

STATE OF KANSAS



CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

PHONE: 785-271-3100
FAX: 785-271-3354
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

NOTICE OF PENALTY ASSESSMENT

April 19, 2018

18-TRAM-444-PEN

Carl Atnip, Comptroller
Joe Smith Company
PO Box 4
Pittsburg, Kansas 66762

Certified Mail No. 70161970000105743687

This is a notice of a penalty assessment against Joe Smith Company (Joe Smith Company) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on March 29, 2018, by Kansas Corporation Commission Special Investigator Verna Jackson. Penalties are assessed in accordance with the FY 2018 Uniform Penalty Assessment Matrix, approved by the Commission on June 27, 2017. For a full description of the penalty(s) and terms and obligations please refer to the Order attached to this notice.

IF YOU ACCEPT THE PENALTY: Joe Smith Company has been assessed a \$100 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$100, through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

The attached Order requires a representative of Joe Smith Company to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm. The Order also requires your company to submit to one follow-up safety compliance review within 18 months from the date of the Order. Transportation Staff will contact your company at a later date to determine an appropriate time for this review.

IF YOU CONTEST THE PENALTY ORDER: 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. Joe Smith Company must file, within fifteen (15) days from the date of service of this Order, the request for hearing with the Commission's electronic filing system found at <https://puc.kcc.ks.gov/e-filing/e-express/>, and mail a copy of the request for hearing to the undersigned at the above address. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to the undersigned Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2017 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$100 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

Ahsan A. Latif
Litigation Counsel
(785) 271-3118

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Dwight D. Keen

In the Matter of the Investigation of **Joe Smith**)
Company, of Pittsburg, Kansas, Regarding the)
Violation of the Motor Carrier Safety Statutes,)
Rules and Regulations and the Commission's) Docket No. 18-TRAM-444-PEN
Authority to Impose Penalties, Sanctions and/or)
the Revocation of Motor Carrier Authority.)
)

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

1. Pursuant to K.S.A. 2017 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. 2017 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. 2017 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 issue an order 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. Joe Smith Company (Joe Smith Company) has private operating authority with the Commission and further operates USDOT number 99359.

5. Joe Smith Company operates in intrastate and interstate commerce and employs six non-CDL drivers.

6. Joe Smith Company is a private motor carrier which primarily hauls household goods, refrigerated foods, beverages, paper products, and store supplies.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on March 29, 2018, Commission Staff (Staff) Special Investigator Verna Jackson conducted a compliance review of the operations of Joe Smith Company. 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, the special investigator identified one (1) violation(s) of the Motor Carrier Safety Regulations.

- a. On February 6, 2018, Joe Smith Company required or permitted its driver, Jonathan Splitter, to operate a commercial motor vehicle, a 2012 Freightliner, VIN ending in 0713, GVWR 19,501 – 23,500 lbs., in interstate commerce from Pittsburg, Kansas to various locations in Oklahoma. This

trip is evidenced by Time Card Report, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Joe Smith Company did not investigate driver Jonathan Splitter's background within 30 days of employment. The carrier's failure to make investigations and inquiries with respect to each driver it employs within 30 days of employment is a violation of 49 C.F.R. 391.23, adopted by K.A.R. 82-4-3, and implement by K.S.A. 2017 Supp. 66-1,129. Staff recommends a fine of \$100.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission finds Joe Smith Company committed one (1) violation(s) 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 \$100 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from Joe Smith Company be required 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. A schedule of the dates and locations for safety seminars can be found on the Commission's website at http://kcc.ks.gov/trans/safety_meetings.htm.

11. Finally, Staff recommends that Joe Smith Company submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation 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 Joe Smith Company because it is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108.

13. The Commission finds Joe Smith Company committed one (1) violation(s) 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. Joe Smith Company, of Pittsburg, Kansas is hereby assessed a \$100 civil penalty for one (1) violation(s) 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. Joe Smith Company is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and is to provide Litigation Counsel with written proof of attendance.

C. Joe Smith Company is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the carrier to set up the appointment.

D. On April 19, 2018, this Penalty Order was mailed to Joe Smith Company via Certified Mail, Return Receipt Requested, Receipt Number 70161970000105743687. Service of this Order is complete upon the date delivered shown on the Domestic Return Receipt.

E. Pursuant to K.S.A. 2017 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issue(s) by submitting a written request setting forth the specific grounds upon which relief is sought. The request may be electronically filed with the Commission's electronic filing system at <https://puc.kcc.ks.gov/e-filing/e-express/>, within fifteen (15) days from the date of service of this Order, and a copy of the request mailed to the Litigation Division. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Joe Smith Company's right to a hearing, and this Penalty Order will become a Final Order assessing a \$100 civil penalty against Joe Smith Company, and ordering a representative from Joe Smith Company 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, and to submit to a safety compliance review within 18 months from the date of this Order.

F. If a request for hearing is filed, attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, 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). For civil penalties less

than \$500, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2017 Supp. 66-1,142b(e) and amendments thereto.

G. If you do not request a hearing, the payment of the civil penalty of \$100 is due in thirty (30) days from the date of service of this Order. Payment of \$100 must be made through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. You must have an account through KTRAN to pay the penalty.

H. Failure to pay the \$100 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Joe Smith Company'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 revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

I. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 04/19/2018



Lynn M. Retz
Secretary to the Commission

AAL

ATTACHMENT “A”



US DOT #
99359

Legal: JOE SMITH COMPANY
Operating (DBA):

MC/MX #:

Federal Tax ID: [REDACTED] (EIN)

Review Type: Non-ratable Review - CSA

Scope: Principal Office

Location of Review/Audit: CSA Off-site

Territory:

Operation Types Interstate Intrastate

Carrier: Non-HM Non-HM

Shipper: N/A N/A

Cargo Tank: N/A

Business: Corporation

Gross Revenue: [REDACTED] for year ending: 12/30/2017

Company Physical Address:

Contact Name: Carl Atnip

Phone numbers: (1) [REDACTED]

Fax [REDACTED]

E-Mail Address: [REDACTED]

Company Mailing Address:

PO BOX 4
PITTSBURG, KS 66762-0004

Carrier Classification

Private Property

Cargo Classification

Household Goods

Refrigerated Foods

Beverages

Paper Products

Other Store Supplies

Equipment

Owned Term Leased Trip Leased

Owned Term Leased Trip Leased

Truck

6

0

0

Power units used in the U.S. 6

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

< 100 Miles:

>= 100 Miles:

6

Average trip leased drivers/month: 0

Total Drivers: 6

CDL Drivers:





JOE SMITH COMPANY

U S DOT # 99359

Review Date:

03/29/2018

Part A

QUESTIONS regarding this report or the Federal Motor Carrier Safety or
Hazardous Materials rules may be addressed to the Kansas Corporation Commission at

1500 SW Arrowhead Rd
Topeka KS 66604-4027
Phone 785-271-3104

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Carl Atnip

Title: Comptroller

Name:

Title:





JOE SMITH COMPANY
U.S. DOT #: 99359

Review Date
03/29/2018

Part B Violations

1 FEDERAL	Primary 391.23(c)	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked 1
--------------	-------------------	-----------------	--------------	----------------------------------	--------------

Description

Failing to investigate driver's background within 30 days of employment.

Example

2/6/2018

Joe Smith Company made the inquiry into the driver's history 2/12/2018. Driver's hire date was 11/29/2017.

Safety Fitness Rating Information:

Total Miles Operated 312,000
Recordable Accidents 1

OOS Vehicle (CR): 0
Number of Vehicle Inspected (CR): 0
OOS Vehicle (MCMIS): 1
Number of Vehicles Inspected (MCMIS): 3

Your proposed safety rating is :

This Review is not Rated.





JOE SMITH COMPANY
U.S DOT #: 99359

Review Date
03/29/2018

Safety Management Process Breakdowns and Remedies

1. 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 Discuss with your employees/drivers the "Security Measures for Truck Drivers and Companies" which were provided and reviewed with motor carrier official Motor carriers should visit the following website for more information
[http://www.fmcsa dot.gov/documents/Hijacking-Brochure.pdf](http://www.fmcsa.dot.gov/documents/Hijacking-Brochure.pdf)
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.

The KCC requires that you prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. Submit this letter within 30 days outlining the carrier's updated changes to their policies and procedures regarding all listed violations Explain in detail how, as a carrier representative, you will rectify these deficiencies and prevent their reoccurrence going forward. Include any supporting documentation and evidence as indicated in the recommendations above, (example. vehicle inspections performed, proof of drug and alcohol testing in place, etc.) necessary to prove that corrective action has been taken. Mail the letter along with copies of your supporting evidence to:

Kansas Corporation Commission
Attn: Gary Davenport
1500 SW Arrowhead Rd





JOE SMITH COMPANY
U.S. DOT #: 99359

Review Date
03/29/2018

Safety Management Process Breakdowns and Remedies

Topeka, KS 66604-4027

2. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Monitoring and Tracking

DESCRIPTION OF PROCESS BREAKDOWN: Joe Smith Company failed to inquire into the driver's driving history within 30 days of the date of hire. Without this information, Joe Smith Company would not be able to determine if the driver had a valid license to operate at the time of hire. Joe Smith Company failed to obtain and maintain the annual review and certification of the driver's driving record (MVR) in the driver qualification file. If the carrier does not validate the accuracy of the driver's driving record, the motor carrier is not verifying the driver is qualified to drive.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices The following are recommended practices related to Monitoring and Tracking Processes.

- Review and retain each driver's Motor Vehicle Record (MVR) at least annually to ensure compliance with company policies, Federal regulations, and State and local laws and ordinances related to driver fitness. If a driver seems to have numerous violations, the MVR should be reviewed more often. Random MVR checks in addition to annual checks are also effective. File the MVR in each driver's driver qualification file after review.
- Evaluate personnel who are monitoring driver fitness performance by making sure they are reviewing driver-assignment and qualification files, applying the performance standards fairly, consistently, and equitably, and documenting the evaluations.
- Regularly evaluate the company's driver fitness-related inspection results via the Federal Motor Carrier Safety Administration's (FMCSA) website at <http://ai.fmcsa.dot.gov/SMS>. Assess violations for process breakdowns and how to remedy them. Use data to help implement an effective process beyond self-reporting to monitor, document, and evaluate compliance with driver-fitness regulations and company policies.
- When monitoring and tracking any driver-fitness-related issue, always assess whether it is individual or represents a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.).

Seek Out Resources:

- You are encouraged to review your company's record at the following website: <http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

3. Pursuant to 391.23 (a) (1) An inquiry to each state where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.
4. As required by 391.25(a), motor carriers shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.
5. Per 49 CFR 391.51(b)(5) and (b)(6), the motor carrier is required to process an annual review and certification of the driver's driving record - 391.51(b)(5) A note relating to the annual review of the driver's driving record as required by 391.25(c)(2), 391 51(b)(6) A list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27
6. I acknowledge that the requirements and/or recommendations resulting from this off-site, focused review have been discussed with me and my questions have been answered. I further acknowledge that KCC recommendations only cover the scope of this focused review, and that areas not reviewed by the KCC have not necessarily been endorsed as compliant. 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 Joe Smith Company's operating authority and/or the impoundment of Joe Smith Company's commercial motor vehicles





JOE SMITH COMPANY
U S DOT # 99359

Review Date
03/29/2018

Safety Management Process Breakdowns and Remedies

Carrier Representative

Date

Printed name and Title

After reviewing these Requirements and/or Recommendations, please sign and date where indicated, and return to the Kansas Corporation Commission, ATTN Verna Jackson, Transportation Division, 1500 SW Arrowhead Rd, Topeka, Kansas 66604-4027, or fax 785-271-3124.

7. I understand that monetary penalties will be assessed as a result of violations found in this compliance investigation. The penalty schedule can be found at this web site http://kcc.ks.gov/trans.penalty_assessment_table.htm

Carrier Name

Carrier Official



ATTACHMENT “B”

Time Card Report

Current Period (02/04/18 to 02/17/18)

Splitter, Jonathan J

Employee	ID Number	Grade	Pay Class
Splitter, Jonathan J	272	4645	Full Time

Date	In	Out	In	Out	Amount	Schedule	Exceptions
02/04/18							
02/05/18							
02/06/18	3:22	12:54			9:32	Flex	
02/07/18	3:19	14:25			11:06	Flex	
02/08/18	3:22	14:52			11:30	Flex	
02/09/18	3:21	12:57			9:36	Flex	
02/10/18							
02/11/18							
02/12/18							
02/13/18	3:21				0:00	Flex	
02/14/18							
02/15/18							
02/16/18							
02/17/18							

Pay Desig.	Location, Department, Job	Hours	Rate	Dollars
Regular	JOES, DRIVERS, ALL EMP	40:00		
Overtime	JOES, DRIVERS, ALL EMP	1:44		
Totals		41:44		

Pay Desig.	Hours
Totals	0:00

Employee Signature

CERTIFICATE OF SERVICE

18-TRAM-444-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on 04/20/2018.

CARL ATNIP, COMPTROLLER
JOE SMITH COMPANY
PO BOX 4
PITTSBURG, KS 66762-0004
Fax: 620-231-2545
catnip@jsc.kscoxmail.com

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe