

SERVICE DATE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

APR 08 2013

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

PENALTY ASSESSMENT: TE-130475

PENALTY AMOUNT: \$1,000

ONSTAR LIMOUSINE, LLC
PO BOX 58461
TUKWILA, WA 98138

The Washington Utilities and Transportation Commission (Commission) believes that you have committed one or more violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and driver safety requirements, which requires passenger transportation companies to comply with Title 49, Code of Federal Regulations (CFR), including Part 395 - Hours of service of drivers, and Part 396 - Inspection, repair and maintenance. Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for every such violation.

As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$1,000, as follows:

On March 5, 6 and 11, 2013, Commission Motor Carrier Inspector Tom McVaugh conducted a compliance review inspection of Onstar Limousine, LLC (Onstar). During that inspection, Mr. McVaugh noted the following critical violations, resulting in Onstar receiving an unsatisfactory safety rating:

- **Twenty-one violations of 49 CFR Part 395.8(a), Failing to require driver to make a record of duty status.** None of the company's three drivers kept records of duty status during the 21 times they drove during the six-month period reviewed by Mr. McVaugh.
- **Five violations of 49 CFR Part 396.11(a), Failing to require driver to prepare driver vehicle inspection report.** The company failed to require its drivers to prepare driver vehicle inspection reports. This is a repeat violation from a 2011 inspection conducted by Commission staff.
- **Two violations of 49 CFR Part 396.17(a), Using a commercial motor vehicle not periodically inspected.** The company fails to conduct annual inspections of its vehicles.

Although authorized to assess \$2,800 in penalties, the Commission finds that a lesser penalty would be more appropriate based on consideration of the following factors:

1. **How serious or harmful the violations are to the public.** The critical violations noted during this compliance review are potentially serious and harmful to the public. Critical violations are indicative of breakdowns in a carrier's management controls. Patterns of non-compliance with critical regulations are linked to inadequate safety management controls and usually higher-than-average accident rates. Accidents involving passenger-carrying motor vehicles can be catastrophic. Some keys to preventing these accidents include:
 - a. Records of duty status: Making sure that drivers are in the best physical condition possible, including documenting that drivers have not worked longer than the legal number of hours in a given time period, is key to preventing accidents. Failing to require drivers to make records of duty status as required prevents the company from keeping track of total on-duty hours for those drivers.
 - b. Vehicle maintenance: Vehicles must be regularly inspected and drivers must fill out daily vehicle inspection reports as required to document that vehicles are in safe operating condition.
2. **Whether the violation is intentional.** Factors include:
 - The company ignored staff's previous technical assistance.
 - There is clear evidence through documentation or other means that show the company knew of and failed to correct the violation.

Onstar received technical assistance about safety regulations when it received its charter and excursion authority in 2010. Commission staff also provided specific technical assistance to Onstar regarding the requirement for drivers to complete driver vehicle inspection reports when it noted violations of this requirement during its 2011 compliance review. The company knew or should have known that these requirements exist.
3. **Whether the company self-reported the violation.** Onstar did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Onstar was cooperative and responsive to Commission staff during the compliance review.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The company's owner expressed a willingness to comply with safety regulations and is working on correcting violations.
6. **The number of violations.** The number of critical violations during this compliance review resulted in the carrier receiving an unsatisfactory safety rating.¹ Patterns of

¹ The Federal Motor Carrier Safety Administration (FMCSA) safety rating process is used to evaluate safety fitness and assign one of three safety ratings (satisfactory, conditional or unsatisfactory) to motor carriers. *Title 49 CFR Part 385.5, Safety Fitness Standard and Part 385.7, Factors to be Considered in Determining a Safety Rating.*

non-compliance with critical regulations are linked to inadequate safety management controls and usually higher-than-average accident rates.

7. **The likelihood of recurrence.** The violations relating to driver vehicle inspection reports were repeat violations from the 2011 compliance review. If Onstar does not change its operations and safety practices, violations are likely to recur. Commission staff will require Onstar to submit a compliance plan outlining how the company will comply with safety regulations going forward. Commission staff will also re-inspect in 45 days to ensure the carrier corrected the violations.
8. **The company's past performance regarding compliance, violations, and penalties.** Commission staff reviewed Onstar's penalty and compliance history since the company received charter and excursion authority in 2010. The Commission did not issue any penalty assessments to Onstar during this time. The company has demonstrated compliance with submitting the required annual safety reports/regulatory fees in a timely manner.
9. **The company's existing compliance program.** Commission staff will require Onstar to submit a compliance plan outlining how the company will comply with safety regulations going forward. Improved compliance with regulations leads to an improved safety rating which increases safety. Ensuring public safety is the Commission's highest priority.
10. **The size of the company.** Onstar is a small charter and excursion company, with approximately \$29 thousand in gross operating revenues reported to the Commission for 2012.

The Commission has weighed these factors and determined that Onstar should be penalized \$100 for 10 violations, for a total penalty of \$1,000.

This information, if proved 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 the violations did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violations that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 81.04.405.

You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and notify you of his or her decision.

You must act within 15 days from the service date of this notice to do one of the following:

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** from the service date of this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective April 8, 2013.



GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-130475

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days from the service date of 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 violation occurred and enclose \$ _____ in payment of the penalty.
2. **Request for a hearing.** I believe that the alleged violation did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reason(s) set out below.

I know guilt of violations. I need to make changes to improve bad habits of Limone side of business. I need to separate from Limone & excision. I can't afford the penalty, business may be slow. Violations are correct. I should pay fee of violations but 1000.00 to High. Law or funds.

- a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.

OR b) I waive a hearing and ask for an administrative decision on the information I present directly 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: 4.14.13 [month/day/year], at Renton, WA [city, state]

ONSTAR Limone LLC
Name of Respondent (company) – please print

[Signature]
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.”