, Washington, and effective September 6, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-190694

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 \$6,100 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) 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