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**LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

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June 1, 2016

HAND-DELIVERED

Kansas Highway Patrol
Motor Carrier Safety Assistance Program (MCSAP)
700 SW Jackson, Suite 704
Topeka, Kansas 66603

Re: Quality Drive-Away, Inc.
Driver/Vehicle Roadside Examination Report
No. KSHP92070900

Greetings:

Please be advised that I represent Quality Drive-Away, Inc. ("Quality"), and I am writing to inform you of Quality's challenge to the violation set forth in the above-referenced Driver/Vehicle Roadside Examination Report ("Inspection Report") and also in the Invoice which accompanied the Notice of Violation issued by the Kansas Corporation Commission as a result of the Inspection Report. The violation ("Violation") alleged is that the driver engaged by Quality to operate a bus (VIN: 1FDAF5GT0GEA46310) in a driveaway-towaway operation failed to have a passenger vehicle endorsement on his commercial driver's license ("CDL"). The Notice of Violation stated that this violated the Federal Motor Carrier Safety Regulations ("FMCSR") "as adopted by KSA 66-1,129 and K.A.R. 82-4-3 *et seq.*"

Quality (U.S. DOT No. 465185) is registered with the Federal Motor Carrier Safety Administration ("FMSCA" or "Administration"), as a motor carrier authorized to provide for-hire transportation, in interstate commerce, transporting property including commercial motor vehicles designed or used to carry sixteen (16) or more passengers, including the driver, from points of manufacture or distribution to a dealer or purchaser in a driveaway-towaway operation. Its principal offices are located in Goshen, Indiana. Quality utilizes Eight Hundred Thirty-Eight (838) power units and engages One Thousand Fifty-Eight (1,058) drivers in providing driveaway-towaway services.

The issues presented by the Violation have been discussed previously by representatives of Quality and members of the Kansas Highway Patrol, pursuant to Quality's use of the Kansas DataQ process. These issues emanate from the interpretations issued by FMSCA to 49 CFR 383.93 ("Guidance"). This Guidance was developed by the Administration's responses to questions related to the various endorsements required on a CDL by Part 383.93. Question 3 set forth in the Guidance asks: "Are drivers delivering empty buses in driveaway-towaway operations required to have the passenger endorsement on their CDLs?" The guidance in response is "No." Here, it is to be noted that Part 383 does not define either the term "passenger vehicle" or the term "bus," although the latter term is defined in Part 390.5 as "any motor vehicle designed, constructed, or used in the transportation of passengers, including taxi cabs." Accordingly, based upon the foregoing Guidance, a driver would *not* be required to have a passenger endorsement to operate a bus in a driveaway-towaway operation.

The foregoing is precisely on point in the instant case. At the time of the roadside examination evidenced by the Inspection Report, Quality's driver, Raymond Berry, was engaged in an interstate driveaway-towaway operation. Mr. Berry was operating an empty bus, transporting it from the manufacturer of the bus, El Dorado National, Inc., in Salina, Kansas, to a distributor of El Dorado buses, Central States Bus Sales, Inc., in Fenton, Missouri. A copy of the Bill of Lading evidencing this movement is enclosed.

However, a contradictory statement is provided in the Guidance in response to Question 12, which asks: "Is a person who drives an empty school bus from the manufacturer to the local distributor required to obtain a CDL?" The Administration provided the following guidance:

Yes. Any driver of a bus that is designed to transport sixteen (16) or more passengers or that has a GDWR of 11,794 kilograms (26,001 pounds) or greater is required to obtain a CDL in the applicable class. A passenger endorsement is also required if the bus is designed to transport sixteen (16) or more passengers, including the driver.

Here, it should be noted that, although the question was related to the need to have a CDL to operate an "empty school bus," the Guidance would appear to be applicable to all buses of any type. Accordingly, pursuant to the guidance to Question 12, a driver would be required to have a CDL with a passenger endorsement when operating a motor vehicle designed to transport sixteen (16) or more passengers, in a driveaway-towaway operation.

The internal conflict within the Guidance is confusing at best, and efforts have been made for a number of years to obtain clarification from the Administration. Finally, in a letter to Congresswoman Jackie Walorski dated November 9, 2015, a copy of which is enclosed, T.F. Scott Darling, III, Acting Administrator of FMSCA, responded to Congresswoman Walorski's inquiry regarding the contradictory provisions of the Guidance, as follows:

Kansas Highway Patrol
Motor Carrier Safety Assistance Program (MCSAP)
June 1, 2016
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FMCSA is working to publish an updated interpretation in the Federal Register, including revisions to Question 12. When published, the Guidance clarification will state that drivers who operate buses in driveaway-towaway operations from the manufacturer to dealers and distributors will not be required to have a Passenger or School Bus endorsement.

Since the above-quoted statement by Acting Administration Darling is a "Guidance clarification" of the contradictory guidances noted above, Quality has the right to rely upon the guidance set forth in Question 3 of the Guidance. Accordingly, drivers who operate buses, in driveaway-towaway operations, from the manufacturer to dealers and distributors are not required to have a passenger or school bus endorsement, effective November 9, 2015.

Therefore, the Inspection Report, to the extent it cites Quality's driver, Raymond D. Berry, for not having a passenger vehicle endorsement on his CDL, by virtue of FMCSR § 383.93(b)(2), is of no force or effect.

Thank you for your consideration of this challenge to the Violation. I look forward to your favorable response.

Very truly yours,



W. Robert Alderson
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.

WRA:jk/bjb

Enclosures

cc: Paul D. Borghesani, Esq.
Devon Bechtel
Brad Hooley
Dale Colville

BILL OF LADING - NOT NEGOTIABLE



64825 C.R. 31
Goshen, IN 46528
MC# 248649
SCAC# QUAC

COPY
Flare sticker

04/15/2016

Any damage declaration must be made with Quality's claims department within 30 days of delivery date, a claim number will be assigned at that time. Any and all claims made after 30 days will be denied.

ORDER# 139960

DISPATCHER: RROEDER

TRIP# 149458

BILL TO: EL DORADO NATIONAL, INC

SHIPPER EL DORADO NATIONAL, INC 3344 SCANLAN AVE. Salina, KS, 67401 (574)536-5796	CONSIGNEE CENTRAL STATES BUS SALES, INC (ELDORADO) 2450 CASSENS DRIVE Fenton, MO, 63026 (314)882-3955
NOTES Dealer Acceptance form must be signed and sent in for settlement. See special inst. sheet in packet.	NOTES Delivery Hours: Mon - Friday 8am-4pm only! NO DROPS

REFERENCE	COMMODITY DESCRIPTION	FUEL TYPE	FUEL TAX	MILES
CA#: NFA7150 VIN: GEA48310	UNKNOWN	DIES		416

COD	\$0.00 Amount due to Quality Drive-Away, Inc.	Driver must collect cash, money order, certified cashier's check,
	\$0.00 Amount due to EL DORADO NATIONAL, INC	or must be payment to be settled by credit card.

LIMITATION OF LIABILITY: Shipper/Consignee hereby agrees that the value of the described property on this Bill of Lading does not exceed \$250,000.00 and that Carrier will not be liable for any loss, damage, or misdelivery of the described property in excess of \$250,000. **EXCLUSIONS OF LIABILITY:** Carrier shall not be liable for loss and/or damage; (1) to contents or other personal effects within the described property; (2) to windshields and other windows of the described property; (3) resulting from road chips, wind, hail, or other adverse and/or road conditions; and (4) resulting from concealed or pre-existing conditions. **RECEIVED**, subject to the tariffs, individually determined rates or rate sheets that have been agreed to between Quality Drive-Away, Inc., ("Carrier") and Shipper/Consignee, if applicable, otherwise to the rates and rules that have been established by the Carrier and available to the Shipper/Consignee, upon written request, the Property described above, in apparent good order, except as noted, consigned and destined as shown above, which Carrier agrees to transport to destination. It is mutually agreed that every service to be performed hereunder shall be subject to all the terms and conditions contained herein, including those on the back hereof and/or in the published rates and rules of the Carrier's governing publications. The Shipper/Consignee hereby certifies that it is familiar with all of the terms and conditions of this Bill of Lading, including those on the back hereof, and the said terms and conditions are hereby agreed to by the Shipper/Consignee and accepted for itself and its assigns.

SHIPPER	I hereby agree to the provisions of this Bill of Lading including the contract terms and conditions on the back hereof.		
Signature: _____	Date: _____		
DRIVER	The above-described shipment received subject to the terms and conditions of this Bill of Lading, including those on the back hereof. Note: the Contractor has no authority to agree to any other terms and conditions affecting the movement of the shipment described herein.		
Contractor name: RAYMOND BERRY	Contractor# 24822		
Signature: _____	Date: _____		
CONSIGNEE	RECEIVED the above described property in good condition except as noted and agree to the foregoing contract terms and conditions. NOTICE: This is a release to carrier for all damages and shortages unless noted hereon. No claims for any loss, damage, injury or delay will be paid unless all lawful charges have been paid to carrier.		
Date: _____	Notification for loss or damage at time of delivery: _____		
Signature: _____			

* Send receipts for reimbursements along with completed paperwork to the settlement department by email to Settle@QualityDriveAway.com or by fax to 877-238-0596

COPY



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Administrator

November 9, 2015

1200 New Jersey Avenue, SE
Washington, DC 20590

The Honorable Jackie Walorski
Member, U.S. House of Representatives
202 Lincolnway East, Suite 101
Mishawaka, IN 46544

Dear Congresswoman Walorski:

Thank you for your letter to the U.S. Department of Transportation's Office of Governmental Affairs on behalf of your constituents, Mr. Joseph Braun and Mr. Ben Parsons, who requested assistance in clarifying Federal Motor Carrier Safety Administration (FMCSA) guidance on whether commercial motor vehicle (CMV) drivers who operate empty buses from points of manufacturer to dealers/distributors are required to have a Passenger Endorsement (P). Your letter was forwarded to FMCSA for response.

Your constituents point out that the regulatory guidance published within the Federal Motor Carrier Safety Regulations (FMCSR), 49 C.F.R. § 383.93 Question 3 and Question 12 contradict each other. Question 3 asks, "Are drivers delivering empty buses in driveaway-towaway operations required to have a passenger endorsement on their CDLs?" The answer provided in the current guidance is, "No." Whereas, Question 12 asks, "Is a person who drives an empty school bus from the manufacturer to the local distributor required to obtain a CDL?" Current guidance is, "Yes. Any driver of a bus that is designed to transport 16 or more passengers or that has a GVWR [Gross Vehicle Weight Rating] of 11,794 kilograms (26,001 pounds) or greater is required to obtain a CDL in the applicable class. A passenger endorsement is also required if the bus is designed to transport 16 or more passengers, including the driver."

FMCSA is working to publish an updated Interpretation in the Federal Register, including revisions to Question 12. When published, the guidance clarification will state that drivers who operate buses in driveaway-towaway operations from the manufacturer to dealers and distributors will not be required to have a Passenger or School Bus endorsement.

I hope this information is helpful in responding to your constituents. Should you or members of your staff need additional information or assistance, please contact Brenda Brown, Deputy Director for Governmental Affairs.

Sincerely,



T.F. Scott Darling, III
Acting Administrator

Passenger Endorsement NOT Needed
See Reverse Side



DataQs

Home Help Center

Help Center

Instructions, FAQs, and other materials to help you navigate the website.

Analyst Guide

Approved requests and critical information to help you manage your DataQs.

MyDataQs:

Detailed view of ID # 1419542

CREATE PDF

Date Entered: 11/17/2015 Type: Inspection - Incorrect Violation
Status: Closed - No Data Correction Made Assigned to Agency: KS HP

Requestor Profile

Name: Dale Colville (Validated Motor Carrier) U.S. DOT #: 465185
Email Address: d.colville@qualitydriveaway.com Company/Agency Name: Quality Drive Away, Inc.
Phone: 574-642-2015 Address: 64825 CR 31
Fax Number: 574-642-2025 City/State/Zip: Goshen, IN 46528

Detailed Information from Inspection Record

Report State: * KS Report Number: * HP00751050
Report State: * KS-Kansas Date (MM/DD/YYYY): * 3/10/2015
Time (HH:MM AM/PM): 0946 County: WABAUNSEE
City/Location: WABAUNSEE EAST M.C.I.S. #22W
Reporting Officer ID: 0075

Carrier Information from Inspection Record

Carrier Name: * QUALITY DRIVE AWAY INC U.S. DOT #: 465185
Address (Line 1): 64825 CR 31 MC/MX #:
Address (Line 2): State: Indiana
Country: United States City: GOSHEN
Zip: 46528

Driver Information from Inspection Record

Driver Name: Spencer Jones

Explanation of Request for Data Review

Where did you view the information you want reviewed?:
FMCSA Publication

The following violation code(s) have been requested to be reviewed:

Status	Violation	Violation Description
Closed - No Data Correction Made	383.93(b)(2)	No passenger vehicle endorsement on CDL
	Explanation: Quality requested a guidance clarification from DOT a couple years ago about the requirement of a "P" endorsement when moving buses. This issue keeps popping its head up from time to time. We finally rec'd a letter from DOT signed by T.F. Scott Darling III that transportation companies such as Quality do indeed NOT need the "P" endorsement when transporting new unoccupied buses from point of manufacture to their dealer network. I am attaching a copy of that letter as well as a letter from a local transportation lawyer. Please review this information and if you find everything in order please remove the violation from the system. Please contact me at 574-642-6015 if you need to communicate with me further.. thanks much.. Dale B. Colville	

Supporting Documents

The following files have been uploaded for submission

Date Uploaded	Document Name	Title	Content Type	Size (bytes)
11/17/2015	Scan_2015_11_17_14_26_44_743.pdf	"P" endorsement clarification letter from DOT	application/pdf	536765

Response List

[Forward](#) [Add Response/Documentation](#)

Response Date 11/20/2015

Entered By Rex Railsback (KS HP)

Phone Number 7852565046

Response To 383.93(b)(2)

Mr. Colville, Ref. KS Inspection Report KSHP00751050, dated 03/10/2015, thank you for availing yourself to the Kansas DataQ process. Upon review of the inspection report and other relevant information, the violation in question is valid and will stand. When Kansas receives official information from the FMCSA of any change to the stated issue, then we will act according to that information from that date forward. As stated in my previous response, our enforcement actions are based on current regulations and direction received from the FMCSA National Training Center. The violation is valid and the driver's inspection history and carrier's profile will not change. Lieutenant Rex C. Railsback MCSAP, Troop I

Status Changed to Closed - No Data Correction Made

Status Prior to Response Open - Pending Agency Review

Response Date 11/19/2015

Entered By Dale Colville (Validated Motor Carrier)

Phone Number 574-642-2015

Response To 383.93(b)(2)

Thanks Mr. Railsback for your response to my question. I respectfully disagree as I guess I read this differently. I look at the November 9th letter from Mr. Darling as clarification guidance which recognized the long standing conflict between Question 3 and Question 12 and this letter from him in Washington, DC has reaffirmed that the guidance issued in response to Question 3 was the correct guidance all along. Like I said earlier I appreciate you getting back to me about this ongoing issue and hopefully soon we will have something concrete to go by. Quality as a Carrier is not trying to go around the rules and regulations and quite a few of the drivers have gone into the various jurisdictions and have passed the written portion of the "P" endorsement but are bottle necked when trying to get the driving portion done because of personnel issues. Anyway, hope you and your family have a blessed Thanksgiving..

Status Changed to Open - Pending Agency Review

Status Prior to Response Closed - No Data Correction Made

Response Date 11/18/2015

Entered By Rex Railsback (KS HP)

Phone Number 7852565046

Response To 383.93(b)(2)

Mr. Colville, Ref. KS Inspection Report KSHP00751050, dated 03/10/2015, thank you for availing yourself to the Kansas DataQ process. Upon review of the inspection report and other relevant information, the violation in question is valid and will stand. 383.93 Interpretation Question #12 was placed into the regulations via the rule making process, back in 1997 and until such time that said interpretation is removed by the same rule making process, the interpretation and enforcement thereof will continue. Furthermore, FMCSA presented a National Training Center (NTC) Instructor Recertification in September of 2014, at which time all NTC certified instructors were advised to follow interpretation #12 due to the fact that it is what the Federal Motor Carrier Safety Regulations require. To date FMCSA NTC has not advised its instructors to teach differently. Finally, 383.93(b)(2) states "Endorsement descriptions. An operator must obtain State-issued endorsements to his/her CDL to operate commercial motor vehicles which are:.... Passenger vehicles" The violation is valid and the driver's inspection history and carrier's profile will not change. Lieutenant Rex C. Railsback MCSAP, Troop I

Status Changed to Closed - No Data Correction Made

Status Prior to Response Open - In Review



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Federal Motor Carrier Safety Administration

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