

1500 SW Arrowhead Road
Topeka, KS 66604-4027



Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

NOTICE OF PENALTY ASSESSMENT

15-TRAM-425-PEN

March 31, 2015

Drew Demo, President
Best Beverage Sales, Inc.
PO Box 924
Independence, Kansas 67301

This is a notice of a penalty assessment for violation of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on February 4, 2015, by Kansas Corporation Commission Special Investigator Michael Heenan. For a full description of the penalty and process please refer to the Order that is attached to this notice.

IF YOU ACCEPT THE PENALTY:

You have been assessed a \$500 penalty. You have thirty (30) days from service of this Penalty Order to pay the fine amount. Check or money order must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Transportation Division of the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and must include a reference to the docket number of this proceeding. Credit card payment may be made by faxing your credit card information to the Transportation Office at 785-271-3124, using the KCC's credit card payment form found at <http://kcc.ks.gov/trans/creditcard.pdf>.

You must attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. 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.

You must submit to one follow-up safety compliance review within the next 18 months. Staff will contact you at a later date to determine an appropriate time for this review.

IF YOU CONTEST THE PENALTY:

You have the right to request a hearing. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Respondent must submit an original and seven (7) copies of the request to the Commission's Acting Secretary at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date stamped on the last page of the Penalty Order. K.A.R. 82-1-215; K.S.A. 2014 Supp. 77-542.

IF YOU FAIL TO ACT:

Failure to pay the fine amount within thirty (30) days of service of the Penalty Order, or in the alternative, provide a written request for a hearing within fifteen (15) days from service of the Penalty Order will result in the attached Order becoming a Final Order and may result in the additional sanction of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

Michael J. Duenes
Litigation Counsel
(785) 271-3181

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

In the Matter of the Investigation of **Best**)
Beverage Sales, Inc., of Independence,)
Kansas, Regarding the Violation of the Motor)
Carrier Safety Statutes, Rules and Regulations) Docket No. 15-TRAM-425-PEN
and the Commission's Authority to Impose)
Penalties, Sanctions and/or the Revocation of)
Motor Carrier Authority.)

PENALTY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). The Commission, having been briefed on the issue by the Director of the Commission's Transportation Division, finds and concludes as follows:

I. JURISDICTION

1. Pursuant to K.S.A. 2014 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2014 Supp. 66-1,108, 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. 2014 Supp. 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. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and order a hearing on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

II. BACKGROUND

4. Best Beverage Sales, Inc. (Best Beverage Sales) obtained private operating authority from the Commission on March 19, 1979, and operates under KSMCID number 112842 and USDOT number 1147234.

5. Best Beverage Sales is an intrastate carrier and has vehicles over 26,000 pounds.

6. Best Beverage Sales is a private motor carrier which primarily hauls beverages.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on February 4, 2015, Commission Staff (Staff) Special Investigator Michael Heenan conducted a compliance review of the operations of Best Beverage Sales. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, Mr. Heenan identified two (2) violations of the Motor Carrier Safety Regulations.

- a. On February 2, 2015, Best Beverage Sales required or permitted its driver, John N. Caresio, to operate a commercial motor vehicle, a 2005 Chevrolet, VIN ending in 518375, in intrastate commerce in and around the area of Independence, Kansas. This trip is evidenced by Mr. Caresio's time card, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Best

Beverage Sales had not made inquiry into the motor vehicle record (MVR) of any of its drivers in the preceding 12 months. The special investigator found four (4) violations of this type. Best Beverage Sales' failure to inquire into its driver's MVR at least once every 12 months and maintain a copy of the MVR in the driver qualification file is a violation of 49 C.F.R. Part 391.25(a) and (c), as adopted by K.A.R. 82-4-3g, as authorized by K.S.A. 2014 Supp. 66-1,112. Staff recommends a fine of \$250.

- b. During the transportation described in paragraph a., above, Best Beverage Sales failed to require its driver, John N. Caresio, to be medically examined and certified as physically fit to operate a commercial motor vehicle. Best Beverage Sales' failure to confirm that each of its drivers are medically examined and certified prior to requiring or permitting the operation of a commercial motor vehicle and maintaining documentation of the medical certificate in the driver qualification file is a violation of 49 C.F.R. 391.45(b)(1) and 49 C.F.R. 391.51(b)(7)(i), as adopted by K.A.R. 82-4-3g, and as authorized by K.S.A. 2014 Supp. 66-1,129. Staff recommends a fine in the amount of \$250.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission find Best Beverage Sales committed two (2) violations of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

9. Additionally, Staff recommends a civil penalty of \$500 for two (2) violations of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Best Beverage Sales be required to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. A schedule of the dates and locations for the safety seminar can be found on the Commission's website at http://kcc.ks.gov/trans/safety_meetings.htm.

11. Finally, Staff recommends that Best Beverage Sales submit to one follow-up safety compliance review within the next eighteen (18) months. Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

V. CONCLUSIONS OF LAW

12. The Commission finds it has jurisdiction over Best Beverage Sales because it is a motor carrier as defined in K.S.A. 2014 Supp. 66-1,108.

13. The Commission finds Best Beverage Sales committed two (2) violations of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

THE COMMISSION THEREFORE ORDERS THAT:

A. Best Beverage Sales, Inc., of Independence, Kansas is hereby assessed a \$500 civil penalty for two (2) violations of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. Best Beverage Sales is hereby ordered to attend a Commission-sponsored safety seminar within the next ninety (90) days and is to provide Staff with written proof of attendance.

Further, Best Beverage Sales is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.

C. Pursuant to K.S.A. 2014 Supp. 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 Commission's Acting Secretary, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order. If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Best Beverage Sales's right to a hearing, and this Penalty Order will become a Final Order assessing a \$500 civil penalty against Best Beverage Sales, and ordering Best Beverage Sales to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance, and to submit to a safety compliance review within eighteen (18) months from the date of service of this Order.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. A corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a).

E. If you do not request a hearing, the payment of the civil penalty is due in thirty (30) days from date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payments shall be mailed to the Transportation Division of the Kansas Corporation Commission, 1500 S.W.

Arrowhead Road, Topeka, Kansas 66604. *The payment shall include a reference to the docket number of this proceeding.*

F. Failure to pay the \$500 civil penalty within thirty (30) days of the service of this Penalty Order, and/or failure to comply with the provisions of this Order, may result in revocation of Best Beverage Sales's motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of out-of-service and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

G. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: MAR 31 2015



ORDER MAILED APR 01 2015

Neysa Thomas
Acting Secretary

MJD

ATTACHMENT "A"

Kansas Corporation Commission

	US DOT # 1147234	Legal: BEST BEVERAGE SALES INC Operating (DBA):								
MC/MX #:		State #:		Federal Tax ID:			(EIN)			
Review Type: Compliance Review (CR)										
Scope: Principal Office			Location of Review/Audit: Company facility in the U. S.					Territory: C		
Operation Types										
		Interstate		Intrastate						
Carrier: N/A		Non-HM		Business: Corporation						
Shipper: N/A		N/A		Gross Revenue:				for year ending: 12/31/2013		
Cargo Tank: N/A										
Company Physical Address:										
Contact Name: Drew Demo										
Phone numbers: (1)					Fax					
E-Mail Address:										
Company Mailing Address:										
PO BOX 924 INDEPENDENCE, KS 67301										
Carrier Classification										
Private Property										
Cargo Classification										
Beverages										
Equipment										
		Owned			Term Leased			Trip Leased		
Truck		1	0	0	Truck Tractor		2	0	0	
Trailer		2	0	0						
Power units used in the U.S.: 3										
Percentage of time used in the U.S.: 100										
Does carrier transport placardable quantities of HM? No										
Is an HM Permit required? N/A										
Driver Information										
		Inter	Intra	Average trip leased drivers/month: 0						
< 100 Miles:			4	Total Drivers: 4						
>= 100 Miles:				CDL Drivers: 4						





BEST BEVERAGE SALES INC

U.S. DOT #: 1147234

State #:

Review Date:

02/04/2015

Part A

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

Kansas Corporation Commission
1500 SW Arrowhead Rd
Topeka, Ks 66604-4027 1-785-271-3145

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Drew Demo

Title: President

Name: Rodney G Hull

Title: Sales Manager





BEST BEVERAGE SALES INC
U.S. DOT #: 1147234

State #:

Review Date:
02/04/2015

Part B Violations

1 STATE	Primary: 391.45(a) Secondary: 391.11(a) CFR Equivalent: 391.45(a)	Discovered 1	Checked 4	Drivers/Vehicles In Violation 1	Checked 4
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Description

Using a driver not medically examined and certified.

Example

Driver name:

Trip date: 02-02-15

At the time of this trip, and the time of this review, the driver listed above had a no medical in his driver file or on his person as the driver was called to the warehouse to provide a copy of his medical.

2 STATE	Primary: 391.51(b)(3) CFR Equivalent: 391.51(b)(3)	Discovered 4	Checked 4	Drivers/Vehicles In Violation 4	Checked 4
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Description

Failing to maintain road test certificate in driver's qualification file, or copy of license or certificate the motor carrier accepted as equivalent.

Example

Driver name:

Trip date: 02-02-15

At the time of this trip, and the time of this review, the carrier failed to have any road test, certificate of road test or CDL equivalent for any of their registered drivers.

3 STATE	Primary: 391.51(b)(4) CFR Equivalent: 391.51(b)(4)	Discovered 4	Checked 4	Drivers/Vehicles In Violation 4	Checked 4
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Description

Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a).

Example

Driver name:

Trip date: 02-02-15

At the time of this trip, and the time of this review, the carrier failed to have any current response from any state agency in reference to their drivers records as per 391.25(a). Carrier failed to obtain MVRs of their registered drivers at least every 12 months.

4 STATE	Primary: 391.51(b)(5) CFR Equivalent: 391.51(b)(5)	Discovered 4	Checked 4	Drivers/Vehicles In Violation 4	Checked 4
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Description

Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).

Example

Driver name:

Trip date: 02-02-15

At the time of this trip, and the time of this review, the carrier failed to have any annual review of drivers record for any drivers.





BEST BEVERAGE SALES INC
U.S. DOT #: 1147234

State #:

Review Date:
02/04/2015

Part B Violations

5 STATE	Primary: 391.51(b)(6)	Discovered 4	Checked 4	Drivers/Vehicles	
	CFR Equivalent: 391.51(b)(6)			In Violation	Checked

Description

Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.

Driver name:

Trip date: 02-02-15

At the time of this trip, and the time of this review, the carrier failed to have any certification of driver violations for any of their drivers.

Safety Fitness Rating Information:

Total Miles Operated 60,000
Recordable Accidents 0

OOS Vehicle (CR): 0
Number of Vehicle Inspected (CR): 0
OOS Vehicle (MCMIS): 0
Number of Vehicles Inspected (MCMIS): 0

Your proposed safety rating is :

This Review is not Rated.





BEST BEVERAGE SALES INC
U.S. DOT #: 1147234

State #:

Review Date:
02/04/2015

Part B Requirements and/or Recommendations

1. Driver shall not drive Intrastate/Interstate until they have physically examined and re-examined each 24 months.
2. All Driver Files are to include a properly signed and executed Road Test and Road Test Certificate for Commercial Motor Vehicles. A current CDL may be used in place of Road Test or Certificate. Tank vehicles twin and triple trailers are exempt from allowing the CDL in place of the road test.
3. Each Driver Qualification File must contain a properly executed and signed Certification of Violations and a Annual Review of Driving Record completed yearly.
4. The motor carrier must retain a copy of the completed roadside inspection form at its principal place of business, or where the vehicle is housed, for 12 months.
5. Maintain letters or certificates of qualifications for all persons performing annual periodic inspections on commercial motor vehicles.
6. Drivers may not drive a CMV interstate or intrastate unless they have been physically examined and certified with a Medical Certificate every 24 months
7. For all Investigations:
 - Understand Why Compliance Saves Time and Money: Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.
 - Document and Follow Through on Action Plans: Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.
 - NOTICE: A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.
 - NOTICE: 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information:
<http://www.psp.fmcsa.dot.gov/Pages/default.aspx>

 - All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities.
8. Make certain that all drivers of commercial motor vehicles have a record check of their driving record at least every 12 months and within 30 days of their initial employment.





BEST BEVERAGE SALES INC
U.S. DOT #: 1147234

State #:

Review Date:
02/04/2015

Part B Requirements and/or Recommendations

9. FMCSA recently announced planned improvements to the Carrier Safety Measurement System (SMS) which was implemented in December 2010 as part of the Agency's broader Compliance, Safety, Accountability (CSA) initiative. A preview of these improvements is currently available to motor carriers. The system changes are scheduled to be available to the public in July 2012. There will be additional opportunity for public comment on the changes after the preview period ends in July 2012.
- The improvements to SMS are based on ongoing analysis and feedback from enforcement personnel, the motor carrier industry, and other stakeholders. The changes more effectively identify and prioritize high-risk and other unsafe motor carriers for enforcement interventions designed to reduce commercial motor vehicle crashes and hazardous materials incidents.
- Motor carrier's currently have the ability to preview how the improvements impact their individual safety data in SMS. These improvements include: (1) Changes to the SMS methodology that identify higher risk carriers while addressing industry biases; (2) better applications of SMS results for Agency interventions by more accurately identifying safety sensitive carriers (i.e., carriers transporting people and carriers hauling hazardous materials (HM)), so that such firms can be selected for CSA interventions at more stringent levels; and, (3) more specific fact-based displays of SMS results on the SMS Web site.
- The data preview may be found at <http://csa.fmcsa.dot.gov/>. During the data preview period, the Agency requests comments on the impacts of the changes.
10. Basic: Driver Fitness
391.45(b)(1) or 391.51(b)(7)
- Provide evidence of a valid medical examiners certificate for all drivers or proof of waiver and or exception issued by Agency for requested drivers listed below.

Within 15 days send a letter to our office explaining your actions taken to remedy a non-compliance status. Mail to Kansas Corporation Commission, 1500 SW Arrowhead RD. , Topeka, KS 66604-4027
Attention: Gary Davenport

11. Basic: Driver Fitness
391.51(b)(4)

Failing to maintain inquiries into drivers records in the driver qualification files at least every 12 months as per 391.25(a)

Please provide written documented proof of obtaining current Motor Vehicle Record Checks on the following drivers

Please provide current evidence or copies of Motor Vehicle Record Checks on the drivers listed above within 15 days and a letter explaining your actions to correct the violations listed in this report to the person and address listed below.

Mr Gary Davenport
Kansas Corporation Commission
1500 SW Arrowhead Rd
Topeka, Ks 66604-4027





BEST BEVERAGE SALES INC

U.S. DOT #: 1147234

State #:

Review Date:

02/04/2015

Part B Requirements and/or Recommendations

12. Within 15 days send a letter to our office explaining your actions taken to remedy a non-compliance status. Mail to Kansas Corporation Commission, 1500 SW Arrowhead RD. , Topeka, KS 66604-4027
Attention: Gary Davenport
13. I acknowledge that these requirements and/or recommendations have been discussed with me and my questions have been answered. I understand that failure to satisfactorily remedy the above-listed requirements, and/or failure to comply with Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of [Best Beverage Sales Inc.] operating authority and/or the impoundment of [Best Beverage Sales Inc] vehicles.

Carrier Signature _____





BEST BEVERAGE SALES INC - Terminal
U.S. DOT #: 1147234

State #:

Review Date
02/04/2015

Part B Requirements and/or Recommendations

12. Within 15 days send a letter to our office explaining your actions taken to remedy a non-compliance status. Mail to Kansas Corporation Commission, 1500 SW Arrowhead RD., Topeka, KS 66604-4027
Attention: Gary Davenport
13. I acknowledge that these requirements and/or recommendations have been discussed with me and my questions have been answered. I understand that failure to satisfactorily remedy the above-listed requirements, and/or failure to comply with Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of [Best Beverage Sales Inc.] operating authority and/or the impoundment of [Best Beverage Sales Inc] vehicles.

Carrier Signature

M.W. Newman 8213



ATTACHMENT "B"

IN RE: DOCKET NO. 15-TRAM-425-PEN

DATE MAR 31 2015

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
DREW DEMO, PRESIDENT BEST BEVERAGE SALES, INC. PO BOX 924 INDEPENDENCE, KS 67301		
MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED APR 01 2015

The Docket Room hereby certified that on this _____ day of _____, 20____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.