

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-220960

PENALTY AMOUNT: \$1,800

Fun Way To Go, LLC, d/b/a FWTG
407 S 23rd St.
Renton, WA 98055

The Washington Utilities and Transportation Commission (Commission) believes Fun Way To Go, LLC, d/b/a FWTG (FWTG or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 382 – Controlled Substance and Alcohol Use and Testing; 49 C.F.R. Part 383 – Commercial Driver’s License Standards; 49 C.F.R. Part 391 – Qualification of Drivers; 49 C.F.R. Part 393 – Parts and Accessories Necessary for Safe Operation; 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 December 21, 2022, Commission Motor Carrier Investigator Tracy Coble completed a routine safety investigation of FWTG and documented the following violations:

- **One violation of 49 C.F.R. § 382.601(b) – Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 49 C.F.R. § 382.601(b) 1-11.** FWTG failed to provide its employees with a complete alcohol and controlled substances policy.
- **Eight violations of 49 C.F.R. § 383.23(a) – Operating a commercial motor vehicle (CMV) without a valid commercial driver’s license (CDL).** The Company allowed drivers Stacy Gosby and Cheryl Jones to operate a CMV without a valid CDL on eight occasions between August 6 and October 8, 2022.
- **Two violations of 49 C.F.R. § 391.23(e)(1) – Failing to investigate the driver’s alcohol and controlled substances history for the previous three years.** FWTG failed to investigate the alcohol and controlled substances history for the previous three years for drivers Stacy Gosby and Marilyn Smith.
- **Two violations of 49 C.F.R. § 391.51(b)(4) – Failing to maintain the responses of each state agency to the annual driver record inquiry required by 49 C.F.R. § 391.25(a).** The Company failed to maintain annual driving records for drivers Stacy Gosby and William Wolsted.

- **Two violations of 49 C.F.R. § 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 C.F.R. § 391.27.** FWTG failed to maintain a list or certificate of all violations of motor vehicle traffic laws and ordinances for drivers Stacy Gosby and William Wolsted.
- **Five violations of 49 C.F.R. § 391.51(b)(9) – Failing to verify the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners.** The Company failed to verify the medical examiners identified on the medical certificates of William Wolsted, Stacy Gosby, Thomas Hayes, Cheryl Jones, and Marilyn Smith were listed with the national registry.
- **One violation of 49 C.F.R. § 393.25(f) – Inoperative brake lamps.** Commission staff (Staff) discovered a CMV with defective rear stop lamps. This CMV was placed out-of-service.¹
- **Two violations of 49 C.F.R. § 393.62(e) – No or inadequate bus emergency exit marking.** Staff discovered two CMVs with emergency exits not marked. These CMVs were placed out-of-service.²
- **One violation of 49 C.F.R. § 393.91 – Seating not secured to CMV.** Staff discovered a CMV with a seat not affixed or secured. This CMV was placed out-of-service.³
- **One hundred fifty violations of 49 C.F.R. § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method.** The Company failed to require drivers William Wolsted, Stacy Gosby, Thomas Hayes, Cheryl Jones, and Marilyn Smith to complete a record of duty status on 150 occasions between September 1 and September 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 very serious and potentially harmful to the public. Passenger transportation companies that: (1) fail to provide employees with a complete alcohol and controlled substances policy, (2) allow drivers to operate CMVs without valid CDLs, (3) fail to investigate drivers' alcohol and controlled substances histories, (4) fail to maintain annual driving records of its drivers, (5) use drivers with unknown traffic violations, (6) fail to verify whether medical examiners are qualified to issue medical certificates, (7) use CMVs with defective brake lamps, (8) fail to mark emergency exits in CMVs, (9) use CMVs with unsecured seating,

¹ Vehicle Identification Number 1GBE5V1247F413894.

² Vehicle Identification Numbers 1GBE5V1247F413894 and 1FDXE45F2YHB67862.

³ Vehicle Identification Number 1FCNF53S3Y0A13111.

and (10) fail to maintain records of duty status, put their customers and traveling public at risk. These violations present significant safety concerns.

2. **Whether the violations were intentional.** Considerations include:

- Whether the Company ignored Staff's 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 December 19, 2013, the Commission received the Company's application for charter and excursion carrier authority. In the application, FWTG acknowledged its responsibility to understand and comply with applicable motor carrier safety requirements.

On February 26, 2014, Staff provided new entrant carrier safety regulation training to Jerrilund Sampson, previous of FWTG, and William Wolsted, mechanic of FWTG at the time, which included technical assistance pertaining to motor carrier safety regulations.

On July 6, 2018, Staff completed a safety investigation of FWTG and documented violations of 49 C.F.R. § 382.601(b), 49 C.F.R. § 391.23(e)(1), 49 C.F.R. § 391.51(b)(4), 49 C.F.R. § 391.51(b)(6), 49 C.F.R. § 391.51(b)(9), 49 C.F.R. § 393.62(e), and 49 C.F.R. § 395.8(a)(1).

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** FWTG did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation, corrected some of the identified violations, and expressed a desire to come into compliance with motor carrier safety regulations.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Stacy Gosby's CDL was reinstated on December 1, 2022, and Cheryl Jones' CDL was reinstated on December 2, 2022. FWTG also corrected the out-of-service violations of 49 C.F.R. § 393.25(f), 49 C.F.R. § 393.62(e), and 49 C.F.R. § 393.91. The Company has not provided Staff with evidence that it corrected the remaining violations.
6. **The number of violations.** Staff identified 27 violation types with a total of 223 individual occurrences during the routine safety investigation of FWTG. Of those violations, Staff identified 10 violation types with a total of 174 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** FWTG reported traveling 66,674 intrastate miles in 2021. These safety 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 Company was cooperative with Staff, corrected some of the identified violations, and expressed a desire to come into compliance; however, FWTG incurred numerous repeat violations from the 2018 safety investigation. 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 July 30, 2018, FWTG was penalized \$100 for a safety violation of WAC 480-30-221 in Docket TE-180602. The Company paid the penalty in full.
10. **The Company's existing compliance program.** William Wolsted, owner of FWTG, is responsible for the Company's safety compliance program.
11. **The size of the Company.** FWTG currently operates six CMVs and employs 12 drivers for its intrastate operations. The Company reported \$364,566 in gross revenue for 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.⁴ 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 FWTG \$1,800 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 382.601(b) – Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 49 C.F.R. § 382.601(b) 1-11. The Commission assesses a penalty of \$100 for this repeat violation.
- Eight violations of 49 C.F.R. § 383.23(a) – Operating a CMV without a valid CDL. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$800.
- Two violations of 49 C.F.R. § 391.23(e)(1) – Failing to investigate the driver's alcohol and controlled substances history for the previous three years. The Commission assesses a "per category" penalty of \$100 for these repeat violations.

⁴ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

- Two violations of 49 C.F.R. § 391.51(b)(4) – Failing to maintain the responses of each state agency to the annual driver record inquiry required by 49 C.F.R. § 391.25(a). The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- Two violations of 49 C.F.R. § 391.51(b)(6) – Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 C.F.R. § 391.27. The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- Five violations of 49 C.F.R. § 391.51(b)(9) – Failing to verify the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners. The Commission assesses a “per category” penalty of \$100 for these repeat violations.
- One violation of 49 C.F.R. § 393.25(f) – Inoperative brake lamps. The Commission assesses a penalty of \$100 for this out-of-service violation.
- Two violations of 49 C.F.R. § 393.62(e) – No or inadequate bus emergency exit marking. The Commission assesses a penalty of \$100 for each occurrence of this out-of-service violation, for a total of \$200.
- One violation of 49 C.F.R. § 393.91 – Seating not secured to CMV. The Commission assesses a penalty of \$100 for this out-of-service violation.
- One hundred fifty violations of 49 C.F.R. § 395.8(a)(1) – Failing to require a driver to prepare a record of duty status using the appropriate method. The Commission assesses a “per category” penalty of \$100 for these repeat critical violations.

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 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 January 5, 2023.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-220960

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 \$1,800 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.