

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TV-220773

PENALTY AMOUNT: \$9,000

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) 480-15-570, Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (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 October 20, 2022, Commission Motor Carrier Investigator Sandra Yeomans completed a follow-up safety investigation of Wise Choice and documented the following violations:

- **Ninety violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status.** Wise Choice failed to require drivers Tyler Conrad, Marco Tovar, and Danny Plotner to complete a record of duty status on 90 occasions between August 1 and August 30, 2022.

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 fail to maintain records of duty status put their customers' belongings and the traveling public at risk. These violations present 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 July 30, 2020, Staff completed a routine safety investigation of Wise Choice and documented 60 violations of 49 C.F.R. § 395.8(a)(1). During the safety investigation, Staff provided technical assistance to Shane Wise, owner of Wise Choice. 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 has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified eight violation types with a total of 101 individual occurrences during the follow-up safety investigation of Wise Choice. Of those violations, Staff identified one violation type with a total of 90 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Wise Choice reported traveling 38,982 miles in 2021. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** Wise Choice committed repeat violations despite having suspended penalties and having received 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 April 24, 2018, Wise Choice was penalized \$22,900 in Docket TV-180287 for safety violations of WAC 480-15-555, WAC 480-15-560, and WAC 480-15-570. On July 6, 2018, the Commission reduced the penalty to \$11,950 in Order 01 of Docket TV-180287 and suspended a \$6,700 portion of the reduced penalty for a period of two years, subject to conditions. On August 6, 2018, Wise Choice paid the \$5,250 unsuspended portion of the penalty in full.

On August 18, 2020, the Company was penalized \$5,000 in Docket TV-200711 for safety violations of WAC 480-15-560 and WAC 480-15-570. On September 11, 2020, the Commission reduced the penalty to \$2,650 in Order 03/01 of consolidated Dockets TV-180287 and TV-200711 and suspended an \$8,150 portion of the combined penalties¹ for a period of two years, subject to conditions. On September 9, 2021, Wise Choice paid the \$1,200 unsuspended portion of the penalty in full.
10. **The Company's existing compliance program.** Shane Wise is responsible for the Company's safety compliance program.
11. **The size of the Company.** Wise Choice operates five commercial motor vehicles and employs three drivers. The Company reported \$719,013 in gross revenue for 2021.

¹ Continued suspended penalty of \$6,700 from Docket TV-180287 and suspended penalty of \$1,450 from Docket TV-200711.

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.² 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 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 \$9,000 (Penalty Assessment), calculated as follows:

- Ninety violations of 49 C.F.R. § 395.8(a)(1) – Failing to require driver to make a record of duty status. The Commission assesses a penalty of \$100 for each occurrence of these repeat critical violations, for a total of \$9,000.

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 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 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 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 Penalty Assessment. If you are unable to use the web portal, you may submit it via email to

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

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 November 9, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-220773

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 \$9,000 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 or she makes a materially false statement which he or she 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 or her 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.