

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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

Dwight D. Keen, Chair  
Shari Feist Albrecht, Commissioner  
Jay Scott Emler, Commissioner

Laura Kelly, Governor

**NOTICE OF PENALTY ASSESSMENT**  
19-TRAM-427-PEN

April 30, 2019

Dusty L. Booth, Owner  
d/b/a Booth Construction Co.  
2075 H Rd  
Eureka, KS 67045

This is a notice of a penalty assessment against Dusty L. Booth, d/b/a Booth Construction Co. (Booth Construction) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on April 10, 2019, by Kansas Corporation Commission Special Investigator Michael Heenan. Penalties are assessed in accordance with the FY 2019 Uniform Penalty Assessment Matrix, approved by the Commission on August 7, 2018. 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:** Booth Construction has been assessed a \$1,700 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$1,700, 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 Booth Construction 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](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. Booth Construction 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. 2018 Supp. 77-542.

**IF YOU FAIL TO ACT:** Failure to pay the penalty of \$1,700 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

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

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

In the Matter of the Investigation of **Dusty L. )  
Booth, d/b/a Booth Construction Co., of )  
Eureka, KS**, Regarding the Violation of the )  
Motor Carrier Safety Statutes, Rules and ) Docket No. 19-TRAM-427-PEN  
Regulations 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). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

**I.        JURISDICTION**

1.       Pursuant to K.A.R. 82-4-1b, 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.A.R. 82-4-1, 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. 2018 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. Dusty L. Booth, d/b/a Booth Construction Co. (Booth Construction) operated under USDOT number 1512541.

5. Booth Construction is a private motor carrier which primarily hauls motor vehicles and back hoe/trencher.

## **III. STATEMENT OF FACTS**

6. Pursuant to the jurisdiction and authority cited above, on April 10, 2019, Commission Staff (Staff) Special Investigator Michael Heenan conducted a safety compliance review of the operations of Booth Construction. 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 four (4) violation(s) of the Motor Carrier Safety Regulations.

- a. On February 28, 2019, Booth Construction required or permitted its driver, Dusty L. Booth, to operate a CDL-required commercial motor vehicle, a 1995 Kenworth, VIN ending in 673365, GVWR 33,000 lbs., pulling a 2009 PJ trailer, VIN ending in 1109111, GVWR 24,000 lbs., in intrastate commerce from Eureka, Kansas to Toronto, Kansas. This trip is

evidenced by Driver/Vehicle Examination Report Number KSHP01760387, dated March 28, 2019, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Booth Construction did not maintain a driver qualification file containing the required documents on its driver. The carrier's failure to maintain a driver qualification file on its driver is a violation of 49 C.F.R. 391.51(a), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$350.

- b. During the transportation described in paragraph a, above, Booth Construction had not implemented an alcohol and controlled substance testing program for its CDL driver. The carrier's failure to establish an alcohol and controlled substances testing program for its CDL drivers that complies with the procedures established in 49 C.F.R. 382.105 as adopted by K.A.R. 82-4-3c is a violation of 49 C.F.R. 382.115(a), adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$350.
- c. During the transportation described in paragraph a, above, Booth Construction failed to obtain and document successful periodic (annual) inspections on the commercial motor vehicles during the preceding 12-month period. The special investigator discovered two (2) violations of this type. The carrier's failure to conduct periodic (annual) inspections on commercial motor vehicles is a violation of 49 C.F.R. 396.17(c), adopted

by K.A.R. 82-4-3j, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$750.

- d. During the transportation described in paragraph a, above, Booth Construction failed to require its driver to make a record of duty status showing work completed, time started, time ended and total hours worked. The special investigator discovered eight (8) violations of this type. The carrier's failure to require its drivers to keep records of duty status for each 24-hour period, or in the alternative to maintain and retain time records described in 49 C.F.R. 395.1(e) under the short haul exemption, using the method described in 49 C.F.R. 395.8(a), and to submit the original record to the motor carrier within 13 days of creation is a violation of 49 C.F.R. 395.8(a), adopted by K.A.R. 82-4-3a, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$250.

#### **IV. STAFF'S RECOMMENDATIONS**

7. Based upon the available facts, Staff recommends the Commission finds Booth Construction committed four (4) 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.

8. Additionally, Staff recommends a civil penalty of \$1,700 for four (4) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

9. Staff further recommends that a representative from Booth Construction 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](http://kcc.ks.gov/trans/safety_meetings.htm).

10. Finally, Staff recommends that Booth Construction 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**

11. The Commission finds it has jurisdiction over Booth Construction because it is a motor carrier as defined in K.A.R. 82-4-1.

12. The Commission finds Booth Construction committed four (4) 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. Dusty L. Booth, d/b/a Booth Construction Co., of Eureka, KS is hereby assessed a \$1,700 civil penalty for four (4) 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. Booth Construction 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. Booth Construction 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. Pursuant to K.S.A. 2018 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 Booth Construction's right to a hearing, and this Penalty Order will become a Final Order assessing a \$1,700 civil penalty against Booth Construction, and ordering a representative from Booth Construction 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.

E. 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. 2018 Supp. 66-1,142b(e) and amendments thereto.

F. If you do not request a hearing, the payment of the civil penalty of \$1,700 is due in thirty (30) days from the date of service of this Order. Payment of \$1,700 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.

G. Failure to pay the \$1,700 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 Booth Construction'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.

H. 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.**

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 04/30/2019




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Lynn M. Retz  
Secretary to the Commission

AAL

## **ATTACHMENT “A”**

**Kansas Corporation Commission**

	<b>US DOT #</b> 1512541	<b>Legal:</b> DUSTY L BOOTH <b>Operating (DBA):</b> BOOTH CONSTRUCTION CO																			
	<b>MC/MX #:</b> _____ <b>Federal Tax ID:</b> _____ (EIN)																				
<b>Review Type:</b> Compliance Review (CR)																					
<b>Scope:</b> Principal Office		<b>Location of Review/Audit:</b> Company facility in the U. S.			<b>Territory:</b> C																
<b>Operation Types</b>		<b>Business:</b> Individual																			
Interstate Intrastate		Gross Revenue: _____ for year ending: 12/31/2018																			
Carrier: N/A HM																					
Shipper: N/A N/A																					
Cargo Tank: N/A																					
<b>Company Physical Address:</b>																					
2075 H RD EUREKA, KS 67045																					
<b>Contact Name:</b> Dusty L Booth																					
<b>Phone numbers:</b> (1) _____ <b>Fax</b> _____																					
<b>E-Mail Address:</b> _____																					
<b>Company Mailing Address:</b>																					
2075 H RD EUREKA, KS 67045																					
<b>Carrier Classification</b>																					
Private Property																					
<b>Cargo Classification</b>																					
Motor Vehicles Other: Back hoe/ trencher																					
<b>Hazardous Materials</b>																					
9 Miscellaneous HM Carried Non-Bulk																					
<b>Equipment</b>																					
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Owned</th> <th>Term Leased</th> <th>Trip Leased</th> <th></th> <th>Owned</th> <th>Term Leased</th> <th>Trip Leased</th> </tr> </thead> <tbody> <tr> <td>Truck Tractor</td> <td align="center">1</td> <td align="center">0</td> <td align="center">0</td> <td>Trailer</td> <td align="center">1</td> <td align="center">0</td> <td align="center">0</td> </tr> </tbody> </table>							Owned	Term Leased	Trip Leased		Owned	Term Leased	Trip Leased	Truck Tractor	1	0	0	Trailer	1	0	0
	Owned	Term Leased	Trip Leased		Owned	Term Leased	Trip Leased														
Truck Tractor	1	0	0	Trailer	1	0	0														
Power units used in the U.S.:1																					
Percentage of time used in the U.S.:100																					
<b>Does carrier transport placardable quantities of HM?</b> No																					
<b>Is an HM Permit required?</b> N/A																					
<b>Driver Information</b>																					
		Inter	Intra																		
< 100 Miles:			1	Average trip leased drivers/month: 0																	
>= 100 Miles:				Total Drivers: 1																	
				CDL Drivers: 1																	





**BOOTH CONSTRUCTION CO (DUSTY L BOOTH dba)**  
U.S. DOT #: 1512541

**Review Date:**  
04/10/2019

**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:

1500 SW Arrowhead Rd  
Topeka, Ks 66604-4027  
Attn: Gary Davenport 620-785-3145

**This report will be used to assess your safety compliance.**

**Person(s) Interviewed**

**Name:** Dusty L Booth

**Title:** Owner

**Name:** Joni R Booth

**Title:** Office Manager





**BOOTH CONSTRUCTION CO (DUSTY L BOOTH dba)**  
U.S. DOT #: 1512541

Review Date:  
04/10/2019

### Part B Violations

1 STATE	Primary: 382.115(a) CFR Equivalent: 382.115(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations. <b>Example</b> Dusty L Booth Accident date 2-28-19 The carrier at the time of this accident and the time of this review had no drug testing consortium or program in place at all. The carrier/driver stated he was blood tested within 2 hours of the accident, signed a document but was given no copy of any evidence custody sheet in reference to the test. All other drug and alcohol violations preclude to the fact the carrier had no drug and alcohol testing program in place.					
2 STATE	Primary: 390.15(b) CFR Equivalent: 390.15(b)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 0	Checked 0
<b>Description</b> Failing to maintain, for a period of three years after an accident occurs, an accident register. <b>Example</b> Dusty L Booth Accident date 2-28-19 The carrier at the time of this review had no accident register for the above listed crash.					
3 STATE	Primary: 390.15(b)(2) CFR Equivalent: 390.15(b)(2)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 0	Checked 0
<b>Description</b> Failing to maintain copies of all accident reports required by State or other governmental entities or insurers. <b>Example</b> Dusty L Booth Accident date 2-28-19 The carrier at the time of this review had no accident report for the above listed crash. The Kansas Highway Patrol Trooper J Helton gave them a copy of the post accident inspection only.					
4 STATE	Primary: 391.51(a) CFR Equivalent: 391.51(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to maintain driver qualification file on each driver employed. <b>Example</b> Dusty L Booth Accident date 2-28-19 The carrier at the time of this review had no item that he could provide that was part of a driver qualification file. The carrier could not provide one driver file required item.					





**BOOTH CONSTRUCTION CO (DUSTY L BOOTH dba)**  
U.S. DOT #: 1512541

Review Date:  
04/10/2019

### Part B Violations

5 STATE	Primary: 392.2 Secondary: 8-143 CFR Equivalent: 392.2	Discovered 1	Checked 2	Drivers/Vehicles In Violation 1	Checked 2
<b>Description</b> Operating a commercial motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated - Other.					
<b>Example</b> The carrier had a standard tag 008 LUX on tractor of his 1995 Kenworth when the vehicle, being intrastate only, should have a Kansas Commercial Plate on the tractor.					
6 STATE	Primary: 392.9b(a) CFR Equivalent: 392.9b(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 0	Checked 0
<b>Description</b> Operating a commercial motor vehicle in interstate commerce without an active USDOT Number.					
<b>Example</b> Dusty L Booth Accident date 2-28-19 The carrier at the time of this review had an outdated USDOT number of 1512541. The USDOT number was not displayed on the truck and the carrier tractor showed RV Not For Hire on the side of the door. The carrier reported that the individual he bought the tractor from on 01-11-19 had the RV Sign on the vehicle. See Part C for description.					
7 STATE	Primary: 395.8(a) CFR Equivalent: 395.8(a)	Discovered 8	Checked 28	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to require driver to make a record of duty status.					
<b>Example</b> Dusty L Booth Accident date 2-28-19 The carrier at the time of this trip and the time of this review had activity sheets that showed what work had been done with the back hoe, truck and trailer. No hours for in, out and total hours were listed on any of the planner date sheets. Seven work dates were located and the eight date was the date of the accident.					
8 STATE	Primary: 396.3(b)(1) CFR Equivalent: 396.3(b)(1)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
<b>Description</b> Failing to keep a maintenance record which identifies the vehicle, including make, serial number, year, and tire size.					
<b>Example</b> Carrier had 1 tractor and 1 trailer that fit the intrastate requirements for CMV that they had basic registration and maintenance items for but they did not have them contained in a way that identified the vehicle as required by this part.					





**BOOTH CONSTRUCTION CO (DUSTY L BOOTH dba)**  
U.S. DOT #: 1512541

Review Date:  
04/10/2019

### Part B Violations

9 STATE	Primary: 396.17(a) CFR Equivalent: 396.17(a)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
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**Description**

Using a commercial motor vehicle not periodically inspected.

**Example**

Dusty L Booth

Accident date 2-28-19

The carrier at the time of this accident, and the time of this review, review had no annual inspection for either the truck or trailer. It is a physical impossibility to obtain an annual inspection on these vehicles as the truck, trailer, and back hoe was completely destroyed in the accident.

**Safety Fitness Rating Information:**

Total Miles Operated 7,200  
Recordable Accidents 1

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

Your proposed safety rating is :

**This Review is not Rated.**





**BOOTH CONSTRUCTION CO (DUSTY L BOOTH dba)**  
U.S. DOT #: 1512541

Review Date:  
04/10/2019

## Part B Requirements and/or Recommendations

### 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.
- **Apply Adequate Resources:** Apply adequate resources to properly implement safety management practices. Consider reallocating responsibilities, additional staffing, contracting, or investing in technology to aid in this responsibility.
- **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.
- 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.

For all Investigations resulting in a Penalty Order:

- **PLEASE NOTE:** The violations discovered during this compliance review may affect the civil penalty proposed in any subsequent Penalty Order. In addition, your history of prior violations of the Federal Motor Carrier Safety Regulations, Federal Hazardous Material Regulations or the Federal Motor Carrier Commercial Regulations may also affect the civil penalty proposed in any subsequent Penalty Order. Your signature for receipt of this report acknowledges your understanding that the violations discovered by the FMCSA during this review may be used to calculate any civil penalty proposed as a result of this review. Your signature is not an admission of the violations identified.

For all Investigations resulting in a proposed conditional or unsatisfactory rating:

#### 385.15

If you believe the proposed rating is in error and there are factual and procedural issues in dispute, Part 385.15 (copy provided) outlines procedures for petitioning the Federal Motor Carrier Safety Administration for an administrative review of these findings. Your petition should be addressed to:

Chief Safety Officer  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue SE,  
Washington, DC 20590

#### 385.17

In addition, a request for a revised rating based on corrective actions may be made at any time. Part 385.17 (copy provided) outlines the procedures for such a request. The request must be made in writing, must describe the corrective action taken and must include other documentation that may be relied upon as a basis for the requested change. Address your written request to:

Ensure that a CC copy of the letter is mailed to:





**BOOTH CONSTRUCTION CO (DUSTY L BOOTH dba)**  
U.S. DOT #: 1512541

Review Date:  
04/10/2019

## Part B Requirements and/or Recommendations

Division Administrator/Max Stratham  
Federal Motor Carrier Safety Administration  
1303 First American Place, Suite 200  
Topeka, KS 66604

Information on your compliance status, roadside inspections, regulatory changes, accident counter measures and hazardous material counter measures is available on the Internet at the Federal Motor Carrier Safety Administration's web site at <http://www.fmcsa.dot.gov/> and <http://www.safer.fmcsa.dot.gov/>.

For all Investigations that did not result in a Cooperative Safety Plan:

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  
Topeka, KS 66604-4027

2. Make sure all commercial motor vehicles have current and commercial registration .
3. Establish a systematic maintenance records program for all vehicles. Maintain a complete file for each subject vehicle, recording all repair, maintenance and inspection operations performed. maintenance files must identify the vehicle by make, serial number, year, tire size, and carrier unit number.
4. Ensure that you give drivers a written drug policy and educational materials.
5. The starting date for alcohol and/or controlled substance testing programs must be implemented no later than the date the employer begins commercial motor vehicle operations per 49 CFR 382.115(a).
6. If you or your drivers are involved in a recordable commercial motor vehicle accident, you must maintain an accident file for three years from the date of the accident.
7. Per 391.51(a) - requiremenst for maintaining the medical certification information in the Driver Qualification file is as follows:
  - (7)(i) The medical examiner's certificate as required by § 391.43(g) or a legible copy of the certificate.
  - (ii) Exception. For CDL holders, beginning January 30, 2012, if the CDLIS motor vehicle record contains medical certification status information, the motor carrier employer must meet this requirement by obtaining the CDLIS motor vehicle record defined at § 384.105 of this chapter. That record must be obtained from the current licensing State and placed in the driver qualification file. After January 30, 2015, a non-excepted, interstate CDL or CLP holder without medical certification status information on the CDLIS motor vehicle record is designated "not-certified" to operate a CMV in interstate commerce. After January 30, 2015, a motor carrier may use a copy of the driver's current medical examiner's certificate that was submitted to the State for up to 15 days from the date it was issued as proof of medical certification.
  - (iii) If that driver obtained the medical certification based on having obtained a medical variance from FMCSA, the





**BOOTH CONSTRUCTION CO (DUSTY L BOOTH dba)**  
U.S. DOT #: 1512541

Review Date:  
04/10/2019

### Part B Requirements and/or Recommendations

motor carrier must also include a copy of the medical variance documentation in the driver qualification file in accordance with § 391.51(b)(8);

8. Ensure that all commercial motor vehicles, which would include trailers as well as power units, have a current Annual Inspection as required by 396.17. A motor carrier shall not use a commercial motor vehicle unless each component has passed an inspection at least once during the preceding 12 months. The inspection must identify the vehicle, the date of the inspection, and the name and address of the motor carrier or entity where the report is maintained.
9. The MCS-150 (Motor Carrier Identification Report) is required to be updated bi-annually. As required under 49 CFR 390.19(a) and 390.19(b), the carrier must file Form MCS-150 before it begins operations and every 24 months according to the schedule noted in 390.19(b)(2). Depending on the next to the last digit of the USDOT#, the carrier will be responsible for updating the USDOT# in either the even or odd number year. Example: The next to the last number in the USDOT# is 2, the carrier would need to update the MCS150 in an even numbered year. On the same hand, the last number of the USDOT# is the qualifier for the month in which the update must occur. If the last number of the USDOT# is 4, the USDOT# must be updated by the end of April. The required form must be filed with FMCSA Office of Information Management. The USDOT number needs to be filed electronically according to the instructions at the Agency's ([www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)) Web site.
10. CDL Drivers operating vehicles which meet the definition of a CDL commercial motor vehicle (CMV) SHALL have an equal chance of being tested each time selections are made. These drivers shall be in a pool of CDL drivers. Non-CDL drivers cannot be allowed in the same pool as the CDL drivers as the non-CDL drivers will take the opportunity for a random selection away from the CDL driver resulting in the CDL driver not having an equal chance of being tested each time selections are made.
11. Each motor carrier shall maintain a driver qualification (DQ) file for each driver it employs. A driver's qualification file may be combined with his/her personnel file. The DQ file must include: driver's application for employment completed in accordance with 391.21; a copy of the motor vehicle record received from each State within 30 days of the hire date pursuant to 391.23(a)(1); certificate of the driver's road test issued to the driver [391.31(e)] or a copy of the CDL license [391.33]; copy of the annual motor vehicle record received from each State agency [391.25(a)]; note relating to the annual review of the driver's driving record [391.25(c)(2)]; list or certificate relating to violations of motor vehicle laws and ordinances of the annual review of the driver's driving record [391.27]; copy of the medical examiner's certificate [391.43(g)]; a note relating to the verification of medical examiner listing on the National Registry of Certified Medical Examiners [391.23(m)]; and a Skill Performance Evaluation Certificate if applicable [391.49].
12. Ensure that you have in writing a means of indicating the nature and due date of various inspection and maintenance operations to be performed.
13. Make sure the MCS-150 (USDOT number) is updated every year. When doing so, be sure to change any information being reflected inaccurate.
14. 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





BOOTH CONSTRUCTION CO (DUSTY L BOOTH dba)  
U.S. DOT #: 1512541

Review Date:  
04/10/2019

### Part B Requirements and/or Recommendations

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.

15. Each employer shall provide educational materials that explain the requirements of Part 382
16. Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.
17. 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 Dusty L Booth dba Booth Construction Co. operating authority and the impoundment of Dusty L Booth dba Booth Construction Co. vehicles.

I understand that monetary penalties will be assessed as a result of violations found in this compliance review. The penalty schedule can be found at this web site: [http://kcc.ks.gov/trans/penalty\\_assessment\\_table.htm](http://kcc.ks.gov/trans/penalty_assessment_table.htm)

X DUSTY L. BOOTH  
Printed Michael Heenan KS8213

X Dusty Booth  
Signed Michael Heenan KS8213

18. 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





**BOOTH CONSTRUCTION CO (DUSTY L BOOTH dba)**  
U.S. DOT #: 1512541

Review Date:  
04/10/2019

### Part B Requirements and/or Recommendations

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>

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 carriers 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.

19. Per 391.51(b)(7)(i): The qualification file for a driver must include the medical examiner's certificate as required by 391.43(g) or a legible copy of the certificate.
20. This review contains violations that are serious in nature and may result in a penalty assessment against the company and/or drivers.
21. If carrier is not subject to federal corrective action plan the KCC requires you reply in writing with corrections made to violations in this review. Please advise how you will correct deficiencies and how you intend to rectify them from happening in the future. Please include all copies of documents to be included in this correction action letter and send to the following individual at the following address within 30 days of this review.

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



## **ATTACHMENT “B”**

# DRIVER/VEHICLE EXAMINATION REPORT

Kansas Highway Patrol  
MOTOR CARRIER SAFETY ASSISTANCE  
700 SW Jackson, Ste 704  
Topeka, KS 66603  
Phone #: (785)296-7189 Fax #: (785)296-2858  
truckinspection@khp.ks.gov

Report Number: KSHPO1760387  
Inspection Date: 2/28/2019 Certification Date:  
Time Started: 13:00 Time Ended: 11:00  
Inspection Level: I - Full Inspection  
HM Inspection Type: No HM Inspection

DUSTY L BOOTH  
2075 H RD  
EUREKA, KS 67045  
USDOT #: 01512541  
MC/MX #:  
State #:

Phone #:   
Fax #:

Driver: BOOTH, DUSTY L  
License #:   
Date of Birth:   
State: KS

Location: GREENWOOD COUNTY - 073  
Highway: U54 & K99 JUNCTION  
County: GREENWOOD  
Shipper:

MilePost:  
Origin: EUREKA,KS  
Destination: TORONTO,KS

Bill of Lading:  
Cargo: BACKHOE TRACTOR

## VEHICLE IDENTIFICATION:

Unit Type	Make	Year	State	License#	Equipment ID	Unit VIN	GVWR	CVSA #	CVSA Issued #	OOS Stkr.#
1 TT	KW	1995	KS			673365	33,000			147329
2 FT	PJ	2008	KS			1109111	24,000			147330

## BRAKE ADJUSTMENTS:

Axle #	1	2	3	4
Right	2	1 3/8	N/A	N/A
Left	1	1 1/2	N/A	N/A
Chamber	C-20	C-30	ELEC	ELEC

## VIOLATIONS :

Vio Code	Section	Unit	OOS	State Citation		Verify*	Crash	Violation Description
				Number	Result#			
396.17C	396.17(c)	1	N		0	N	N	Operating a CMV without proof of a periodic inspection: No Annual Inspection for Truck Tractor
396.17C	396.17(c)	2	N		0	N	N	Operating a CMV without proof of a periodic inspection: No Annual Inspection for Trailer
393.9	393.9(a)	1	N		0	N	N	Inoperable Required Lamp: Left (DS) ID Lamp
393.9	393.9(a)	1	N		0	N	N	Inoperable Required Lamp: Left & Right Clearance Lamps Inoperable (Driver & Passenger Side)
393.9H	393.9(a)	1	N		0	N	Y	**Inoperable head lamps: Left & Right Headlamps BOTH Inoperable (missing)
393.9TS	393.9(a)	1	N		0	N	Y	**Inoperative turn signal: Front Left & Right Turn Signals BOTH inoperable (missing)
393.9BRKLAMP	393.9(a)	2	N		0	N	U	Inoperative Brake Lamps: Right Rear Brake Lamp Inoperable (unable to determine if working prior to crash or not)
393.9TS	393.9(a)	2	Y		0	U	U	Inoperative turn signal: Right Rear Turn Signal Inoperable (unknown if working prior to crash or not)
393.9	393.9(a)	2	N		0	N	U	Inoperable Required Lamp: Left Rear Clearance Lamp Inoperable (unknown if light was working prior to crash or not)
393.43	393.43	2	Y		0	U	N	No/improper breakaway or emergency braking: Breakaway for Trailer Inoperable. Battery was in box but not working when tested.
393.203C	393.203(c)	1	Y		0	U	Y	**Hood not securely fastened: Hood securement broken due to crash.
393.65C	393.65(c)	1	Y		0	U	Y	**Improper securement of fuel tank: Right Side (passenger) Fuel tank loose in hanger. As a result of the collision.
396.3A1-LLEAK	396.3(a)(1)	1	Y		0	U	Y	**A liquid fuel system with a dripping leak at any point.: Right (Passenger side) Fuel Tank leaking fuel. (as a result of the collision)
392.9BA-INACTIVEI	392.9b(a)	1	N		0	N	N	INTRASTATE CARRIER Operating a commercial

Report Prepared By:  
J R. Helton

Badge #:  
0176

Copy Received By:  
BOOTH, DUSTY L

Page 1 of 3



KSHPO1760387

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# DRIVER/VEHICLE EXAMINATION REPORT

Kansas Highway Patrol  
 MOTOR CARRIER SAFETY ASSISTANCE  
 700 SW Jackson, Ste 704  
 Topeka, KS 66603  
 Phone #: (785)296-7189 Fax #: (785)296-2858  
 truckinspection@khp.ks.gov

Report Number: KSHPO1760387  
 Inspection Date: 2/28/2019 Certification Date:  
 Time Started: 13:00 Time Ended: 11:00  
 Inspection Level: I - Full Inspection  
 HM Inspection Type: No HM Inspection

DUSTY L BOOTH  
 2075 H RD  
 EUREKA, KS 67045  
 USDOT #: 01512541  
 MC/MX #:  
 State #:

Phone #: [REDACTED]  
 Fax #: [REDACTED]

Driver: BOOTH, DUSTY L  
 License #: [REDACTED] State: KS  
 Date of Birth: [REDACTED]

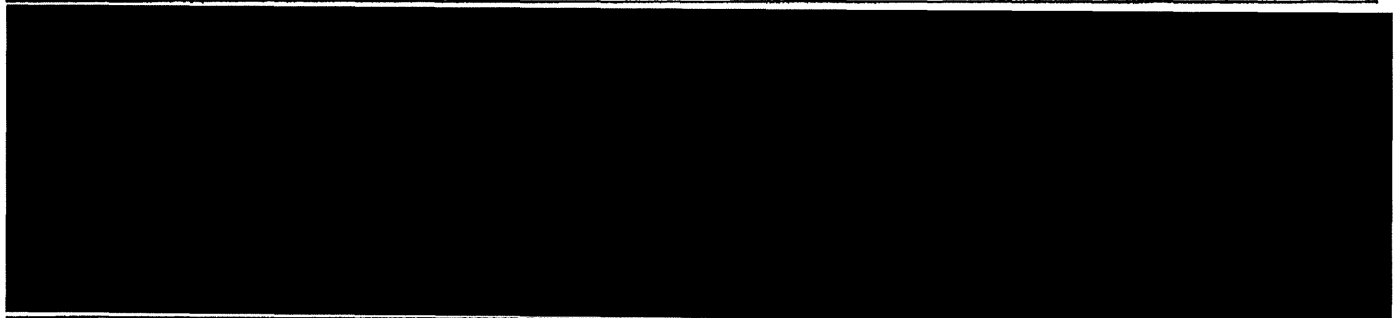
391.41A-F	391.41(a)	D	N	0	N	N	motor vehicle in intrastate commerce without an active USDOT number when required.: No DOT Operating a property-carrying vehicle without possessing a valid medical certificate.: No Medical Card
393.95A	393.95(a)	1	N	0	N	N	No/discharged/unsecured fire extinguisher: Fire Extinguisher Loose (strap broken that secures extinguisher)
396.3A1B	396.3(a)(1)	1	Y	0	U	U	Brakes (general) Explain:: Air leak at chamber through manufactured hole
393.47E	393.47(e)	1	N	0	N	N	Clamp or Roto type brake out-of-adjustment: Front Right (passenger side) brake out-of-adjustment. @2 inches.
393.53B	393.53(b)	1	N	0	N	N	CMV manufactured after 10/19/94 has an automatic airbrake adjustment system that fails to compensate for wear
393.130	393.130	2	Y	0	U	N	No/improper heavy vehicle/machine securement: Only one chain and boomer across the front of a Case 580 Super M Backhoe.

\* N - Non-OOS or Driver OOS Violation; U - Unknown  
 \*\* Y - The violation occurred because of the crash; U - Unknown  
 \* 0-N/A, 1-Conviction of Original Charge, 2-Conviction of a Different Charge, 3-Not Guilty/Dismissed

HazMat: No HM Transported. Placard: NA Cargo Tank:

Special Checks:

<input type="checkbox"/> Alcohol/Controlled Substance Check	<input type="checkbox"/> Traffic Enforcement	<input checked="" type="checkbox"/> Post Crash Inspection
<input type="checkbox"/> Conducted by Local Jurisdiction	<input type="checkbox"/> PASA Conducted Inspection	<input type="checkbox"/> PBBT Inspection
<input type="checkbox"/> Size and Weight Enforcement	<input type="checkbox"/> Drug Interdiction Search	Arrests:
<input type="checkbox"/> EScreening		



## Special Study Fields:

Special Study1:	Special Study6:
Special Study2:	Special Study7
Special Study3:	Special Study8.
Special Study4:	Special Study9:
Special Study5:	Special Study10:

Report Prepared By:  
 J.R. Helton

Badge #:  
 0176

Copy Received By:  
 BOOTH, DUSTY L

Page 2 of 3



KSHPO1760387

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# DRIVER/VEHICLE EXAMINATION REPORT

Kansas Highway Patrol  
 MOTOR CARRIER SAFETY ASSISTANCE  
 700 SW Jackson, Ste 704  
 Topeka, KS 66603  
 Phone #: (785)296-7189 Fax #: (785)296-2858  
 truckinspection@khp ks gov

Report Number: KSHP01760387  
 Inspection Date: 2/28/2019 Certification Date:  
 Time Started: 13:00 Time Ended: 11:00  
 Inspection Level: I - Full Inspection  
 HM Inspection Type: No HM Inspection

DUSTY L BOOTH  
 2075 H RD  
 EUREKA, KS 67045  
 USDOT #: 01512541  
 MC/MX #:  
 State #:

Phone #:  
 Fax #:

Driver: BOOTH, DUSTY L  
 License #:  
 Date of Birth:  
 State: KS

\* Pursuant to the authority contained in Title 49, CFR, K S A. 66-1,129; K C.C. Reg. 82-4-3, I hereby declare the above marked unit(s) as "OUT OF SERVICE". No person and/or carrier shall permit and/or require the removal of the "OUT OF SERVICE" stickers or the operation of this motor vehicle until ALL out of service defects have been corrected. This Out of Service condition may result in the assessment of a Civil Penalty being issued against the Carrier indicated on this report. Driver Initials \_\_\_\_\_

\*\*\* DRIVER THIS FORM IS REQUIRED TO BE RETURNED TO THE CARRIER BY REGULATION \*\*\* \*\*/ \*\* \*CARRIER CERTIFICATION: All defects on this sheet must be corrected or acknowledged PRIOR TO RE-DISPATCH and then certified by a responsible carrier official who must sign below. RETURN THIS FORM WITHIN 15 DAYS to the Motor Carrier Division of the KANSAS HIGHWAY PATROL at the address listed at the top of this form.

Signature of Carrier Official. X

Date

Note to carrier this section applies to self adjusting brake.

Advisory: This vehicle has been identified to have brake adjustment violations. 49CFR Section 393.53 requires that a self-adjusting brake system be equipped on this vehicle. A qualified service technician needs to determine why the defective brake has excessive stroke and make the appropriate repairs. Simply re-adjusting a self-adjusting brake adjuster, or replacing it, does not guarantee that the problem is corrected. The problem may exist in the foundation brake system. By certifying this inspection report you have indicated that this vehicle now has a properly functioning self-adjusting brake adjustment system.

\* NOTE TO MECHANIC: The undersigned certifies that all mechanical defects listed on this report HAVE BEEN CORRECTED at the time of signature

Signature of Repairer: X

Facility

Date.

Report Prepared By:  
 J.R. Helton

Badge #:  
 0176

Copy Received By:  
 BOOTH, DUSTY L

Page 3 of 3



KSHP01760387

X

X

**CERTIFICATE OF SERVICE**

19-TRAM-427-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 05/01/2019.

DUSTY L. BOOTH, OWNER  
DUSTY L. BOOTH  
D/B/A BOOTH CONSTRUCTION CO.  
2075 H RD  
EUREKA, KS 67045  
dusty-joni-booth@sbcglobal.net

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

/S/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe