

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Andrew J. French, Chairperson
Dwight D. Keen
Annie Kuether

In the Matter of the Emergency Suspension of)
Operating Authority of **Javier G Morales d/b/a**)
J's Trucking of Garden City, Kansas, for)
Failure to Comply with New Entrant Safety) Docket No. 24-TRAM-323-PEN
Requirements as Required by the Motor Carrier)
Safety Statutes, Rules and Regulations.)

EMERGENCY SUSPENSION OF OPERATING AUTHORITY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) on its own motion. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. JURISDICTION AND BACKGROUND

1. Pursuant to K.S.A. 66-1,108b, 66-1,111, 66-1,112, and 66-1,114b, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. 390.5 and as adopted by K.A.R. 82-4-3f, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.

2. Pursuant to K.S.A. 66-1,129a, 66-1,130, and 66-1,142b, the Commission may suspend operations, revoke, or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision, or regulation of the Commission.

3. Pursuant to K.S.A. 66-1,129(a)(7), the Commission has adopted motor carrier transportation regulations (K.A.R. 82-4-3f) consistent with the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous waste.

4. K.S.A. 77-536 governs the use of emergency proceedings. The statute provides in part as follows:

- (a) A state agency may use emergency proceedings: (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or (2) as otherwise provided by law.
- (b) The state agency may take only such action as is necessary: (1) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or (2) to remedy a situation for which use of emergency adjudication is otherwise provided by law.

II. FINDINGS OF FACTS

5. Javier G Morales d/b/a J's Trucking (Carrier) is a motor carrier as defined in 49 C.F.R. 390.5 and as adopted in K.A.R. 82-4-3f, which operates commercial motor vehicle(s) in interstate commerce in a manner that requires authority.

6. Carrier is registered as a motor carrier with the U.S. Department of Transportation (USDOT), and operates under USDOT Number 2560333.

7. On August 17, 2023, Carrier submitted to an onsite compliance review and evaluation of its safety fitness. Based on this review, it was determined that Carrier did not have adequate safety management controls in place to ensure compliance with the required safety fitness standard.

8. As of August 28, 2023, Federal Motor Carrier Safety Administration (FMCSA) issued the Carrier an Unsatisfactory safety rating. As a result, Carrier was granted sixty (60) days to take the necessary steps to improve the rating to conditional or satisfactory. The FMCSA's Order is attached hereto as Attachment "A" and is hereby incorporated by reference.

9. As of October 28, 2023, Carrier had not improved its safety rating. As a result the Unsatisfactory safety rating became final and Carrier is prohibited from operating commercial motor vehicles in interstate or intrastate commerce.

III. STAFF'S RECOMMENDATIONS

10. Staff submitted a Report and Recommendation (R&R), dated November 13, 2023, attached hereto as Attachment "B" and is hereby incorporated by reference. In its R&R, Staff made recommendations regarding Carrier.

11. Staff asks the Commission to find that Carrier received sufficient notice from the FMCSA of the violation(s) of motor carrier safety rules and regulations, and a requisite opportunity to correct the violation(s) and to obtain compliance.

12. Staff asks the Commission to find that Carrier failed to act upon the FMCSA's notice.

13. Staff asks the Commission to find that Carrier's failure to improve its safety rating is sufficient evidence of unsafe motor carrier operations and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas.

14. Based on the presented facts, Staff recommends the Commission issue an Emergency Suspension of Operating Authority Order until such time as Carrier takes the necessary steps to obtain compliance with the federal and state motor carrier safety rules and regulations. After Carrier submits verifiable evidence of the same to Staff, Staff will recommend that the Commission enter an order reinstating the Carrier's motor carrier operating authority.

15. Furthermore, Staff recommends the Commission order Carrier to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and to provide Litigation Counsel with written proof of attendance.

IV. CONCLUSIONS OF LAW

16. The Commission finds it has jurisdiction over Carrier as the Carrier is a motor carrier, as defined in 49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.

17. The Commission finds Carrier received sufficient notice from the FMCSA of violation(s) of motor carrier safety rules and regulations and a requisite opportunity to correct the violation(s) and obtain compliance.

18. The Commission finds Carrier failed to act upon this notice.

19. The Commission also finds Carrier's failure to remediate Unsatisfactory safety rating is sufficient evidence of unsafe motor carrier operations, and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas. Therefore, this Commission orders the Carrier to suspend all intrastate motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 66-1,129, until such time as the carrier takes the necessary steps to become compliant. This includes submitting to Staff verifiable evidence of the correction of the violation(s) noted in FMCSA's August 28, 2023 Order including, but not limited to, proof of federal reinstatement and attendance of a Commission-sponsored safety seminar within ninety (90) days from the date of this Order. A schedule of dates and locations for the safety seminar can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm. The proof of attendance at the safety seminar should be submitted to Litigation Counsel.

THE COMMISSION THEREFORE ORDERS THAT:

A. Javier G Morales d/b/a J's Trucking of Garden City, Kansas is to be immediately suspended from all intrastate Kansas commercial motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 66-1,129, until such

time as Carrier presents to Staff verifiable evidence, including, but not limited to, proof of federal reinstatement documenting the correction of the safety concerns identified in the FMCSA's August 28, 2023 Unsatisfactory safety rating letter. This Emergency Suspension of Operating Authority Order may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of any Order to cease operations or suspend operating authority.

B. Javier G Morales d/b/a J's Trucking of Garden City, Kansas, is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order and provide Litigation Counsel with written proof of attendance.

C. **Pursuant to K.S.A. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Executive Director, at 1500 S.W. Arrowhead Road Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Order.** Pursuant to K.S.A. 66-1,129a, hearings will be held within ten (10) days upon written request. Failure to timely request a hearing will result in a waiver of Carrier's right to a hearing, and this Order will become a Final Order.

D. Failure to comply with the provisions of this Order may result in further sanctions to include, but not limited to, the assessment of civil penalties and/or the impoundment of commercial motor vehicles found operating in violation of this Order and any other remedies available to the Commission by law, without further notice.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 11/28/2023



Lynn M. Retz
Executive Director

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ATTACHMENT “A”



U.S. Department of
Transportation
1200 New Jersey Ave. S.E.
Washington, D.C. 20590

**Federal Motor Carrier
Safety Administration**

**JAVIER G MORALES
106 N 9TH ST
GARDEN CITY, KS 67846-8353**

60 Day Property Carrier

August 28, 2023

In reply refer to:
USDOT Number: **2560333**
Review No.: 2047498/CR

Dear JAVIER G. MORALES:

The proposed motor carrier safety rating for your company is:

UNSATISFACTORY

This proposed UNSATISFACTORY rating is the result of an onsite compliance review and evaluation of your safety fitness completed on August 17, 2023. An UNSATISFACTORY rating indicates that your company does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences of violations listed in 49 CFR 385.5(a-k), and indicates that your company is operating at an unacceptable level of compliance.

Under 49 CFR 385.13, a motor carrier that receives a final safety rating of UNSATISFACTORY is prohibited from operating a commercial motor vehicle in interstate and intrastate commerce. Additionally, 49 USC 31144 and 49 CFR 385.13(a)(1) provide that this prohibition takes effect unless, within 60 days of the date of this notice, you take the necessary steps to improve the rating to conditional or satisfactory.

Pursuant to 49 USC 13905(f)(1)(B), the registration of a motor carrier that has been prohibited from operating in interstate and intrastate commerce for failure to comply with the safety fitness requirement shall be revoked.

UNLESS YOU IMPROVE YOUR PROPOSED UNSATISFACTORY RATING, IT WILL BECOME FINAL AND YOU WILL BE PROHIBITED FROM OPERATING COMMERCIAL MOTOR VEHICLES IN INTERSTATE AND INTRASTATE COMMERCE BEGINNING ON OCTOBER 28, 2023, AND YOUR REGISTRATION SHALL BE REVOKED, IF APPLICABLE.

If you have been subject to any Order(s), prohibition(s), registration suspension(s) and/or registration revocation(s) in any other case(s) or proceeding(s), the prohibitions and registration revocation in this case will be in addition to, and will not supersede, amend, or modify any Orders, notices, and/or requirements in any other case(s) or proceeding(s). Further, the orders, prohibitions and/or registration revocation may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of a "final" unsatisfactory safety rating.

Immediate action must be taken to correct any deficiencies or violations discovered during the compliance review. Your operation was found to be deficient with respect to the applicable safety regulations in the following areas:

Part 396 INSPECTION, REPAIR AND MAINTENANCE
Part 395 HOURS OF SERVICE OF DRIVERS
INSPECTION OUT OF SERVICE RATE

Please refer to the copy of the compliance review left at your office for more specific guidance regarding areas in need of corrective action.

APPEAL RIGHTS: Owners or operators of commercial motor vehicles may appeal the proposed safety rating in the following manners:

<A> REQUESTS FOR A CHANGE TO SAFETY RATING BASED UPON CORRECTIVE ACTIONS (49 CFR 385.17): A request for a change to a safety rating for a corrective action may be made at any time. This request must be made in writing to the FMCSA Service Center for the geographic area where the carrier maintains its principal place of business (See 49 CFR 390.27). The request must be based upon evidence that the carrier has taken corrective actions and that its operations currently meet the safety fitness standards and factors specified in 49 CFR 385.5 and 385.7. The FMCSA will make a final determination based upon the documentation submitted and any other additional relevant information. A written decision will be issued by the FMCSA. Any motor carrier whose request for change is denied may, within 90 days after the denial, request administrative review under 49 CFR 385.15.

 ADMINISTRATIVE REVIEW (49 CFR 385.15): A request may be made to the FMCSA to conduct an administrative review if you believe that an error was committed in assigning the proposed safety rating or when your request under 49 CFR 385.17 was denied. This request must be made within 90 days of the date of the proposed safety rating issued under 49 CFR 385.11(c) or within 90 days of an Order denying your request for a rating change under 49 CFR 385.17.

Owners or operators may seek administrative review (49 CFR 385.15) by filing a Petition for Review at the following address: U.S. DOT Dockets, United States Department of Transportation, 1200 New Jersey Ave., S.E., Washington, DC 20590. A copy of the Petition MUST also be sent to: The Chief Safety Officer, Federal Motor Carrier Safety Administration (Attention: Adjudications Counsel), 1200 New Jersey Ave., S.E., Washington, DC 20590. The appeal should include a copy of this compliance review and the forthcoming official notice from the FMCSA headquarters office. All subsequent filings must also be served in the same manner.

The FMCSA will conduct a review of the request and issue a decision within 30 days of receipt of that request (49 CFR 385.15(e)(1) and 385.17(e)(1)). The FMCSA highly recommends that hazardous material and passenger owners and operators file requests for administrative review (49 CFR 385.15) within 15 days from the date on the notice of the "proposed" rating (49 CFR 385(c)(1)). This will allow sufficient time to review the request and issue a written decision before the prohibitions on operating in interstate and intrastate commerce take effect. Administrative review requests must be made within 90 days of the date on the notice of the "proposed" rating (49 CFR 385.15(c)(2)). However, failure to petition within 15 days from the date on the notice of the "proposed" rating may prevent the FMCSA from issuing a final decision before the prohibitions on interstate and intrastate transportation and, if applicable, the registration revocation take effect (49 CFR 385.15(c)(1)).

A petition to contest the rating or a request for a change in the rating will not automatically postpone the effective date of your final rating.

You may obtain further information from the local Federal Motor Carrier Safety Information office listed below:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
1303 SW FIRST AMERICAN PL STE 200
TOPEKA, KS 66604-4040
Telephone No.: 785-271-1260

Sincerely,



David J. Yessen
Chief, Compliance Division

** The rating for Part 396 was comprised of the vehicles placed out-of-service during roadside inspections in the twelve months prior to the compliance review and/or inspected at the time of the review, and non-compliance with the Part 396 inspection, repair and maintenance systems requirements.

ATTACHMENT “B”

Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

Laura Kelly, Governor

**REPORT AND RECOMMENDATION
TRANSPORTATION DIVISION**

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

FROM: Mike Hoeme, Director of Transportation
Gary Davenport, Deputy Director of Transportation

DATE: November 13, 2023

SUBJECT: Docket No. 24-TRAM-323-PEN
In the Matter of the Emergency Suspension of Operating Authority of **Javier G Morales d/b/a J's Trucking of Garden City, Kansas**, for Failure to Comply with New Entrant Safety Requirements as Required by the Motor Carrier Safety Statutes, Rules and Regulations

EXECUTIVE SUMMARY:

Javier G Morales d/b/a J's Trucking (Carrier) is a common motor carrier, primarily hauling grain, feed, and hay. Carrier operates under United States Department of Transportation (USDOT) No. 2560333. On August 17, 2023, the Federal Motor Carrier Safety Administration (FMCSA) forwarded a notice of violation(s) of the federal motor carrier safety regulations to Carrier, wherein Carrier was given 60 days to comply with the regulations. On October 28, 2023, FMCSA records indicate Carrier had not improved its safety rating. As a result, the FMCSA suspended its interstate motor carrier operations.

Staff recommends the Commission issue an Emergency Suspension of Operating Authority Order until such time as Carrier takes the necessary steps to obtain compliance with the federal and state motor carrier safety rules and regulations. After Carrier submits verifiable evidence of the same to Staff, Staff will recommend that the Commission enter an order reinstating the Carrier's motor carrier operating authority.

DISCUSSION AND ANALYSIS:

K.S.A. 66-1,129a states:

- a) The commission, at any time for good cause shown, may suspend the operation of any motor carrier subject to economic or safety rules and regulations adopted by

the commission. Upon notice and an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act, the commission may revoke, amend, initiate sanctions or fine any motor carrier who has a certificate, license or permit issued by the commission or is subject to the safety rules and regulations adopted by the commission. Any motor carrier suspended prior to a hearing must be afforded the opportunity of a hearing on the matter. If such a hearing is requested, the hearing shall be held within 10 days of the request.

On August 17, 2023, Carrier submitted to an onsite compliance review and evaluation of its safety fitness. Based on this review, it was determined that Carrier did not have adequate safety management controls in place to ensure compliance with the required safety fitness standard. On August 28, 2023, Federal Motor Carrier Safety Administration (FMCSA) issued the Carrier an Unsatisfactory safety rating. As a result, Carrier was granted sixty (60) days to take the necessary steps to improve the rating to conditional or satisfactory. On October 28, 2023, Carrier had not taken the necessary steps to improve its safety rating. As a result, the Unconditional safety rating became final and the Carrier was placed “out-of-service.”

It is the procedure of the Transportation Division that when the FMCSA suspends a Kansas based carrier from interstate operations that Staff recommends the Commission issues an order suspending the Carrier from intrastate operations. Suspension from interstate operations by the FMCSA is an indication the Carrier has unsafe safety practices that may pose a danger to the motoring public of Kansas.

RECOMMENDATION:

Staff asks the Commission to find that Carrier 1) received sufficient notice from the FMCSA of the violation(s) of motor carrier safety rules and regulations, and a requisite opportunity to correct the violation(s) and to obtain compliance; 2) failed to act upon the FMCSA’s notice; and that 3) Carrier’s failure to improve its safety rating is sufficient evidence of unsafe motor carrier operations and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas.

Based on the presented facts, Staff recommends the Commission issue an Emergency Suspension of Operating Authority Order until such time as Carrier takes the necessary steps to obtain compliance with the federal and state motor carrier safety rules and regulations. After Carrier submits verifiable evidence of the same to Staff, Staff will recommend that the Commission enter an order reinstating the Carrier’s motor carrier operating authority.

Furthermore, Staff recommends the Commission order Carrier to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order, and to provide Litigation Counsel with written proof of attendance.

CERTIFICATE OF SERVICE

24-TRAM-323-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 11/28/2023.

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
a.latif@kcc.ks.gov

Javier G Morales, OWNER
Javier G Morales
D/B/A J's Trucking
106 N 9th St
Garden City, KS 67846
morales.js04@yahoo.com

/S/ KCC Docket Room
KCC Docket Room