

1500 SW Arrowhead Road  
Topeka, KS 66604-4027

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



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

Sam Brownback, Governor

## NOTICE OF PENALTY ASSESSMENT

December 23, 2014

15-TRAM-246-PEN

Mark Illausky, President  
Free State Growers, Inc., d/b/a Alex R. Masson  
PO Box 170  
Linwood, Kansas 66052

This is a notice of a penalty assessment for violation of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on November 12, 2014, by Kansas Corporation Commission Special Investigators Verna Jackson and B.K. Smith. For a full description of the penalty and process please refer to the Order that is attached to this notice.

### IF YOU ACCEPT THE PENALTY:

You have been assessed an \$800 penalty. You have thirty (30) days from service of this Penalty Order to pay the fine amount. Check or money order must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Transportation Division of the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and must include a reference to the docket number of this proceeding. Credit card payment may be made by faxing your credit card information to the Transportation Office at 785-271-3124, using the KCC's credit card payment form found at <http://kcc.ks.gov/trans/creditcard.pdf>.

You must attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website [http://www.kcc.state.ks.us/trans/safety\\_meetings.htm](http://www.kcc.state.ks.us/trans/safety_meetings.htm).

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

### IF YOU CONTEST THE PENALTY:

You have the right to request a hearing. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Respondent must submit an original and seven (7) copies of the request to the Commission's Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date stamped on the last page of the Penalty Order. K.A.R. 82-1-215; K.S.A. 2013 Supp. 77-542.

### IF YOU FAIL TO ACT:

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

Respectfully,

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

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

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

In the Matter of the Investigation of **Free State**      )  
**Growers, Inc., d/b/a Alex R. Masson, of**      )  
**Linwood, Kansas,** Regarding the Violation of      )  
the Motor Carrier Safety Statutes, Rules and      ) Docket No. 15-TRAM-246-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). The Commission, having been briefed on the issue by the Director of the Commission's Transportation Division, finds and concludes as follows:

**I.      JURISDICTION**

1.      Pursuant to K.S.A. 2013 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. 2013 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. 2013 Supp. 66-1,129a, 66-1,130 and 66-1,142b, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and order a hearing on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

## **II. BACKGROUND**

4. Free State Growers, Inc., d/b/a Alex R. Masson (Free State Growers) obtained private operating authority from the Commission on February 22, 2013, and operates under KSMCID number 169548 and USDOT number 2360285.

5. Andrea Illausky attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on December 10, 2012, on behalf of Free State Growers.

6. Free State Growers is a private motor carrier which primarily hauls green house plants.

## **III. STATEMENT OF FACTS**

7. Pursuant to the jurisdiction and authority cited above, on November 12, 2014, Commission Staff (Staff) Special Investigators Verna Jackson and B.K. Smith conducted a compliance review of the operations of Free State Growers. 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, Ms. Jackson and Mr. Smith identified two (2) violations of the Motor Carrier Safety Regulations.

- a. On October 3, 2014, Free State Growers required or permitted its driver, Thomas Coen, to operate a commercial motor vehicle, a 2007 Freightliner, VIN ending in 82012, pulling a 2001 Great Dane trailer, VIN ending in 035201, in interstate commerce from Oklahoma City, Oklahoma to

Denton, Texas. This trip is evidenced by Driver's Daily Log, dated October 3, 2014, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Free State Growers did not require its driver, Mr. Coen, to complete a daily Driver Vehicle Inspection Report (DVIR) on the commercial motor vehicles. The special investigators found 16 violations of this type. Free State Growers' failure to require each of its drivers to prepare a DVIR in writing, at the completion of each day's work, on each vehicle operated and to submit copies of the reports to the motor carrier for action and record retention is a violation of 49 C.F.R. 396.11(a), as adopted by K.A.R. 82-4-3j, and as authorized by K.S.A. 2013 Supp. 66-1,129. Staff recommends a fine of \$300.

- b. On October 10, 2014, Free State Growers required or permitted its driver, Thomas Coen, to operate a commercial motor vehicle, a 2007 Freightliner, VIN ending in 82012, pulling a 1998 Great Dane trailer, VIN ending in 047301, in interstate commerce from Oklahoma City, Oklahoma to Linwood, Kansas. This trip is evidenced by Driver's Daily Log, dated October 10, 2014, a copy of which is attached hereto as Attachment "C" and is hereby incorporated by reference. At the time of this transportation, the driver, Mr. Coen, drove after more than eight hours had passed since the end of his last off duty or sleeper berth period of at least 30 minutes. See Attachment "C". The special investigators found eight violations of this type. Free State Growers' failure to provide "rest breaks" to its drivers

if more than eight (8) hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes is a violation of 49 C.F.R. 395.3(a)(3)(ii), as adopted by K.A.R. 82-4-3a, and as implemented by K.S.A. 2013 Supp. 66-1,129. Staff recommends a fine of \$500.

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

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

9. Additionally, Staff recommends a civil penalty of \$800 for two (2) violations of the Motor Carrier Safety Statutes, Rules and Regulations.

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

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

#### **V. CONCLUSIONS OF LAW**

12. The Commission finds it has jurisdiction over Free State Growers because it is a motor carrier as defined in K.S.A. 2013 Supp. 66-1,108.

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

**THE COMMISSION THEREFORE ORDERS THAT:**

A. Free State Growers, Inc., d/b/a Alex R. Masson, of Linwood, Kansas is hereby assessed an \$800 civil penalty for two (2) violations of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. Free State Growers is hereby ordered to attend a Commission-sponsored safety seminar within the next ninety (90) days and is to provide Staff with written proof of attendance. Further, Free State Growers is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.

C. Pursuant to K.S.A. 2013 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Commission's Executive Director, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order. If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Free State Growers' right to a hearing, and this Penalty Order will become a Final Order assessing a \$800 civil penalty against Free State Growers, and ordering Free State Growers to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of

attendance, and to submit to a safety compliance review within eighteen (18) months from the date of service of this Order.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. A corporation shall not be permitted to enter an appearance, except by its attorney.

E. If you do not request a hearing, the payment of the civil penalty is due in thirty (30) days from date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payments shall be mailed to the Transportation Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. *The payment shall include a reference to the docket number of this proceeding.*

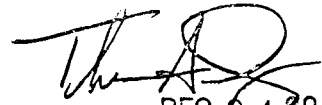
F. Failure to pay the \$800 civil penalty within thirty (30) days of the service of this Penalty Order, and/or failure to comply with the provisions of this Order, may result in revocation of Free State Growers' motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of out-of-service and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

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

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Com.; Apple, Com.

Dated: DEC 23 2014




ORDER MAILED DEC 24 2014

Thomas A. Day  
Acting Executive Director

MJD



## **ATTACHMENT “A”**

	<b>US DOT #</b> 2360285	<b>Legal:</b> FREE STATE GROWERS INC <b>Operating (DBA):</b> ALEX R MASSON		
<b>MC/MX #:</b>		<b>State #:</b>	<b>Federal Tax ID:</b>	<b>(EIN)</b>
<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>
<b>Operation Types</b>		<b>Interstate</b>	<b>Intrastate</b>	
<b>Carrier:</b> Non-HM		Non-HM		<b>Business:</b> Corporation <b>Gross Revenue:</b> for year ending: 12/31/2013
<b>Shipper:</b> N/A		N/A		
<b>Cargo Tank:</b> N/A				
<b>Company Physical Address:</b>				
<b>Contact Name:</b> Linda Scribner <b>Phone numbers: (1)</b> <b>E-Mail Address:</b>				
<b>Company Mailing Address:</b>				
P O BOX 170 LINWOOD, KS 66052-0170				
<b>Carrier Classification</b>				
Private Property				
<b>Cargo Classification</b>				
Other: Green House Plants				
<b>Equipment</b>				
	<b>Owned</b>	<b>Term Leased</b>	<b>Trip Leased</b>	
Truck	4	0	0	Truck Tractor
Trailer	5	0	0	
<b>Owned</b> <b>Term Leased</b> <b>Trip Leased</b> 2 1 0				
Power units used in the U.S.: 7 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>				
	<b>Inter</b>	<b>Intra</b>		
< 100 Miles:			Average trip leased drivers/month: 0	
>= 100 Miles:	7		Total Drivers: 7	
			CDL Drivers: 7	





ALEX R MASSON (FREE STATE GROWERS INC dba)

U.S. DOT #: 2360285

State #:

Review Date:

11/12/2014

### 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  
Topeka, Kansas 66604  
Telephone 785-271-3104

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

**Person(s) Interviewed**


**Name:** Mark Illausky

**Title:** President

**Name:** Linda Scribner

**Title:** Admin Asst



	<b>ALEX R MASSON (FREE STATE GROWERS INC dba)</b>		Review Date:
	U.S. DOT #: 2360285	State #:	11/12/2014

### Part B Violations

<b>1</b> FEDERAL CRITICAL	Primary: 396.11(a)	Discovered 16	Checked 94	Drivers/Vehicles In Violation 3	Checked 5
<b>Description</b> Failing to require driver to prepare driver vehicle inspection report. <b>Example</b> Thomas Coen October 3, 2014 Oklahoma City, Oklahoma to Denton, Texas Unit # 322, VIN 82012, connected to trailer Unit 412, VIN 035201 DVIR was unavailable					
<b>2</b> FEDERAL	Primary: 395.3(a)(3)(ii)	Discovered 8	Checked 150	Drivers/Vehicles In Violation 1	Checked 5
<b>Description</b> Requiring or permitting a property-carrying commercial motor vehicle driver to drive after more than 8 hours have passed since the end of the driver's last off duty or sleeper berth period of at least 30 minutes. <b>Example</b> Thomas Coen October 10, 2014 Oklahoma City, OK to Linwood, KS Driver started day at 6:30 am, flagged off duty at 6:00 pm. No 30 minute break recorded on ROD. In violation of driving 3PM to 6PM.  October 2014 - 30 minute violations for same driver: 10/1/2014 - 8 to 8:30 PM 10/3/2014 - 4 to 4:30 PM 10/8/2014 - 8 to 9 PM 10/9/2014 - 3:30 to 4 PM 10/15/2014 - 10 to 10:30 PM 10/22/2014 - 8 to 9 PM 10/29/2014 - 9 to 9:30 PM					
<b>3</b> FEDERAL	Primary: 395.8(f)	Discovered 3	Checked 150	Drivers/Vehicles In Violation 2	Checked 5
<b>Description</b> Failing to require driver to prepare record of duty status in form and manner prescribed. <b>Example</b> [REDACTED] (1 of 150) October 19, 2014 Failed to indicate in remarks the change of status location  [REDACTED] (2 of 150) October 15, 2014 and October 29, 2014 Failed to indicate number of miles traveled for the day.					





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## Part B Violations

4 FEDERAL	Primary: 396.11(c)	Discovered 20	Checked 94	Drivers/Vehicles In Violation 1	Checked 5																												
<b>Description</b> Failing to correct safety-related defects listed on vehicle inspection report(s). [REDACTED] September 17, 2014 Unit #228 - 2006 Freightliner - VIN 64748 DVIR is noted by the driver "no box lights" every day the vehicle was used in September (a total of 21 days for the month - 20 days continuing to show the note and the vehicle was not repaired or annotated the repair was not needed). Mechanic signature was not noted on DVIRs.																																	
<b>Safety Fitness Rating Information:</b> Total Miles Operated 302,360 Recordable Accidents 0 Recordable Accidents/Million Miles 0.00		<b>OOS Vehicle (CR): 0</b> Number of Vehicle Inspected (CR): 0 <b>OOS Vehicle (MCMIS): 1</b> Number of Vehicles Inspected (MCMIS): 5																															
Your proposed safety rating is :		<table border="1"><thead><tr><th>Rating Factors</th><th></th><th>Acute</th><th>Critical</th></tr></thead><tbody><tr><td>Factor 1:</td><td>S</td><td>0</td><td>0</td></tr><tr><td>Factor 2:</td><td>S</td><td>0</td><td>0</td></tr><tr><td>Factor 3:</td><td>S</td><td>0</td><td>0</td></tr><tr><td>Factor 4:</td><td>C</td><td>0</td><td>1</td></tr><tr><td>Factor 5:</td><td>N</td><td>0</td><td>0</td></tr><tr><td>Factor 6:</td><td>S</td><td>-</td><td>-</td></tr></tbody></table>				Rating Factors		Acute	Critical	Factor 1:	S	0	0	Factor 2:	S	0	0	Factor 3:	S	0	0	Factor 4:	C	0	1	Factor 5:	N	0	0	Factor 6:	S	-	-
Rating Factors		Acute	Critical																														
Factor 1:	S	0	0																														
Factor 2:	S	0	0																														
Factor 3:	S	0	0																														
Factor 4:	C	0	1																														
Factor 5:	N	0	0																														
Factor 6:	S	-	-																														
<b>SATISFACTORY</b>																																	

Corrective actions must be taken for any violations (deficiencies) identified on Part B of this report.





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## Part B Requirements and/or Recommendations

1. 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.

### 2. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Monitoring and Tracking

DESCRIPTION OF PROCESS BREAKDOWN: Carrier failed to inquire into the driver's driving record every 12 months and neglected to process the annual review and certification of the MVR. Without processing the inquiry on a 12 month period, the carrier is not validating the driver is a qualified driver.

#### BASIC SPECIFIC RECOMMENDED REMEDIES

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

- Implement an effective process for monitoring and documenting all drivers' job functions, training, qualifications, renewal dates, disclosed medical conditions, and operational restrictions, including those of drivers on a waiver program or with impairments that may be satisfied by a Skill Performance Evaluation certificate, to ensure that assignments are covered by qualified drivers.
- 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.
- Maintain each driver's investigation history file in a secure location with limited and controlled access for as long as the driver is employed and for three years thereafter.
- Maintain roadside inspection reports, moving violation records, training records, the Commercial Driver's License (CDL), the dispatch schedule, bills of lading, and the medical report to help evaluate the performance of all staff involved in qualifying drivers (dispatchers and managers) and the effectiveness of the policies and procedures.
- Implement a system for keeping accurate records of employee driver fitness training needs, such as entry-level and HAZMAT training, and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- 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





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## Part B Requirements and/or Recommendations

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. VEHICLE MAINTENANCE BASIC - INSPECTION-REPAIR-MAINTENANCE PROCESS BREAKDOWN: Roles and Responsibilities

**DESCRIPTION OF PROCESS BREAKDOWN:** Carrier failed to require drivers to complete the driver's vehicle inspection report every time a vehicle was used in commerce. Carrier allowed drivers to miss documenting information on the DVIR that was required. Without having adequate roles and responsibilities in regards to the personnel monitoring such documents for maintenance, the carrier neglected to have the required Driver Vehicle Inspection Reports and vehicle periodic inspections as required by the regulations.

#### BASIC SPECIFIC RECOMMENDED REMEDIES

**Implement Safety Improvement Practices:** The following are recommended practices related to Roles and Responsibilities.

- Define and document responsibilities of managers, supervisors, drivers, dispatchers, mechanics, and technicians as related to vehicle inspection, repair, and maintenance policies, including the monitoring and documentation of defects and repairs.
- Define and document roles and responsibilities of mechanics and technicians for differentiating between safety-related defects and other defects and for taking unsafe vehicles Out-of-Service (OOS).
- Empower the person who is in charge of fixing trucks with the authority to complete tasks, such as the purchasing of new parts when needed.
- Define and document roles and responsibilities for checking daily completion of Driver Vehicle Inspection Records (DVIRs) and certifying repair before the next assignment.
- Define and document dispatcher responsibilities for planning, scheduling, monitoring, and adjusting fleet operations in accordance with repair and maintenance requirements.
- Define driver responsibilities for informing managers, supervisors, and mechanics/technicians of safety-related defects and repair requirements prior to vehicle operation, including those resulting from vehicle Out-of-Service (OOS) orders.

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.

### 4. HOS COMPLIANCE BASIC PROCESS BREAKDOWN: Monitoring and Tracking

**DESCRIPTION OF PROCESS BREAKDOWN:** The carrier failed to require a driver to make a record of duty status and failed to require driver to take a break of at least 30 minutes after being on duty for 8 hours. Drivers can become fatigued when operating without breaks or monitoring the driver's time record. Drivers are more prone to accidents or mishaps when fatigued.

#### BASIC SPECIFIC RECOMMENDED REMEDIES

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

- Implement an effective process for monitoring, tracking, and evaluating all drivers' compliance with Hours-of-Service (HOS) regulations and company policies.
- Promptly review all Records of Duty Status (RODS) for Hours-of-Service (HOS) violations and falsification. Look





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for discrepancies by comparing driver logs with their "check-in" calls and other supporting documents.

- Document all findings of fatigue-related noncompliance with regulations and/or company policies.
- Systematically check to see if drivers and dispatchers are regularly communicating about Hours-of-Service (HOS) availability and driver-fatigue level.
- Maintain roadside inspection, Records of Duty Status (RODS), supporting documents, dispatch schedules, and communication records to help evaluate the performance of all staff (drivers, dispatchers, and managers) involved in Hours of Service (HOS) and the effectiveness of compliance with HOS policies, procedures, and regulations.
- Regularly evaluate the company's fatigue-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.
- Implement a system for keeping accurate records of employees' Hours-of-Service (HOS) training needs and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- Evaluate personnel (log clerks, payroll, dispatchers, and third-party safety consultants) who are monitoring drivers' Records of Duty Status (RODS) for accuracy; for whether they are applying performance standards fairly, consistently, and equitably; and for whether they are documenting evaluations.
- Consider using Electronic On-board Recorders (EOBRs) to monitor and track Hours-of-Service (HOS) violations.
- When monitoring and tracking any fatigue-related issues, always assess whether an issue is individual or represents a systemic breakdown in 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.

### 5. 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







ALEX R MASSON (FREE STATE GROWERS INC dba)

U.S. DOT #: 2360285

State #:

Review Date:

11/12/2014

### Part B Requirements and/or Recommendations

target. Protect yourself, your trucks, your cargo, and your facilities.

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

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 15 days and any additional evidence necessary to prove the corrective action has been taken to:

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

6. 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 Free State Grower's Inc dba Alex R Masson's operating authority and/or the impoundment of Free State Grower's Inc dba Alex R Masson's vehicles.

Carrier Representative

Date



## **ATTACHMENT “B”**



# DRIVER'S DAILY LOG

(24 HOURS)

10 3 114  
(Month) (Day) (Year)

ALEX R. MASSON

Original - File at home terminal  
Duplicate - Driver retains in his/her possession for eight days

RECAP  
Complete at  
end of workday.

Total Miles Driving Today 251

Total Mileage Today  
018 40K  
322-412

Name of Carrier or Carriers  
LINCOLN KS 66052

Main Office Address

I certify these entries are true and correct

Home Terminal Address

Truck/Tractor and Trailer Numbers or  
License Plate(s) / State (show each unit)

Driver's Full Signature

Co-Driver's Name

MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11 TOTAL HOURS

1. OFF DUTY

2. SLEEPER  
BERTH

3. DRIVING

4. ON DUTY  
(NOT DRIVING)

REMARKS

SHIPPING  
DOCUMENTS:

MASSON

B/L or Manifest No.

or plants

Shipper & Commodity

Enter name of place you reported and where released from work and when and where each change of duty occurred.

From: OKC OK

To: DENTON TX

USE TIME STANDARD AT HOME TERMINAL

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8526



A. Total hours on  
duty last 7 days,  
including today.

B. Total hours  
available  
tomorrow.  
70 hr. minus A.

C. Total hours on  
duty last 8 days,  
including today.

60 Hour/  
7 Day  
Drivers

A. Total hours on  
duty last 8 days,  
including today.

B. Total hours  
available  
tomorrow.  
60 hr. minus A.

C. Total hours on  
duty last 7 days,  
including today.

If you meet the  
34-hour restart  
requirements  
in 49CFR 395.3, you  
have 6070  
hours available  
again.

No  
DVIR

## **ATTACHMENT “C”**



Original - File at home terminal  
Duplicate - Driver retains in his/her possession for eight days

**RECAP**  
Complete at  
end of workday.

	503
Total Miles Driving Today	Total Mileage Today

Name of Carrier or Carriers  
LINWOOD KS 66052

322-408

I certify these entries are true and correct: \_\_\_\_\_ Home Terminal Address

Truck/Tractor and Trailer Numbers or  
License Plate(s) / State (show each unit)

Driver's Full Signature

**Co-Driver's Name**

A.	Total hours on duty last 7 days, including today.
----	---

B.	Total hours available tomorrow. 70 hr. minus A.
----	--

C.	Total hours on duty last 8 days, including today.
----	---

**60 Hour/  
7 Day  
Drivers**

A.	Total hours on duty last 5 days, including today.
----	---

B.	Total hours available tomorrow. 50 hr. minus A.
----	--

**C.**  
Total hours on duty last 7 days, including today:  
\*If you meet the 34-hour restart requirement in §395.3, you have 60/70 hours available again.

1. OFF DUTY
2. SLEEPER BERTH
3. DRIVING
4. ON DUTY (NOT DRIVING)

MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	TOTAL HOURS
-----------	---	---	---	---	---	---	---	---	---	----	----	------	---	---	---	---	---	---	---	---	---	----	----	-------------

[illegible]

REMARKS

MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11 24.5

**SHIPPING  
DOCUMENTS:**

B/L or Manifest No.  
or *D1A1B6*

Shipper &amp; Commodity

Enter name of place you reported and where released from work and when and where each change of duty occurred.

From: ONE OK

To: Pinwood

**USE TIME STANDARD AT HOME TERMINAL**

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IN RE: DOCKET NO. **15-TRAM-246-PEN**

DATE **DEC 23 2014**

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
MARK ILLAUSKY, PRESIDENT FREE STATE GROWERS, INC. D/B/A ALEX R. MASSON PO BOX 170 LINWOOD, KS 66052-0170		
MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED **DEC 24 2014**

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