

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: TN-190928
PENALTY AMOUNT: \$500**

Boost Collaborative
1235 SE Professional Mall Blvd.
Pullman, WA 99163

The Washington Utilities and Transportation Commission (Commission) believes Boost Collaborative (Boost Collaborative or Company) violated Washington Administrative Code (WAC) 480-31-130, Operation of Motor Vehicles, 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 November 6, 2019, Commission Motor Carrier Investigator Jason Sharp completed a routine safety investigation of Boost Collaborative and documented the following violations:

- **Five violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Boost Collaborative allowed drivers Daphne Starrett, Haydon Truitt, Kayoko Nadamoto, MaryKay Turner, and Teresa Driver to operate a motor vehicle without having been medically examined and certified on five occasions.

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. Companies that use drivers not medically examined and certified put their customers 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 October 21, 2004, Staff provided technical assistance training to Eric Hoyle, Transportation Director for Palouse Industries, Inc., the previous iteration of Boost Collaborative. In the report, Staff noted that the Company's drivers were not currently

medically certified, and that the Company's management planned to discuss medical certification with its board of directors.

On September 14, 2009, Staff conducted a safety investigation of Palouse Industries, Inc., and noted that none of the Company's drivers possessed the required medical certificates. Staff also noted that Eric Hoyle would meet with the board of directors to determine if the Company would maintain vehicles requiring medically certified drivers.

On September 4, 2013, the Commission received the Company's application for a transfer of existing nonprofit transportation authority. In the application, Eric Hoyle, Executive Director of Boost Collaborative, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

The Company knew, or should have known about this requirement.

3. **Whether the Company self-reported the violations.** Boost Collaborative did not self-report this violation.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Staff does not know if the Company has corrected these violations.
6. **The number of violations.** Staff identified 11 violation types with a total of 37 individual occurrences.
7. **The number of customers affected.** The Company employs four drivers and operates one motor vehicle. Boost Collaborative traveled 12,500 miles in 2018. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company committed violations despite receiving past technical assistance. Absent a commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On July 7, 2017, Boost Collaborative was penalized \$1,000 for failure to submit a complete annual report and failure to pay the annual regulatory fee.

The Company has no history of safety related penalties with the Commission.
10. **The Company's existing compliance program.** Eric Hoyle is responsible for the Company's safety compliance program.
11. **The size of the Company.** Boost Collaborative currently operates one motor vehicle and employs four drivers. The Company reported \$1,332,106 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 Boost Collaborative \$500, calculated as follows:

- Five violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for each occurrence of this 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 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 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

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

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 November 22, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TN-190928

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 \$500 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 B felony.”