

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-220319
PENALTY AMOUNT: \$300

Joel Cisneros
d/b/a Always Movin' Moving Company
9615 27th Ave SE
Everett, WA 98208

The Washington Utilities and Transportation Commission (Commission) believes Joel Cisneros d/b/a Always Movin' Moving Company (Always Movin' or Company) violated Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees and WAC 480-15-570, Driver Safety Requirements which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 391 – Qualification of Drivers and 49 C.F.R. 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 April 28, 2022, Commission Motor Carrier Investigator Edward Steiner completed a routine safety investigation of Always Movin' and documented the following violations:

- **One violation of 49 C.F.R. § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner's listing in the National Registry of Certified Medical Examiners (NRCME) required by 391.23(m) in driver qualification file(s).** The Company failed to maintain verification of medical examiner's listing on the NRCME.
- **Thirty violations of 49 C.F.R. §395.8(a)(1) – Failing to require a driver to prepare a record of duty status.** The Company failed to complete and maintain records of duty status as required for driver Joel Cisneros.
- **One violation of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required.** The Company failed to retain on file employee Latchizare Loutichov's background check for the duration of employment and three years thereafter.

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) fail to maintain verification of medical examiner's listing on the NRCME, (2) fail to require drivers to prepare a record of duty status, and (3) fail to retain criminal background checks on employees 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 May 24, 2018, the Commission received the Company's application for household goods moving authority. In the application, Joel Cisneros, owner of Always Movin' acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On November 7, 2018, Joel Cisneros attended household goods training provided by Staff, which included training pertaining to motor carrier safety regulations. The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Always Movin' did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The investigator noted that Joel Cisneros initially informed the investigator that the business was not currently operating, however, upon further investigation, the investigator determined that the Company had been continually operating. Technical assistance was provided to the carrier during the review.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company has not provided Staff with evidence that the violations have been corrected.
6. **The number of violations.** Staff identified eight violation types with a total of 39 individual occurrences during the routine safety investigation of Always Movin'. Of those violations, Staff identified three violation types with 32 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Always Movin' reported traveling 2,000 miles in the past 12 months. These violations presented a public safety risk.
8. **The likelihood of recurrence.** Staff provided technical assistance with 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 violation of 49 C.F.R. § 391.51(b)(9) was previously identified during the Company's 2020 provisional safety

investigation. Absent a commitment to prioritize safe operations, the violation is likely to reoccur.

9. **The Company's past performance regarding compliance, violations, and penalties.** On July 14, 2018, the Commission assessed a \$5,000 penalty against Always Movin' in Docket TV-180520 for violations of RCW 81.80.075(1) for engaging, or continuing to engage, in business as a common carrier of household goods for compensation within the state of Washington without possessing the permit required for such operations. The Commission suspended a \$4,750 portion of the penalty for a period of two years, subject to conditions. On August 10, 2018, the Company paid the \$250 portion of the penalty in full.

On April 6, 2020, the Commission assessed a \$2,900 penalty against Always Movin' in Docket TV-200271. On April 28, 2020, the Commission entered Order 01, reduced the penalty to \$1,500 and suspended a \$1,000 portion of the penalty for a period of two years, subject to conditions. On July 21, 2020, the Company paid the \$500 portion of the penalty in full.

10. **The Company's existing compliance program.** Joel Cisneros is responsible for the Company's safety compliance program.

11. **The size of the Company.** The Company employs one driver and operates two commercial motor vehicles. The Company reported \$25,000 in gross revenue in 2021.

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 by violation category, 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 Always Movin' \$300 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner's listing in the National Registry of Certified Medical Examiners (NRCME) required by 391.23(m) in driver qualification file(s). The Commission assesses a penalty of \$100 for this repeat violation.

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

- Thirty violations of 49 C.F.R. §395.8(a)(1) – Failing to require a driver to prepare a record of duty status. The Commission assesses a “per category” penalty of \$100 for these critical violations.
- One violation of WAC 480-15-555 – Failing to conduct or retain paperwork containing criminal background check for a household goods carrier in the state of Washington as required. The Commission assesses a penalty of \$100 for this 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 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 Penalty Assessment 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 Penalty Assessment. 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 May 31, 2022.

/s/Michael Howard
MICHAEL HOWARD
Acting Director, Administrative Law
Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-220319

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 \$300 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