

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-200711

PENALTY AMOUNT: \$5,000

Wise Choice Movers, LLC
21129 State Route 9
Woodinville, WA 98072

The Washington Utilities and Transportation Commission (Commission) believes Wise Choice Movers, LLC, (Wise Choice or Company) violated Washington Administrative Code (WAC) 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 396 – Inspection, Repair and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts 49 CFR Part 391 – Qualification of Drivers and 49 CFR Part 395 – Hours of Service 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 30, 2020, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Wise Choice and documented the following violations:

- **Forty-six violations of 49 CFR § 391.45(a) – Using a driver not medically examined and certified.** Wise Choice allowed drivers Steven Spruel, Mark Marshall, and Danny Plotner to operate a commercial motor vehicle without a valid medical certificate on 46 occasions between February 24 and March 22, 2020.
- **Three violations of 49 CFR § 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 CFR § 391.27.** The Company failed to maintain a list or certificate of all violations of motor vehicle traffic laws and ordinances for drivers Steven Spruel, Mark Marshall, and Danny Plotner.
- **Three violations of 49 CFR § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners required by 49 CFR § 391.23(m) in driver qualification file(s).** Wise Choice failed to verify the medical examiners listed on the medical certificates of drivers Steven Spruel, Mark Marshall, and Danny Plotner with the national registry.
- **Sixty violations of 49 CFR § 395.8(a)(1) – Failing to require driver to make a record of duty status.** The Company failed to require drivers Steven Spruel and Danny Plotner to complete a record of duty status on 60 occasions between June 1 and June 30, 2020.

- **One violation of 49 CFR § 396.25(d) – Failing to ensure that each brake inspector meets the minimum qualifications.** Wise Choice failed to ensure that its brake inspector Peter Fernandez met the minimum qualifications.

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: (1) use drivers that are not medically examined and certified, (2) use drivers with unknown traffic convictions, (3) fail to verify whether medical examiners are qualified to issue medical certificates, (4) fail to require drivers to make records of duty status, and (5) fail to ensure that brake inspectors meet the minimum qualifications, put their customers, their 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 January 31, 2012, the Commission received the Company's application for household goods moving authority. In the application, Brandon Wise, owner of Wise Choice, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

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

On July 11, 2012, Brandon Wise attended household goods training provided by Staff and acknowledged receiving training pertaining to motor carrier safety regulations.

On September 22, 2012, Staff 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 November 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 regulations.

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

On March 29, 2018, Staff completed a routine safety investigation of Wise Choice that resulted in a conditional safety rating. Staff provided technical assistance to Brandon Wise during this safety investigation, and also documented violations of 49 CFR § 391.45(a), 49 CFR § 391.51(b)(6), 49 CFR § 391.51(b)(9), and 49 CFR § 396.25(d).

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Wise Choice did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative and responsive throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Wise Choice obtained valid medical certificates for drivers Steven Spruel, Mark Marshall, and Danny Plotner prior to the start of the safety investigation. The Company has not provided Staff with evidence that it has corrected other violations.
6. **The number of violations.** Staff identified nine violation types with a total of 118 individual occurrences.
7. **The number of customers affected.** The Company employs three drivers, operates five commercial motor vehicles, and reported 45,468 miles traveled in 2019. These safety violations present a public safety risk.
8. **The likelihood of recurrence.** Wise Choice committed repeat violations despite receiving extensive technical assistance. Absent a significant commitment to prioritize safe operations, the violations are likely to reoccur.
9. **The Company's past performance regarding compliance, violations, and penalties.** On August 8, 2013, Wise Choice was penalized \$325 in Docket TV-131009 for failing to file a complete annual report and pay regulatory fees by the deadline. The Company paid the penalty in full.

On April 24, 2018, the Company was penalized \$22,900 in Docket TV-180287 for safety violations. The Commission later reduced the penalty in Order 01 to \$11,950, and then suspended a \$6,700 portion of the reduced penalty for a period of two years, subject to conditions. Wise Choice paid the \$5,250 unsuspended portion of the penalty in full.
10. **The Company's existing compliance program.** Shane Wise, owner of Wise Choice, is responsible for the Company's safety compliance program.

11. **The size of the Company.** Wise Choice currently operates five commercial motor vehicles and employs three drivers. The Company reported \$724,897 in gross revenue for 2019.

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 Wise Choice \$5,000, calculated as follows:

- Forty-six 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 these repeat violations, for a total of \$4,600.
- Three violations of 49 CFR § 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 CFR § 391.27. The Commission assesses a "per category" penalty of \$100 for these repeat violations.
- Three violations of 49 CFR § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners required by 49 CFR § 391.23(m) in driver qualification file(s). The Commission assesses a "per category" penalty of \$100 for these repeat violations.
- Sixty violations of 49 CFR § 395.8(a)(1) – Failing to require driver to make a record of duty status. The Commission assesses a "per category" penalty of \$100 for these first-time violations.
- One violation of 49 CFR § 396.25(d) – Failing to ensure that each brake inspector meets the minimum qualifications. The Commission assesses a penalty of \$100 for this repeat 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 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

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

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 their 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 August 18, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-200711

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 \$5,000 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.”