

1500 SW Arrowhead Road
Topeka, KS 66604-4027

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



20170817144106
Kansas Corporation Commission

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

Sam Brownback, Governor

NOTICE OF PENALTY ASSESSMENT

August 17, 2017

18-TRAM-069-PEN

David Brandyberry, Owner
d/b/a B Bar K Tree Service
9461 Rd W
Lenora, Kansas 67645

Certified Mail Receipt No. 70161970000105740044

This is a notice of a penalty assessment against David Brandyberry, d/b/a B Bar K Tree Service for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on July 19, 2017, by Kansas Corporation Commission Special Investigator(s) Penny Fryback. For a full description of the penalty and terms and obligations, please refer to the Penalty Order that is attached to this notice.

IF YOU ACCEPT THE PENALTY:

B Bar K Tree Service has been assessed an \$850 penalty. You have thirty (30) days from the date of service of this Penalty Order to pay the fine, unless you choose the reduced penalty option explained below. Please remit payment of \$850 through your personal account with the Kansas Corporation Commission's KTRAN application 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.

B BAR K TREE SERVICE IS A NEW ENTRANT MOTOR CARRIER AND IS ELIGIBLE FOR A PENALTY REDUCTION OF FIFTY PERCENT (50%) UNDER THE FOLLOWING TERMS:

New Entrant motor carriers are eligible for a one-time, fifty-percent (50%) reduction in the penalty(s) assessed motor carriers in accordance with the FY 2018 Uniform Penalty Assessment Matrix. You have to meet the terms and obligations set out in the attached Reduced Penalty Agreement to be eligible for the fifty-percent (50%) reduction. A fifty-percent (50%) reduction in the penalty assessed in the attached Order is available if:

(1) the carrier signs and submits within fifteen (15) days from the date of this Penalty Order, the attached Reduced Penalty Agreement to Litigation Counsel at the above address;

(2) within 30 days from the date of the attached Penalty Order, the carrier submits to Transportation Staff an approved Corrective Action Plan (CAP) documenting the violation(s) described in the attached 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; and

(3) within thirty (30) days from the date of the attached Penalty Order, the carrier sends an individual responsible for safety compliance to attend a Commission-sponsored safety seminar, and proof of attendance must be submitted to the undersigned Litigation Counsel shortly thereafter.

(4) within 18 months from the date of the attached Penalty Order, the carrier must be available for a follow-up Safety Compliance Review. Transportation Staff will contact the carrier to schedule the review.

If a carrier is approved for the fifty-percent (50%) reduced penalty, a Motion to Amend Penalty Order, along with the Reduced Penalty Agreement will be filed with the Commission. An Amended

Penalty Order assessing the reduced penalty and setting out the terms and conditions stated above will be issued by the Commission shortly thereafter. Payment of the reduced penalty of \$425 would be due within thirty (30) days from the date of service of the Amended Penalty Order.

IF YOU CONTEST THE PENALTY ORDER:

You have the right to request a hearing if you contest the terms of the Penalty Order. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. David Brandyberry, d/b/a B Bar K Tree Service 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 by mailing a copy of the request for hearing to Litigation Counsel at the above address. If you do not have access to the internet, you can mail 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 of service of this Penalty Order and mail a copy of the request to Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2016 Supp. 77-542.

IF YOU FAIL TO ACT:

Failure to adhere to the terms and obligations set out in the attached Penalty Order, including payment of the penalty of \$850 within thirty (30) days from the date of service of this Penalty Order, or in the alternative, provide a written request for a hearing within fifteen (15) days from the date of service of this Penalty Order, will result in the Order becoming a final Penalty Order and the terms and conditions set out therein will be enforced. If B Bar K Tree Service submits the attached Reduced Penalty Agreement as explained above, an Amended Penalty order may be issued assessing the reduced penalty of \$425 and that payment will become due within thirty (30) days from the date of service of the Amended Penalty Order.

Respectfully,



Ahsan A. Latif
Litigation Counsel
(785) 271-3118
a.latif@kcc.ks.gov

1500 SW Arrowhead Road
Topeka, KS 66604-4027

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



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Fax: 785-271-3354
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Sam Brownback, Governor

REDUCED PENALTY AGREEMENT

18-TRAM-069-PEN

David Brandyberry, d/b/a B Bar K Tree Service (B Bar K Tree Service) hereby submits this Reduced Penalty Agreement to become eligible for a fifty percent (50%) reduction in the penalty assessed in the Penalty Order dated August 17, 2017. B Bar K Tree Service has agreed to comply with the following terms and obligations:

1. B Bar K Tree Service has submitted, within fifteen (15) days from the date of the Penalty Order issued on August 17, 2017, this signed and dated Reduced Penalty Agreement to Litigation Counsel at the above address.

2. B Bar K Tree Service will, within 30 days from the date of the Penalty Order dated August 17, 2017, submit to Transportation Staff a Corrective Action Plan (CAP) documenting the violation(s) and describing specific and detailed information explaining the its efforts and concrete steps taken to ensure the violation(s) do not occur in the future. I understand the CAP must be approved by Transportation Staff before my company can be eligible for the 50% reduced penalty.

3. B Bar K Tree Service will, within thirty (30) days from the date of the Penalty Order dated August 17, 2017, send an individual responsible for safety compliance to attend a Commission-sponsored safety seminar, and proof of attendance will be submitted to the Litigation Counsel.

4. B Bar K Tree Service will be available within eighteen (18) months from the date of the Penalty Order for a follow-up Safety Compliance Review. Transportation Staff will contact the carrier to schedule the review.

David Brandyberry, d/b/a B Bar K Tree Service understands that if approved, Transportation Litigation Counsel will file a Motion for Amended Penalty Order with this Agreement attached to the motion. The Amended Penalty Order will assess B Bar K Tree Service a fifty-percent (50%) reduced penalty of \$425, and set out the terms and conditions stated above. Once the Amended Penalty Order is issued by the Commission, B Bar K Tree Service will have thirty (30) days from the date of service of the Amended Order to pay the reduced penalty assessed.

Dated this ____ day of _____, 2017.

David Brandyberry, d/b/a B Bar K Tree Service

David Brandyberry
Owner

(This Agreement can be mailed via U.S. Mail to the address above to the attention of Ahsan Latif, Litigation Counsel, or sent via e-mail to v.jacobsen@kcc.ks.gov and alatif@kcc.ks.gov.)

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

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

In the Matter of the Investigation of **David**)
Brandyberry, d/b/a B Bar K Tree Service, of)
Lenora, Kansas, Regarding the Violation of the)
Motor Carrier Safety Statutes, Rules and) Docket No. 18-TRAM-069-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. 2016 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. 2016 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. 2016 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. David Brandyberry, d/b/a B Bar K Tree Service (B Bar K Tree Service) has private and common operating authority from the Commission and further operates under USDOT number 2476800.

5. David Brandyberry attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on February 24, 2014, on behalf of B Bar K Tree Service.

6. B Bar K Tree Service is a private and common motor carrier which primarily hauls motor vehicles, grain, feed and hay.

7. B Bar K Tree Service is a New Entrant motor carrier and is eligible for a fifty-percent (50%) reduction of the penalty(s) assessed below.

III. STATEMENT OF FACTS

8. Pursuant to the jurisdiction and authority cited above, on July 19, 2017, Commission Staff (Staff) Special Investigator(s) Penny Fryback conducted a compliance review of the operations of B Bar K Tree Service. A copy of the safety compliance review is attached hereto as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, the special investigator(s) identified two (2) violation(s) of the Motor Carrier Safety Regulations.

- a. On May 28, 2017, B Bar K Tree Service required or permitted its driver, David Brandyberry or one of his employees, to operate a commercial

motor vehicle, a 2007 Ford pickup, VIN ending in 08075, GVWR 10,000 lbs., or a 1999 Ford, VIN ending in 93817, pulling a 2015 Doolittle trailer, VIN ending in 012442, GVWR 10,000 lbs., or an L & M tandem axle car trailer, VIN ending in 0773, in interstate commerce from Lenora, Kansas to Furnas County, Nebraska. This trip is evidenced by Ticket No. 064, dated May 28, 2017, a copy of which is attached hereto as Attachment “B” and is hereby incorporated by reference. At the time of this transportation, B Bar K Tree Service failed to document a successful periodic (annual) inspection on the 2007 Ford pickup and the 1999 Ford during the preceding 12-month period. The carrier’s failure to conduct periodic (annual) inspections on its commercial motor vehicles is a violation of 49 C.F.R. 396.17(c), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2016 Supp. 66-1,129. Staff recommends a fine of \$750.

- b. During the transportation described in paragraph a., above, B Bar K Tree Service failed to make an inquiry every 12 months into the annual motor vehicle record (MVR) of its driver and maintain the response(s) of each state agency in the driver qualification file. The carrier’s failure to inquire into its driver’s MVR at least once every 12 months and maintain a copy of the MVR in the driver qualification file is a violation of 49 C.F.R. Part 391.25(a) and (c)(1), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2016 Supp. 66-1,112. Staff recommends a fine of \$100.

IV. STAFF'S RECOMMENDATIONS

9. Based upon the available facts, Staff recommends the Commission find B Bar K Tree Service committed two (2) 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. Staff recommends a civil penalty of \$850 for two (2) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

11. Staff provides notice to the Commission that David Brandyberry, d/b/a B Bar K Tree Service is a New Entrant motor carrier and is eligible for a fifty-percent (50%) reduced civil penalty if it submits to Litigation Counsel within fifteen (15) days of the date of this Penalty Order the Reduced Penalty Agreement, which is attached to the Notice of Penalty Assessment.

12. Staff recommends David Brandyberry, d/b/a B Bar K Tree Service submit a Corrective Action Plan (CAP) within 30 days of the date of this Penalty Order, to Transportation Staff, documenting the violation(s) described in the this 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. The CAP must be approved by Transportation Staff to qualify for the fifty-percent (50%) discount.

13. Staff further recommends that B Bar K Tree Service attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide proof of attendance to Litigation Counsel.

14. Finally, Staff recommends that B Bar K Tree Service submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

V. CONCLUSIONS OF LAW

15. The Commission finds it has jurisdiction over B Bar K Tree Service because it is a motor carrier as defined in K.S.A. 2016 Supp. 66-1,108.

16. The Commission finds a penalty of \$850 should be assessed to B Bar K Tree Service for committing two (2) 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.

17. The Commission finds B Bar K Tree Service is a New Entrant motor carrier and is eligible for a fifty-percent (50%) reduction in the penalty(s) assessed herein. The carrier must submit to Litigation Counsel, within fifteen (15) days from the date of this Penalty Order, the signed and dated Reduced Penalty Agreement, which states it will comply with the reduced penalty terms and obligations set out therein.

THE COMMISSION THEREFORE ORDERS THAT:

A. David Brandyberry, d/b/a B Bar K Tree Service, of Lenora, Kansas is hereby assessed a penalty of \$850 for two (2) 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. Payment of \$850 must be made through your personal account with the Kansas Corporation Commission's KTRAN application 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.

B. B Bar K Tree Service is ordered to attend a Commission-sponsored safety meeting within ninety (90) days from the date of this Order, and provide proof of attendance to Litigation Counsel. 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.

C. B Bar K Tree Service must submit a Corrective Action Plan (CAP) within thirty (30) days of the date of this Penalty Order, to Transportation Staff, documenting the violation(s) described in the attached 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.

D. B Bar K Tree Service 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 motor carrier at a later date to determine an appropriate time for this review.

E. If B Bar K Tree Service does not submit the Reduced Penalty Agreement and fails to pay the full penalty(s) of \$850 within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or fails to comply with the provisions of this Order, the Commission will have the right to order further sanctions, including suspension of B Bar K Tree Service's motor carrier operating authority without further notice. Additionally, the Commission may issue and enforce revocation of motor carrier authority and/or issue cease and desist order(s), and may order other remedies available to the Commission by law, without further notice.

F. **Pursuant to K.S.A. 2016 Supp. 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, within fifteen (15) days from the date of service of this Penalty Order. The request may be electronically filed with the Commission's electronic filing system at <https://puc.kcc.ks.gov/e-filing/e-express/>, and a copy mailed to the Litigation Counsel within fifteen (15) days from the date of service of this Order. If you do not have access to the internet, you can mail an original and seven (7) copies of the request to the Commission's Secretary, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to Litigation Counsel within fifteen (15) days from the date of service of this Order. On August 17, 2017, this Order was mailed via Certified Mail, Return Receipt Requested, Receipt Number 70161970000105740044. Service of this Order is deemed complete upon the date delivered shown on the Domestic Return Receipt. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of B Bar K Tree Service's right to a hearing.

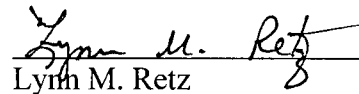
G. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination 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. 2016 Supp. 66-1,142b(e) and amendments thereto.

H. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: AUG 17 2017




Lynn M. Retz
Secretary to the Commission

AAL

Order Mailed Date

AUG 18 2017

ATTACHMENT “A”

	US DOT # 2476800	Legal: DAVID BRANDYBERRY Operating (DBA): B BAR K TREE SERVICE		
MC/IMX #:		State #:	Federal Tax ID: (EIN)	
Review Type: Compliance Review (CR)				
Scope: Principal Office		Location of Review/Audit: Company facility in the U. S.		Territory:
Operation Types				
Carrier: HM	Interstate HM	Intrastate HM	Business: Individual	
Shipper: N/A	N/A	N/A	Gross Revenue: for year ending: 12/31/2016	
Cargo Tank: N/A				
Company Physical Address:				
Contact Name:				
Phone numbers: (1)				
E-Mail Address:				
Company Mailing Address:				
9461 RD W LENORA, KS 67845-9671				
Carrier Classification				
Exempt for Hire		Private Property		
Cargo Classification				
Motor Vehicles		Grain, Feed, Hay		
Hazardous Materials				
9 Miscellaneous HM		Carried		Non-Bulk
Equipment				
	Owned	Term Leased	Trip Leased	
Truck	2	0	0	Truck Tractor
Trailer	4	0	0	
Power units used in the U.S.: 3				
Percentage of time used in the U.S.: 100				
Does carrier transport placardable quantities of HM? No				
Is an HM Permit required? N/A				
Driver Information				
	Inter	Intra		
< 100 Miles:			Average trip leased drivers/month: 0	
>= 100 Miles:	1		Total Drivers: 1	
			CDL Drivers: 1	





B BAR K TREE SERVICE (DAVID BRANDYBERRY dba)
U.S. DOT #: 2476800

State #: [REDACTED]

Review Date:
07/19/2017

Part A

QUESTIONS regarding this report or the Federal Motor Carrier Safety or
Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: David Brandyberry

Title: Owner

Name:

Title:





B BAR K TREE SERVICE (DAVID BRANDYBERRY dba)
U.S. DOT #: 2476800

State #: XXXXXXXXXX

Review Date:
07/19/2017

Part B Violations

1 FEDERAL CRITICAL	Primary: 396.17(a)	Discovered 2	Checked 7	Drivers/Vehicles In Violation 2	Checked 7
Description Using a commercial motor vehicle not periodically inspected. Example Unit 7 Trip Date: 5/28/2017 Carrier had an inspection sticker showing the inspection was current on the Dooley cargo trailer but didn't have the paperwork for the inspection. All the trailers had inspection stickers but no paperwork.					
2 FEDERAL	Primary: 382.601(b)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
Description Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11. Example Driver David Brandyberry Trip Date: 5/29/2017 Carrier provided no written policy at the time of this investigation.					
3 FEDERAL	Primary: 391.21(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
Description Using a driver who has not completed and furnished an employment application. Example Driver David Brandyberry Trip Date: 5/28/2017					
4 FEDERAL	Primary: 391.25(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
Description Failing to make an inquiry into the driving record of each driver to the appropriate State agencies in which the driver held a commercial motor vehicle operator's license at least once every 12 months. Example Driver David Brandyberry Trip Date: 5/29/2017 No MVR's on file for the driver					





B BAR K TREE SERVICE (DAVID BRANDYBERRY dba)
U.S. DOT #: 2476800

State #: [REDACTED]

Review Date:
07/19/2017

Part B Violations

5 FEDERAL	Primary: 391.51(b)(6)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
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Description

Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).
Driver David Brandyberry
Trip Date 5/28/2017

No annual review on file

6 FEDERAL	Primary: 391.51(b)(6)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
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Description

Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.

Example

Driver David Brandyberry
Trip Date: 5/28/2017

No certificate of violations on file

7 FEDERAL	Primary: 396.3(b)(2)	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
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Description

Failing to have a means of indicating the nature and due date of the various inspection and maintenance operations to be performed.

Example

Unit 7

Carrier had no maintenance and inspection schedule.

Safety Fitness Rating Information:

Total Miles Operated 5,000
Recordable Accidents 0
Recordable Accidents/Million Miles 0.00

OOS Vehicle (CR): 0

Number of Vehicle Inspected (CR): 0

OOS Vehicle (MCMIS): 0

Number of Vehicles Inspected (MCMIS): 0

Your proposed safety rating is :

SATISFACTORY

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:	S	0	0
Factor 6:	S	-	-

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





B BAR K TREE SERVICE (DAVID BRANDYBERRY dba)
U.S. DOT #: 2476800

State #: XXXXXXXXXX

Review Date:
07/19/2017

Part B Requirements and/or Recommendations

1. 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 target. Protect yourself, your trucks, your cargo, and your facilities. Discuss with your employees/drivers the "Security Measures for Truck Drivers and Companies" which were provided and reviewed with motor carrier official. Motor carriers should visit the following website for more information:
<http://www.fmcsa.dot.gov/documents/Hijacking-Brochure.pdf>

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 carriers 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.

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





B BAR K TREE SERVICE (DAVID BRANDYBERRY dba)
U.S. DOT #: 2476800

State #: [REDACTED]

Review Date:
07/19/2017

Part B Requirements and/or Recommendations

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.

For all investigations that did not result in a Cooperative Safety Plan:

The 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 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. Mail the letter along with copies of your supporting evidence to:

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

2. Maintain annual inspections in accordance with 396.17 on each vehicle. A motor carrier shall not use a commercial motor vehicle unless each component has passed an inspection at least once during the preceding 12 months. The inspection must identify the vehicle, the date of inspection, and the name and address of the motor carrier or entity where the report is maintained
3. Each employer shall provide educational materials that explain the requirements of this part 382 and the employer's policies and procedures with respect to meeting these requirements. Obtain a receipt signed by driver documenting a copy of these materials were provided.
4. Every motor carrier shall at least once every 12 months review the motor vehicle record of each of the drivers it employs. MVR's can be obtained by going to <http://www.kcc.ks.gov> then clicking on Motor Carrier on the right side of the page. There you will find a link to obtain MVR's.
5. The carrier must have a means of indicating the nature and due date of the various inspections and maintenance operations to be performed.
6. This review will result in a Safety Rating.
7. This report contains citations of regulations that are deemed serious in nature and could result in penalties against your company and/or your drivers.
8. I, David Brandyberry 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 David Brandyberry d/b/a B Bar K Tree Service's operating authority and/or the impoundment of David Brandyberry d/b/a B Bar K Tree Service's vehicles.



ATTACHMENT “B”



B-BAR-K TREE SERVICE David Blaneyberry
6491 Road 44 • Lincoln, NE 68745-0077 • TEL: 781-587-4024 • FAX: 781-587-4024
WINDBREAKS • WILDLIFE PLANTINGS • LIVING SNOWFENCES

CUSTOMER'S ORDER NO.		DEPT		DATE	
NAME		ADDRESS		CITY, STATE, ZIP	
SOLD BY		CASH	C.O.D.	CHARGE	ON ACCT.
MOSE DATE		PAID OUT			
QUANTITY	DESCRIPTION			PRICE	AMOUNT
1	125	Planting trees & shrubs			122.50
2	1197	Fertilizer & Disinfectant			1116.01
3	1227	3 Bag Topsoil			478.22
4		Misc Parts			151.05
5					
6					
7					186.80
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					

RECEIVED BY

KEEP THIS SLIP FOR YOUR RECORDS



CERTIFICATE OF SERVICE

18-TRAM-069-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on **AUG 17 2017**.

DAVID BRANDYBERRY, OWNER
DAVID BRANDYBERRY
D/B/A B BAR K TREE SERVICE
9461RD W
LENORA, KS 67645-9671
bbark@ruraltel.net

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

AUG 18 2017