

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

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

In the Matter of the Emergency Suspension of)
Operating Authority of **LSK Logistics LLC of**)
Overland Park, Kansas, for Failure to Comply)
with New Entrant Safety Requirements as) Docket No. 19-TRAM-162-OOS
Required by the Motor Carrier Safety Statutes,)
Rules and Regulations.)

EMERGENCY SUSPENSION OF OPERATING AUTHORITY ORDER

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

I. JURISDICTION AND BACKGROUND

1. Pursuant to K.S.A. 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. Pursuant to K.S.A. 2017 Supp. 66-1,129(a)(7), the Commission has adopted motor carrier transportation regulations (K.A.R. 82-4-1 *et seq.*) consistent with the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous waste.

4. K.S.A. 2017 Supp. 77-536 governs the use of emergency proceedings. The statute provides in part as follows:

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

II. FINDINGS OF FACTS

5. LSK Logistics LLC (Respondent) is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108, that operates commercial motor vehicle(s) in interstate commerce in a manner that requires authority.

6. Respondent is registered as a motor carrier with the U.S. Department of Transportation (USDOT), and operates under USDOT Number 2858063.

7. On August 21, 2018, the Federal Motor Carrier Safety Administration (FMCSA) forwarded a notice of violation(s) of the federal motor carrier safety regulations to Respondent, wherein Respondent was given 30 days to comply with the regulations.

8. As of October 21, 2018, FMCSA records indicate Respondent had not complied with new entrant requirements. As a result, the FMCSA issued Respondent an

Order to Cease All Interstate and Intrastate Commerce and Revocation of Registration.
FMCSA's Order is attached hereto.

III. STAFF'S RECOMMENDATIONS

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

10. Staff asks the Commission to find that Respondent failed to act upon the FMCSA's notice.

11. Staff asks the Commission to find that Respondent's failure to comply with requirements of a new entrant audit is sufficient evidence of unsafe motor carrier operations and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas.

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

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

IV. CONCLUSIONS OF LAW

14. The Commission finds it has jurisdiction over Respondent as the Respondent is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108.

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

16. The Commission finds Respondent failed to act upon this notice.

17. The Commission also finds Respondent's failure to comply with requirements of a new entrant audit is sufficient evidence of unsafe motor carrier operations, and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas. Therefore, this Commission orders the Respondent to suspend all intrastate motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 2017 Supp. 66-1,129, until such time as the carrier takes the necessary steps to become compliant. This includes submitting to Staff verifiable evidence of the correction of the violation(s) noted in FMCSA's October 21, 2018 Order including, but not limited to, proof of federal reinstatement and attendance of a Commission-sponsored safety seminar within ninety (90) days from the date of this Order. A schedule of dates and locations for the safety seminar can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm. The proof of attendance at the safety seminar should be submitted to Litigation Counsel.

THE COMMISSION THEREFORE ORDERS THAT:

A. LSK Logistics LLC of Overland Park, Kansas is to be immediately suspended from all intrastate Kansas commercial motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 2017 Supp. 66-1,129, until such time as Respondent presents to Staff verifiable evidence, including, but not limited to, proof of federal reinstatement documenting the correction of the safety concerns identified in the FMCSA's October 21, 2018 Order to Revoke "New Entrant" Registration and Cease All Interstate Transportation. This Emergency Suspension of Operating Authority Order may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of any Order to cease operations or suspend operating authority.

B. LSK Logistics LLC of Overland Park, Kansas, is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order and provide Litigation Counsel with written proof of attendance.

C. **Pursuant to K.S.A. 2017 Supp. 77-537 and K.S.A. 2017 Supp. 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 Secretary, at 1500 S.W. Arrowhead Road Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Order.** Pursuant to K.S.A. 2017 Supp. 66-1,129a, hearings will be held within ten (10) days upon written request. Failure to timely request a hearing will result in a waiver of Respondent's right to a hearing, and this Order will become a Final Order against Respondent, suspending Respondent's motor carrier intrastate operations, ordering Respondent to attend a

Commission-sponsored safety seminar within the next ninety (90) days and provide
Litigation Counsel with written proof of attendance.

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

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

F. 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: 10/30/2018



Lynn M. Retz
Secretary to the Commission

AAL



U.S. Department of
Transportation

**Federal Motor Carrier
Safety Administration**

Midwestern Service Center

UPS
1ZA476X80191557185

October 15, 2018

LSK LOGISTICS LLC
10591 LONG STREET
OVERLAND PARK, KS, 66215

4749 Lincoln Mall Drive, Suite 300A
Matteson, IL 60443

Phone: (708) 283-3577
Fax: (708) 283-3565

**ORDER TO CEASE ALL TRANSPORTATION IN INTERSTATE AND
INTRASTATE COMMERCE AND REVOCATION OF REGISTRATION**

EFFECTIVE Sunday, October 21, 2018 at 12:01 am
USDOT# 2858063

This **Order to Cease All Transportation in Interstate and Intrastate Commerce (Order) and Revocation of Registration** is issued pursuant to 49 USC §§ 13905(f)(1)(B) and 31144, and 49 CFR § 385.13.

This **Order** is the result of a compliance review of LSK LOGISTICS LLC's operations completed on August 21, 2018. The review disclosed serious violations of the Federal Motor Carrier Safety Regulations and/or the Hazardous Materials Regulations.

LSK LOGISTICS LLC, USDOT# 2858063, was issued a proposed "unsatisfactory" safety rating on August 21, 2018. LSK LOGISTICS LLC was notified to take certain actions within 60 days from the date of that proposed rating to improve its safety rating to "conditional" or "satisfactory". LSK LOGISTICS LLC was further advised that it would be ordered to cease any and all operation of any commercial motor vehicle(s) in interstate and intrastate commerce and its registration would be revoked unless its safety rating was improved to "conditional" or "satisfactory".

LSK LOGISTICS LLC has failed to take the necessary steps required to improve its safety rating to "conditional" or "satisfactory" within the required timeframe.

THEREFORE, ***IT IS ORDERED*** THAT LSK LOGISTICS LLC SHALL CEASE ALL OPERATION OF ANY COMMERCIAL MOTOR VEHICLE(S) IN INTERSTATE AND INTRASTATE COMMERCE ON THE EFFECTIVE DATE AND TIME OF THIS ORDER, AND THE REGISTRATION OF LSK LOGISTICS LLC SHALL BE REVOKED UNLESS AND UNTIL SUCH

TIME AS THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION DETERMINES LSK LOGISTICS LLC IS FIT, AND LSK LOGISTICS LLC HAS REINSTATED ITS REGISTRATION.

IN ADDITION, EACH AND EVERY DEPARTMENT, AGENCY, OR INSTRUMENTALITY OF THE UNITED STATES GOVERNMENT IS PROHIBITED FROM USING LSK LOGISTICS LLC FOR ANY TRANSPORTATION IN INTERSTATE AND INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT. (49 USC § 31144).

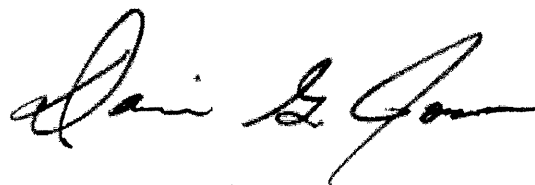
LSK LOGISTICS LLC's continued operation of commercial motor vehicles in interstate and/or intrastate commerce after the effective date and time of this Order and/or Revocation of Registration will be considered a serious safety violation. Each day the transportation continues constitutes a separate offense.

Failure to comply with this order may subject the carrier to a penalty in accordance with 49 USC 521(b) and the minimum/maximum penalty schedule in 49 CFR Part 386 Appendix A and B. Violation(s) of registration requirements, including providing transportation requiring registration during any period of revocation, may result in penalties of not less than \$650 for each separate violation. If the registration violation involves providing transportation of passengers, the penalty shall be not less than \$2,200 for each separate violation; if the registration violation involves the transportation of household goods, the penalty shall not be less than \$25,000 for each separate violation. (49 USC § 14901).

Operation, after the effective date and time of this Order and/or Revocation of Registration, of a commercial motor vehicle designed or used to transport hazardous materials for which placarding of the vehicle is required is subject to a civil penalty of not less than \$275 and not more than \$50,000 for each offense. If the violation results in death, serious illness, or severe injury to any person, or in substantial destruction of property, the civil penalty may be increased to not more than \$105,000 for each offense. Operating a commercial motor vehicle designed or used to transport placardable amounts of hazardous materials after the effective date of this Order and/or Revocation of Registration may also result in criminal prosecution leading to fines and imprisonment up to five (5) years, or fines and imprisonment up to ten (10) years if the violation involves a release of hazardous material that results in death or bodily injury to any person. (49 USC §§ 31144, 5123, 5124).

Please be aware, this Order and Revocation of Registration may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of a final "unsatisfactory" safety rating.

Sincerely,

A handwritten signature in black ink, appearing to read "Darin Jones", is written over a horizontal line.

Darin Jones, Regional Field Administrator
Federal Motor Carrier Safety Administration
Midwestern Service Center

CERTIFICATE OF SERVICE

This is to certify that on October 15, 2018, the undersigned mailed or delivered, as specified, the designated number of copies of the **Order to Cease All Transportation in Interstate and Intrastate Commerce and Revocation of Registration** to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

LSK LOGISTICS LLC 10591 LONG STREET OVERLAND PARK, KS, 66215 Case #KS-2018-5016-UNFIT U.S. DOT #2858063	One Copy by: UPS Tracking Number: 1ZA476X80191557185
Jeffery Ellett, Division Administrator Kansas Division U.S. Department of Transportation Federal Motor Carrier Safety Administration 1303 SW First American Place, Suite 200 Topeka, KS 66604-4040	One Copy Internal Mail
Trial Attorney Federal Motor Carrier Safety Administration Midwestern Service Center 4749 Lincoln Mall Drive, Suite 300A Matteson, IL 60443	One Copy Internal Mail
U.S. Department of Transportation Federal Motor Carrier Safety Administration FMCSA Docket Clerk Midwestern Service Center 4749 Lincoln Mall Drive, Suite 300A Matteson, IL 60443	One Copy Internal Mail

CERTIFICATE OF SERVICE

19-TRAM-162-OOS

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 10/31/2018.

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

RICHARD MALASA, MANAGING MEMBER
LSK LOGISTICS LLC
10591 LONG STREET
OVERLAND PARK, KS 66215

/S/ DeeAnn Shupe

DeeAnn Shupe