

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

Sam Brownback, Governor

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

# NOTICE OF PENALTY ASSESSMENT

June 4, 2015

15-TRAM-551-PEN

Eric McCluer, Managing Member Talent On Parade, LLC PO Box 535 Haysville, Kansas 67060

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 May 8, 2015, by Kansas Corporation Commission Special Investigator Verna Jackson. 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 a \$500 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.

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 Secretary 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. 2014 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

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) Docket No. 15-TRAM-551-PEN
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## 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. 2014 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. 2014 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. 2014 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. Talent On Parade, LLC (Talent On Parade) obtained private operating authority from the Commission on December 14, 2010, and operates under KSMCID number 167932 and USDOT number 1897671.
- 5. Ryan Pratt attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on November 8, 2010, on behalf of Talent On Parade.
- 6. Talent On Parade is a private motor carrier which primarily hauls sound equipment.

#### III. STATEMENT OF FACTS

- 7. Pursuant to the jurisdiction and authority cited above, on May 8, 2015, Commission Staff (Staff) Special Investigator Verna Jackson conducted a compliance review of the operations of Talent On Parade. 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 identified one (1) violation of the Motor Carrier Safety Regulations.
  - a. On March 24, 2015, Talent on Parade required or permitted its driver, Calvin Rusch, to operate a commercial motor vehicle, a 2005 Freightliner, VIN ending in 53947, in interstate commerce from Haysville, Kansas to Des Moines, Iowa. This trip is evidenced by Driver's Daily Log, a copy of which is attached hereto as Attachment "B" and is hereby incorporated

by reference. At the time of this transportation, Talent on Parade failed to require its driver, Mr. Rusch, to stop driving after more than eight hours had passed since the end of the driver's last off duty or sleeper berth period of at least 30 minutes. *See* Attachment "B". The special investigator found four violations of this type. Talent on Parade's 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. 2014 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 Talent On Parade committed one (1) violation 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 \$500 for one (1) violation of the Motor Carrier Safety Statutes, Rules and Regulations.
- 10. Staff further recommends that Talent On Parade 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.

11. Finally, Staff recommends that Talent On Parade 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 Talent On Parade because it is a motor carrier as defined in K.S.A. 2014 Supp. 66-1,108.
- 13. The Commission finds Talent On Parade committed one (1) violation 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. Talent On Parade, LLC, of Haysville, Kansas is hereby assessed a \$500 civil penalty for one (1) violation 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. Talent On Parade 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, Talent On Parade is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.
- C. <u>Pursuant to K.S.A. 2014 Supp. 77-537 and K.S.A. 77-542, any party may</u> 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. 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 Talent On Parade's right to a hearing, and this Penalty Order will become a Final Order assessing a \$500 civil penalty against Talent On Parade, and ordering Talent On Parade 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. 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. 2014 Supp. 66-1,142b(e) and amendments thereto.
- 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 \$500 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 Talent On Parade'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 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, Commissioner; Apple, Commissioner

JUN 0 4 2015

Dated:

ORDER MAILED JUN 0 5 2015

Amy L. Gilbert Secretary

**MJD** 



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**CDL** Drivers:

< 100 Miles:

3

>= 100 Miles:



U.S. DOT #: 1897671

State #:

Review Date: 05/08/2015

# 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: Ryan Pratt

Title: Director of Operations

Name:

Title:



U.S. DOT #: 1897671

State #:

Review Date: 05/08/2015

## **Part B Violations**

1 FEDERAL	Primary: 395.3(a)(3)(ii)	Discovered 4	Checked 60	Drivers/V In Violation 2	ehicles Checked 2
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#### Description

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.

#### Example

March 24 and March 30, 2015

Carrier permitted driver to drive after more than 8 hours have passed since the end of the driver's last off duty period of at least 30 minutes.

Haysville, KS to Des Moines and Council Bluffs, IA; back to Haysville, KS.

March 24 and March 30, 2015

Carrier permitted driver to drive after more than 8 hours have passed since the end of the driver's last off duty period of at least 30 minutes.

Haysville, KS to Des Moines and Council Bluffs, IA; back to Haysville, KS

2	Primary: 395.8(f)			Drivers/V	ehicles
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## Description

Failing to require driver to prepare record of duty status in form and manner prescribed.

## Example

March 24, 2015

Driver failed to provide total hours for each line; Off Duty, Sleeper Berth, Driving, and On Duty (not driving). Driver provided only total hours; 24.

Safety Fitness Rating Information:

18,363

Number of Vehicle Inspected (CR): 0

OOS Vehicle (CR): 0

**Total Miles Operated Recordable Accidents** 

C

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

Your proposed safety rating is :

This Review is not Rated.



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Review Date 05/08/2015

# Safety Management Process Breakdowns and Remedies

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. HOS COMPLIANCE BASIC PROCESS BREAKDOWN: Training and Communication

DESCRIPTION OF PROCESS BREAKDOWN: Carrier allowed drivers to operate vehicles without a 30 minute break within 8 hours of coming on duty. Drivers are preparing log sheets without completing the document with all the required information.

## BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Communication and Training.

- Convey expectations to all applicable staff for adhering to Hours-of-Service (HOS) regulations and company
  policies and procedures, and for executing responsibilities by providing new-hire and refresher training, and establish
  communication channels such as newsletters and/or meetings focused on conflicts between scheduling and HOS
  rules.
- Inform drivers that management will be monitoring and tracking Records of Duty Status (RODS).
- Ensure that managers and dispatchers encourage fatigued drivers to pull over and take a nap.
- Communicate the carrier's HOS Compliance percentile to all staff, and explain to them individually what they can
  do to help the carrier improve the percentile.
- Ensure that managers and supervisors communicate their ongoing commitment to abiding by Hours-of-Service (HOS) regulations and to not driving when fatigued for any reason, including illness.
- Ensure that all staff (drivers, dispatchers, sales) involved in the Hours-of-Service (HOS) process receives training as required by regulations and/or company policies.
- Train managers, supervisors, and dispatchers on how to track and communicate drivers' Hours of Service (HOS), including checking the prior seven-day duty statement for intermittent drivers.
- Train the safety director and dispatchers on how to schedule routes that can be completed within Hours-of-Service (HOS) regulations.
- Train dispatchers and drivers to understand that drivers cannot be assigned a run if illness impairs their ability and/or alertness.
- Train all staff who are required to monitor and track Hours of Service (HOS) on appropriate company policies, including those related to discipline and incentives.
- Provide training/testing program to current drivers on proper log completion, how to achieve proper rest on trips
  by instructing them on the difference between on-duty not driving, for example a driver waits while trailer is loaded,
  and off-duty, and the importance of proper rest between shifts.
- Train drivers on the proper use of sleeper berths, including the correct procedure for entering time spent in a berth as a co-driver on the driver's Record of Duty Status (RODS).



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# Safety Management Process Breakdowns and Remedies

 Ensure that drivers are trained in driver Out-of-Service (OOS) rules, their responsibilities in adhering to those rules, and the carrier's procedures for reporting OOS violations and communicating appropriately with other personnel.

· Provide hiring officials with guidance on how best to attract, screen, and qualify applicants who are most likely to

adhere to Hours-of-Service (HOS) regulations and company policies and procedures.

• Reinforce training about Hours-of-Service (HOS) policies, procedures, and responsibilities to drivers, dispatchers, and other employees, using job aids, post-training testing, and/or refresher training. Encourage informal feedback among them so that they can help each other to improve.

#### 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.
- Driving is not permitted if 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. Drivers must take 30 minutes off-duty or in the sleeper-berth to meet this requirement.
- 4. Require driver to prepare record of duty status in the form and manner prescribed. Make sure drivers are totaling the column for total time driving, on duty not driving, sleeper berth, and off-duty.
- 5. 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. The long form will not substitute for the medical certificate.
- This review contains violations that are serious in nature and may result in a penalty assessment against the company and/or drivers.
- 7. 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:



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# Safety Management Process Breakdowns and Remedies

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.

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

cover the scope of this focuse as compliant. I understand the	ed review, and that are lat failure to satisfactor fety Statutes and Regi	as not reviewed by the KCC have not necessarily been endorsed ily remedy the above-listed requirements, and/or failure to comply lations could result in the suspension of Talent on Parade LLC's at on Parade LLC's vehicles.
Carrier Representative	Date	<del></del>
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8. I acknowledge that the requirements and/or recommendations resulting from this off-site, focused review have been

**ATTACHMENT "B"** 

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

> NO. CERT. **COPIES**

NO. **PLAIN** COPIES

NAME AND ADDRESS

MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 \*\*\*Hand Delivered\*\*\*

ERIC MCCLUER, DIRECTOR TALENT ON PARADE, LLC PO BOX 535 HAYSVILLE, KS 67060

ORDER MAILED JUN 0 5 2015