

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Susan K. Duffy

In the Matter of the Emergency Suspension of)
Operating Authority of **Benyshek Trucking &**)
Harvesting LLC of Belleville, Kansas, for)
Failure to Comply with New Entrant Safety) Docket No. 21-TRAM-464-OOS
Requirements as Required by the Motor Carrier)
Safety Statutes, Rules and Regulations.)

EMERGENCY SUSPENSION OF OPERATING AUTHORITY ORDER

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

I. JURISDICTION AND BACKGROUND

1. Pursuant to K.S.A 66-1,108b, 66-1,111, 66-1,112g, and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.A.R. 82-4-3f, 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. 66-1,129a, 66-1,130, and 66-1,142b, the Commission may suspend operations, revoke, or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision, or regulation of the Commission.

3. Pursuant to K.S.A. 66-1,129(a)(7), the Commission has adopted motor carrier transportation regulations (K.A.R. 82-4-3f) consistent with the federal motor carrier safety assistance program and other federal requirements concerning transportation of hazardous waste.

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

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

II. FINDINGS OF FACTS

5. Benyshek Trucking & Harvesting LLC (Carrier) is a motor carrier as defined in K.A.R. 82-4-3f, which operates commercial motor vehicle(s) in interstate commerce in a manner that requires authority.

6. Carrier is registered as a motor carrier with the U.S. Department of Transportation (USDOT), and operates under USDOT Number 3599735.

7. On June 3, 2021, the Federal Motor Carrier Safety Administration (FMCSA) forwarded a notice of violation(s) of the federal motor carrier safety regulations to Carrier, wherein Carrier was given 10 days to comply with the regulations.

8. As of June 14, 2021, FMCSA records indicate Carrier had not complied with new entrant requirements. As a result, the FMCSA issued Carrier an Order to

Revoke “New Entrant” Registration and Cease All Interstate Transportation. FMCSA’s Order is attached hereto.

III. STAFF’S RECOMMENDATIONS

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

10. Staff asks the Commission to find that Carrier failed to act upon the FMCSA’s notice.

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

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

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

IV. CONCLUSIONS OF LAW

14. The Commission finds it has jurisdiction over Carrier as the Carrier is a motor carrier as defined in K.A.R. 82-4-3f.

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

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

17. The Commission also finds Carrier's failure to comply with requirements of a new entrant audit is sufficient evidence of unsafe motor carrier operations, and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas. Therefore, this Commission orders the Carrier to suspend all intrastate motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 66-1,129, until such time as the carrier takes the necessary steps to become compliant. This includes submitting to Staff verifiable evidence of the correction of the violation(s) noted in FMCSA's June 14, 2021 Order including, but not limited to, proof of federal reinstatement and attendance of a Commission-sponsored safety seminar within ninety (90) days from the date of this Order. A schedule of dates and locations for the safety seminar can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm. The proof of attendance at the safety seminar should be submitted to Litigation Counsel.

THE COMMISSION THEREFORE ORDERS THAT:

A. Benyshek Trucking & Harvesting LLC of Belleville, Kansas is to be immediately suspended from all intrastate Kansas commercial motor carrier operations,

other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 66-1,129, until such time as Carrier presents to Staff verifiable evidence, including, but not limited to, proof of federal reinstatement documenting the correction of the safety concerns identified in the FMCSA's June 14, 2021 Order to Revoke "New Entrant" Registration and Cease All Interstate Transportation. This Emergency Suspension of Operating Authority Order may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of any Order to cease operations or suspend operating authority.

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

C. **Pursuant to K.S.A. 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 Executive Director, at 1500 S.W. Arrowhead Road Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Order.** Pursuant to K.S.A. 66-1,129a, hearings will be held within ten (10) days upon written request. Failure to timely request a hearing will result in a waiver of Carrier's right to a hearing, and this Order will become a Final Order.

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

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 06/24/2021



Lynn M. Retz
Executive Director

AAL



U.S. Department of
Transportation
1200 New Jersey Ave. S.E.
Washington, D.C. 20590

**Federal Motor Carrier
Safety Administration**

June 14, 2021

In reply refer to:
USDOT Number: **3599735**

**BENYSHEK TRUCKING & HARVESTING LLC
710 M ST
BELLEVILLE, KS 66935-1550**

**ORDER TO REVOKE "NEW ENTRANT" REGISTRATION AND CEASE
ALL INTERSTATE TRANSPORTATION U.S. DOT Number: 3599735**

This Order is issued pursuant to 49 CFR 385.337(b). In a letter dated June 3, 2021 BENYSHEK TRUCKING & HARVESTING LLC was notified that its New Entrant Registration would be revoked unless it agreed in writing within 10 days of June 3, 2021 to permit a Safety Audit to be performed. Because BENYSHEK TRUCKING & HARVESTING LLC has failed to agree to the safety audit its New Entrant Registration is hereby revoked and BENYSHEK TRUCKING & HARVESTING LLC's operations are placed out of service effective immediately. BENYSHEK TRUCKING & HARVESTING LLC must immediately cease all Interstate motor carrier operations in the United States.

Failure to comply with this order may subject the carrier to a penalty in accordance with 49 USC 521 (b)(2)(a) and the minimum/maximum penalty schedule in 49 CFR Part 386 Appendix A and B.

Under section 385.329, BENYSHEK TRUCKING & HARVESTING LLC may reapply for new entrant registration no earlier than 30 days from the date of this Order. In accordance with 49 CFR 385.329, in order to reapply BENYSHEK TRUCKING & HARVESTING LLC must submit an updated MCS-150 (Motor Carrier Identification Report), submit to a safety audit, and restart the 18-month new entrant monitoring period. Reapplication may be made via the FMCSA web site (<http://safer.fmcsa.dot.gov>) or by submitting a MCS-150 form. The form may be obtained by calling FMCSA support services at 1-800-832-5660 or via the FMCSA web site.

Sincerely,

Joseph P. DeLorenzo
Director, Office of Enforcement and Compliance

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: June 21, 2021

SUBJECT: Docket No. 21-TRAM-464-OOS
In the Matter of the Emergency Suspension of Operating Authority of **Benyshek Trucking & Harvesting LLC of Belleville, Kansas**, for Failure to Comply with New Entrant Safety Requirements as Required by the Motor Carrier Safety Statutes, Rules and Regulations.

EXECUTIVE SUMMARY:

Benyshek Trucking & Harvesting LLC (Carrier) is a private motor carrier, primarily hauling general freight, machinery, large objects, livestock, grain, feed and hay. Carrier operates under United States Department of Transportation (USDOT) No. 3599735. On June 3, 2021, the Federal Motor Carrier Safety Administration (FMCSA) forwarded a notice of violation(s) of the federal motor carrier safety regulations to Carrier, wherein Carrier was given 10 days to comply with the regulations. On June 14, 2021, FMCSA records indicate Carrier had not complied with new entrant requirements. As a result, the FMCSA issued Carrier an Order to Revoke "New Entrant" Registration and Cease All Interstate Transportation.

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

DISCUSSION AND ANALYSIS:

K.S.A. 66-1,129a states:

- a) The commission, at any time for good cause shown, may suspend the operation of any motor carrier subject to economic or safety rules and regulations adopted by the commission. Upon notice and an opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act, the commission

may revoke, amend, initiate sanctions or fine any motor carrier who has a certificate, license or permit issued by the commission or is subject to the safety rules and regulations adopted by the commission. Any motor carrier suspended prior to a hearing must be afforded the opportunity of a hearing on the matter. If such a hearing is requested, the hearing shall be held within 10 days of the request.

On June 3, 2021, the FMCSA forwarded a notice of violation(s) of the federal motor carrier safety regulations to Carrier, wherein Carrier was given 10 days to comply with the regulations. On June 14, 2021, FMCSA records indicate Carrier had not complied with new entrant requirements. As a result, the FMCSA issued Carrier an Order to Revoke “New Entrant” Registration and Cease All Interstate Transportation.

It is the policy of the Transportation Division that when the FMCSA suspends a Kansas based carrier from interstate operations that Staff recommends the Commission issues an order suspending the Carrier from intrastate operations. Suspension from interstate operations by the FMCSA is an indication the Carrier has unsafe safety practices that may pose a danger to the motoring public of Kansas.

RECOMMENDATION:

Staff asks the Commission to find that Carrier 1.) received sufficient notice from the FMCSA of the violation(s) of motor carrier safety rules and regulations, and a requisite opportunity to correct the violation(s) and to obtain compliance; 2.) failed to act upon the FMCSA’s notice; and that 3.) Carrier’s failure to comply with requirements of a new entrant audit is sufficient evidence of unsafe motor carrier operations and as such poses a potential immediate threat to the safety and welfare of the public of the state of Kansas.

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

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

CERTIFICATE OF SERVICE

21-TRAM-464-OOS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of

first class mail/hand delivered on 06/24/2021.

RICHARD ALAN BENYSHEK, MEMBER
BENYSHEK TRUCKING & HARVESTING LLC
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/S/ Desirae Mayfield

Desirae Mayfield