

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TN-240506
PENALTY AMOUNT: \$400

Special Mobility Services, Inc.
2101 NE Flanders
Portland, OR 97232

The Washington Utilities and Transportation Commission (Commission) believes Special Mobility Services, Inc. (Special Mobility or Company) violated Washington Administrative Code (WAC) 480-31-100, Equipment - Safety, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 393 - Parts and Accessories Necessary for Safe Operation and WAC 480-31-130, Operation of Motor Vehicles, which adopts 49 C.F.R. 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 June 26, 2024, Commission Motor Carrier Safety Investigator Sandra Yeomans completed a routine safety investigation of Special Mobility and documented the following violations:

- **One violation of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified.** Special Mobility allowed driver Lisa Pritchett to operate a motor vehicle without a valid medical certificate.
- **One violation of 49 C.F.R. § 393.62 - Buses - Required emergency exit missing.** Special Mobility used a motor vehicle with an emergency exit that was not properly marked and operable. The vehicle was placed out-of-service.¹
- **One violation of 49 C.F.R. § 393.62 - Buses - Required emergency exit not properly marked.** Special Mobility used a motor vehicle with an emergency exit that was not properly marked. The vehicle was placed out-of-service.²
- **One violation of 49 C.F.R. § 393.62 - Buses - Required emergency exit inoperative (does not open, close, and/or secure as designed).** Special Mobility used a motor vehicle with an emergency exit that was inoperable. The vehicle was placed out-of-service.³

¹ VIN 1FDFE4FS5CDB18887

² VIN 1GB6G6BL7E1192538

³ VIN 1GB6G6BL7E1192538

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. Private, nonprofit transportation providers that: (1) use drivers who are not medically certified, and (2) use motor vehicles with deficient emergency exits put their customers and the traveling public at risk. These violations present significant safety concerns.
2. **Whether the violations were intentional.** Considerations include:
 - Whether the Company ignored Commission 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.

Special Mobility began its operations in September of 1973 and has been subject to prior technical assistance and safety investigations.

The Company knew or should have known about these requirements; however, there is no evidence that suggests Special Mobility ignored Staff's previous technical assistance.

3. **Whether the Company self-reported the violations.** Special Mobility did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Special Mobility has not provided staff with evidence of corrections.
6. **The number of violations.** Staff identified 12 violation types with a total of 37 individual occurrences during its routine safety investigation of Special Mobility. Of those violations, Staff identified two violation types with four individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Special Mobility reported traveling 199,886 miles in 2023. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** The Company was cooperative throughout the safety investigation and was 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. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** The Company has no history of penalties for safety violations.

10. **The Company's existing compliance program.** Beth Mulcahy, Safety Director, is responsible for the Company's safety compliance program.

11. **The size of the Company.** The Company employs nine drivers and operates three motor vehicles. The Company reported \$11,791,907 in gross revenue for 2023.

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 Special Mobility \$400 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 391.45(a) - Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for this first-time critical violation.
- One violation of 49 C.F.R. § 393.62 - Buses - Required emergency exit missing. The Commission assesses a penalty of \$100 for each occurrence of this out-of-service violation, for a total of \$100.
- One violation of 49 C.F.R. § 393.62 - Buses - Required emergency exit not properly marked. The Commission assesses a penalty of \$100 for each occurrence of this out-of-service violation, for a total of \$100.
- One violation of 49 C.F.R. § 393.62 - Buses - Required emergency exit inoperative (does not open, close, and/or secure as designed). The Commission assesses a penalty of \$100 for each occurrence of this out-of-service violation, for a total of \$100.

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

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

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 at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment.⁵ 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 wish to make a payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).⁶

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 July 16, 2024.

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

⁵ <https://efiling.utc.wa.gov/Form>.

⁶ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TN-240506

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, 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.
 Enclose \$400 in payment of the penalty.
 OR Attest that I have paid the penalty in full through the Commission's payment portal.
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.