

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



20211207104536  
Kansas Corporation  
Commission  
Phone: 785-271-3100  
Fax: 785-271-3354  
<http://kcc.ks.gov/>

Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Susan K. Duffy, Commissioner

Laura Kelly, Governor

**NOTICE OF PENALTY ASSESSMENT**  
**22-TRAM-238-PEN**

December 7, 2021

Roy Mackey, Registered Agent  
Mackey & Sons Inc  
PO Box 768  
Newton, KS 67114

This is a notice of a penalty assessment against Mackey & Sons Inc (Mackey & Sons) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on November 29, 2021, by Kansas Corporation Commission Special Investigator Doug Handy. Penalties are assessed in accordance with the FY 2022 Uniform Penalty Assessment Matrix, approved by the Commission on June 29, 2021. 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:** Mackey & Sons has been assessed a \$250 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$250, through your personal account with the Kansas Corporation Commission's Kansas Trucking Regulatory Assistance Network (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 Mackey & Sons 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).

**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. Mackey & Sons 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 Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to the undersigned Litigation Counsel.<sup>1</sup>

**IF YOU FAIL TO ACT:** Failure to pay the penalty of \$250 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,  
*/s/ Ahsan A. Latif*  
Ahsan A. Latif  
Litigation Counsel  
(785) 271-3118  
[a.latif@kcc.ks.gov](mailto:a.latif@kcc.ks.gov)

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<sup>1</sup> K.A.R. 82-1-215; K.S.A. 77-542.

2. Pursuant to K.S.A. 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. Mackey & Sons Inc (Mackey & Sons or Carrier) has private operating authority with the Commission and further operates under USDOT number 863161.

5. Lisa Schindler attended the Procedures for Safety Compliance Seminar presented by the Kansas Corporation Commission, on February 26, 2018, on behalf of Mackey & Sons.

6. Mackey & Sons is a private motor carrier which primarily hauls tools.

## **III. STATEMENT OF FACTS**

7. Pursuant to the jurisdiction and authority cited above, on November 29, 2021, Commission Staff (Staff) Special Investigator Doug Handy conducted a safety compliance review of the operations of Mackey & Sons. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, the special investigator identified one (1) violation(s) of the Motor Carrier Safety Regulations.

- a. On December 12, 2019, Mackey & Sons was issued a Penalty Order in docket 20-TRAM-244-PEN.<sup>2</sup> Per the Penalty Order, Carrier was required to attend a Commission-sponsored safety seminar within ninety days from the date of the Penalty Order. At the time of this investigation, Carrier had

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<sup>2</sup> See Penalty Order, Docket No. 20-TRAM-244-PEN (Dec. 12, 2019).

not attended a Commission-sponsored safety seminar. The Carrier's failure to attend a Commission-sponsored safety seminar as stipulated in a penalty assessment is a violation of 49 C.F.R. 392.2, adopted by K.A.R. 82-4-3h, and authorized by K.S.A. 66-1,142(b). Staff recommends a fine of \$250.

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

8. Staff submitted a Report and Recommendation (R&R), dated November 30, 2021, attached hereto as Attachment "B" and is hereby incorporated by reference. In its R&R, Staff made recommendation regarding the above-mentioned violations.

9. Based upon the available facts, Staff recommends the Commission finds Mackey & Sons committed one (1) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

10. Additionally, Staff recommends a civil penalty of \$250 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

11. Staff further recommends that a representative from Mackey & Sons 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).

12. Staff further recommends Mackey & Sons submit a written, comprehensive corrective action plan (CAP) to Transportation Staff within thirty (30) days of the date of this order, documenting the violation(s) described in this Penalty Order, including specific and detailed

information explaining Carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.

13. Finally, Staff recommends that Mackey & Sons 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**

14. The Commission finds it has jurisdiction over Mackey & Sons pursuant to K.S.A. 66-1,108b because it is a motor carrier as defined in 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f.

15. The Commission finds Mackey & Sons committed one (1) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

### **THE COMMISSION THEREFORE ORDERS THAT:**

A. Mackey & Sons Inc, of Newton, KS is hereby assessed a \$250 civil penalty for one (1) violation(s) of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. Mackey & Sons 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. Carrier is hereby ordered to submit a written, comprehensive corrective action plan (CAP) to Transportation Staff within thirty (30) days of the date of this order, documenting the

violation(s) described in this Penalty Order, including specific and detailed information explaining Carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.

D. Mackey & Sons 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.

E. Pursuant to K.S.A. 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 Executive Director 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 Mackey & Sons' right to a hearing, and this Penalty Order will become a Final Order.

F. If a request for hearing is filed, attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties less than \$500, a corporation may appear by a duly authorized representative of the corporation.<sup>3</sup>

G. If you do not request a hearing, the payment of the civil penalty of \$250 is due in thirty (30) days from the date of service of this Order. Payment of \$250 must be made through your personal account with the Kansas Corporation Commission's Kansas Trucking Regulatory

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<sup>3</sup> K.S.A. 66-1,142b(e) and amendments thereto.

Assistance Network (KTRAN) system located at <https://puc.kcc.ks.gov/ktran/>. You must have an account through KTRAN to pay the penalty.

H. Failure to pay the \$250 civil penalty within thirty (30) days from the date of service of this Penalty Order and/or failure to comply with the provisions of this Order may result in suspension of Mackey & Sons' motor carrier operating authority without further notice.<sup>4</sup> 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.

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

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 12/07/2021



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Lynn M. Retz  
Executive Director

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<sup>4</sup> K.S.A. 66-1,105.

## **ATTACHMENT “A”**



# UNITED STATES DEPARTMENT OF TRANSPORTATION

		<b>U.S. DOT#:</b> 863161 <b>MC/MX#:</b> 0		<b>Legal:</b> MACKEY & SONS INC <b>Operating (DBA):</b>		<b>Investigation Date:</b> 11/29/2021	
<b>Investigation Type:</b> Offsite Investigation							
<b>Physical Address</b>				<b>Mailing Address</b>			
1201 SHARPS DRIVE NEWTON, KS 67114 United States				PO Box 768 Newton, KS 67114 United States			
<b>Contact Information</b>							
<b>Contact Name:</b> Mindy Budde <b>Email:</b> [REDACTED] <b>Cell:</b> ( )- <b>Fax:</b> (316)283-6130							
<b>Business and Financial</b>							
<b>Business Type:</b> Corporation <b>Name of Gross Revenue Provider:</b> Melinda Budde <b>Title of Gross Revenue Provider:</b> Controller <b>Gross Revenue:</b> [REDACTED] <b>For Year Ending:</b> 12/31/2020 <b>Federal Tax ID:</b> [REDACTED]							
<b>Operation Classification and Type</b>				<b>Cargo</b>			
<b>Type of Operation:</b> Non-HM Interstate Carrier, Non-HM Intrastate Carrier  <b>Operation Classification</b> Private Motor Carrier Property – Non-Hazardous Materials				Other (tools)			
<b>Equipment</b>				<b>Driver Information</b>			
	<b>Owned</b>	<b>Term Leased</b>	<b>Trip Leased</b>	<b>Drivers</b>			
Straight Trucks	2				<b>Intrastate</b>	<b>Interstate</b>	
Trailers	4			< 100 Miles		2	
				> = 100 Miles		1	
<b>Power units used in the U.S.:</b> 2 <b>Percentage of time used in the U.S.:</b> 100%				<b>Average trip leased driver/month:</b> 0 <b>Drivers with CDL:</b> 1 <b>Total Drivers:</b> 3			
<b>Person(s) Interviewed</b>							
<b>Name:</b> Mindy Budde				<b>Title:</b> Controller			

## Questions

Questions about this report or the Federal Motor Carrier Safety or Hazardous Materials regulations may be addressed to the Federal Motor Carrier Safety Administration at:	1303 SW FIRST AMERICAN PL STE 200 TOPEKA, KS 66604-4040 Phone: (785) 271-1260 Fax: (877) 547-0378
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**This report will be used to assess your safety compliance.**

# Violations

**1. Primary: 392.2**  
**Secondary: K.S.A. 66-1,142(b)(h)**  
Motor carrier failed to attend a Commission sponsored safety seminar as stipulated in the penalty order assessment

**Example/Notes:**  
  
Mackey & Sons, Inc. failed to provide a safety seminar plan as stipulated as part of the Penalty Assessment dated 12/12/2019, 20-TRAM-244-PEN, the motor carrier was required to provide a corrective action plan within 30 days of the date of the document.

Violations Discovered		
Fed	State	Total
	1	1
Checked		
Fed	State	Total
	1	1
Violations Discovered		
Fed	State	Total
	1	1
Checked		
Fed	State	Total
	1	1

# Safety Fitness Rating

## This Investigation is Not Rated

You must take corrective actions for any violations (deficiencies) identified in the Violations section of this report.

This was an offsite investigation. An offsite investigation allows FMCSA to evaluate your safety compliance with minimal disruption to your business. An offsite investigation will not result in a safety rating.

DataQs: If you dispute the violations recorded in the Violations section of this investigation report, and the violations were not used in the calculation of your safety rating, you may submit a Request for Data Review (RDR) through DataQs. The DataQs system is the method to remove violations that did not affect your safety rating. DataQs is an online system that allows a motor carrier or driver to request and track a review of Federal and State issued data that it believes to be incomplete or incorrect. To submit an RDR, go to <https://dataqs.fmcsa.dot.gov>.

# Process Breakdown and Remedies

None

## Recommendations

### 1. Additional Information

Please visit the CSA outreach site for additional guidance: <https://csa.fmcsa.dot.gov>.

### 2. SMS website

You are encouraged to review your company's SMS results and take action to make the roads safer for everyone. Your public safety records are available at the following website: <http://ai.fmcsa.dot.gov/sms>. Also visit <https://portal.fmcsa.dot.gov> which provides real time data and the opportunity to review your safety data. You will need to use your PIN number that has been provided by FMCSA. Registration and access is free.

### 3. Serious Violations

This review contains violations that are serious in nature and may result in a penalty assessment against the company and/or drivers.

### 4. CAP to Commission

The KCC requires that you prepare a corrective action plan, addressing the measures taken to correct all 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. Submit the letter along with copies of your supporting evidence to:

Email: [g.davenport@kcc.ks.gov](mailto:g.davenport@kcc.ks.gov)  
FAX: 785-271-3124

or mail:

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

### 5. KCC Safety Seminar

Motor carriers are responsible for complying with all tasks ordered by the Commission in its Penalty Order. In addition to paying any civil fines issued, you are also required to attend a Commission sponsored safety seminar. Failure to fulfill this requirement may lead to the issuance of further penalties or other repercussions, including revocation of authority to operate intrastate in Kansas.

### 6. Off-Site Acknowledgement

I acknowledge that the requirements and/or recommendations resulting from this off-site, focused review have been discussed with me and my questions have been answered. I further acknowledge that KCC recommendations only cover the scope of this focused review, and that areas not reviewed by the KCC have not necessarily been endorsed as compliant. I understand that failure to satisfactorily remedy the above-listed requirements, and/or failure to comply with Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of [motor carrier's] operating authority and/or the impoundment of [motor carrier's] commercial motor vehicles.

  
Carrier Representative

11-29-21  
Date

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

## **ATTACHMENT “B”**

## **REPORT AND RECOMMENDATION TRANSPORTATION DIVISION**

**TO:** Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Susan K. Duffy, Commissioner

**FROM:** Mike Hoeme, Director of Transportation  
Gary Davenport, Deputy Director of Transportation

**DATE:** November 30, 2021

**SUBJECT: Docket No. 22-TRAM-238-PEN**  
In the Matter of the Investigation of Mackey & Sons Inc of Newton, Kansas  
Regarding the Violation of the Motor Carrier Rules and Regulations and the  
Commission's Authority to Impose Penalties, Sanctions and/or the Revocation of  
Motor Carrier Authority.

### **EXECUTIVE SUMMARY:**

Mackey & Sons Inc (Mackey & Sons or Carrier) is a motor carrier possessing private operating authority from the Commission, primarily hauling tools. Mackey & Sons operates under USDOT 863161. On November 29, 2021, Commission Staff Special Investigator Doug Handy conducted a safety compliance review of the operations of Mackey & Sons. As a result of this investigation, the special investigator identified one (1) violation(s) of the Motor Carrier Safety Regulations, resulting in a recommended penalty of \$250.

### **DISCUSSION AND ANALYSIS:**

On November 29, 2021, Commission Staff Special Investigator Doug Handy conducted a safety compliance review of the operations of Mackey & Sons. As a result of this investigation, the special investigator identified one (1) violation(s) of the Motor Carrier Safety Regulations.

#### **Violation One (1 of 1)**

On December 12, 2019, Mackey & Sons was issued a Penalty Order in docket 20-TRAM-244-PEN. Per the Penalty Order, Carrier was required to attend a Commission-sponsored safety seminar within ninety days from the date of the Penalty Order. At the time of this investigation, Carrier had not attended a Commission-sponsored safety seminar. The Carrier's failure to attend a Commission-sponsored safety seminar as stipulated in a penalty assessment is a violation of 49 C.F.R. 392.2, adopted by K.A.R. 82-4-3h, and authorized by K.S.A. 66-1,142(b). Staff recommends a fine of \$250.



## **RECOMMENDATION:**

Transportation Staff recommends the Commission find Mackey & Sons committed one (1) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

Additionally, Staff recommends a civil penalty of \$250 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations, in accordance with the recommended penalties listed in the applicable Uniform Penalty Assessment Matrix.

Staff further recommends that a representative from Mackey & Sons be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the 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).

Staff further recommends Mackey & Sons submit a written, comprehensive Corrective Action Plan (CAP) to Transportation Staff within thirty (30) days of the date of this order, documenting the violation(s) described in the Penalty Order, including specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.

Finally, Staff recommends that Mackey & Sons submit to one follow-up safety compliance review within eighteen (18) months from the date of the Penalty Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for the review.

## **CERTIFICATE OF SERVICE**

22-TRAM-238-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of  
first class mail and electronic service on 12/07/2021.

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
a.latif@kcc.ks.gov

ROY L. MACKEY, REGISTERED AGENT  
MACKEY & SONS, INC.  
PO BOX 768  
NEWTON, KS 67114  
mindy@mackeyandsons.com

/S/ DeeAnn Shupe  
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DeeAnn Shupe