

STATE OF KANSAS



CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

PHONE: 785-271-3100  
FAX: 785-271-3354  
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

**NOTICE OF PENALTY ASSESSMENT**  
19-TRAM-202-PEN

November 27, 2018

Todd M. Fairchild, Managing Member  
Fairchild Tree Service, L.L.C.  
3743 SE 30th Ave  
Kingman, KS 67068

This is a notice of a penalty assessment against Fairchild Tree Service, L.L.C. (Fairchild Tree Service) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on October 25, 2018, by Kansas Corporation Commission Special Investigator Doug Handy. Penalties are assessed in accordance with the FY 2019 Uniform Penalty Assessment Matrix, approved by the Commission on August 7, 2018. For a full description of the penalty(s) and terms and obligations please refer to the Order attached to this notice.

**IF YOU ACCEPT THE PENALTY:** Fairchild Tree Service has been assessed an \$850 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$850, through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

The attached Order requires a representative of Fairchild Tree Service to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website [http://www.kcc.state.ks.us/trans/safety\\_meetings.htm](http://www.kcc.state.ks.us/trans/safety_meetings.htm). The Order also requires your company to submit to one follow-up safety compliance review within 18 months from the date of the Order. Transportation Staff will contact your company at a later date to determine an appropriate time for this review.

**IF YOU CONTEST THE PENALTY ORDER: You have the right to request a hearing.** A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Fairchild 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 mail a copy of the request for hearing to the undersigned at the above address. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to the undersigned Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2017 Supp. 77-542.

**IF YOU FAIL TO ACT:** Failure to pay the penalty of \$850 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

A handwritten signature in blue ink, appearing to read "Ahsan A. Latif".

Ahsan A. Latif  
Litigation Counsel  
(785) 271-3118

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

Before Commissioners:        Shari Feist Albrecht, Chair  
                                     Jay Scott Emler  
                                     Dwight D. Keen

In the Matter of the Investigation of **Fairchild**        )  
**Tree Service, L.L.C., of Kingman, KS,**        )  
Regarding the Violation of the Motor Carrier        )  
Safety Statutes, Rules and Regulations and the        ) Docket No. 19-TRAM-202-PEN  
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). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

**I. JURISDICTION**

1. Pursuant to K.S.A. 2017 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. 2017 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. 2017 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 issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

## **II. BACKGROUND**

4. Fairchild Tree Service, L.L.C. (Fairchild Tree Service) has recently obtained private operating authority with the Commission and further operates USDOT number 1692655.

5. Stephanie Fairchild attended a Commission-sponsored Motor Carrier Education and Safety Instructional Meeting on April 1, 2013, on behalf of Fairchild Tree Service.

6. Fairchild Tree Service is a private motor carrier which primarily hauls log, poles, beams, lumber, machinery, and large objects.

## **III. STATEMENT OF FACTS**

7. Pursuant to the jurisdiction and authority cited above, on October 25, 2018, Commission Staff (Staff) Special Investigator Doug Handy conducted a safety compliance review of the operations of Fairchild Tree Service. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, the special investigator identified three (3) violation(s) of the Motor Carrier Safety Regulations.

- a. On May 10, 2018, Fairchild Tree Service required or permitted its driver, Todd Fairchild, to operate a CDL-required commercial motor vehicle, a 2000 Chevrolet, VIN ending in 522735, GVWR 33,000 lbs., pulling a

2014 PJ trailer, VIN ending in 1200617, GVWR 14,000 lbs., in intrastate commerce from Kingman, Kansas to Cheney, Kansas. This trip is evidenced by Driver's Time Record, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Fairchild Tree Service failed to first designate a person to supervise staff for the purposes of making reasonable suspicion determinations regarding alcohol and drug usage. This designated person must then undergo reasonable suspicion training to include 60 minutes of alcohol training and 60 minutes of controlled substance training. The carrier's inability to produce documentation of this training and its failure to have a designated person to attend 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substances use is a violation of 49 C.F.R. 382.603, adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 2017 Supp. 66-1,129. Staff recommends a fine of \$100.

- b. On September 5, 2018, Fairchild Tree Service required or permitted its driver, Todd Fairchild, to operate a CDL-required commercial motor vehicle, a 2000 Chevrolet, VIN ending in 522735, GVWR 33,000 lbs., pulling a 2014 PJ trailer, VIN ending in 1200617, GVWR 14,000 lbs., in intrastate commerce from Kingman, Kansas to Hutchinson, Kansas. This trip is evidenced by Driver's Time Record, a copy of which is attached hereto as Attachment "C" and is hereby incorporate by reference. At the time of this transportation, Fairchild Tree Service failed to obtain its

driver's motor vehicle record (MVR) within 30 days of employment. The special investigator discovered two (2) violations of this type. The carrier's failure to obtain MVRs on its drivers within 30 days of employment and maintain the MVRs in the driver qualification files pursuant to 49 C.F.R. 391.51 is a violation of 49 C.F.R. 391.23(a)(1) and (b), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2017 Supp. 66-1,129. Staff recommends a fine of \$200.

- c. During the transportation described in paragraph b, above, Fairchild Tree Service did not have proper Kansas Corporation Commission PRI-D authority to operate from point-to-point as a commercial motor carrier in Kansas. The carrier's commercial operations of motor vehicles prior to obtaining and maintaining proper Commission authority is a violation of K.S.A. 2017 Supp. 66-1,111 and 49 C.F.R. 392.2, adopted by K.A.R. 82-4-3h, and authorized by K.S.A. 2017 Supp. 66-1,129. Staff recommends a fine of \$500.

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

8. Based upon the available facts, Staff recommends the Commission finds Fairchild Tree Service committed three (3) 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.

9. Additionally, Staff recommends a civil penalty of \$850 for three (3) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from Fairchild Tree Service be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide Litigation Counsel with written proof of attendance. A schedule of the dates and locations for safety seminars can be found on the Commission's website at [http://kcc.ks.gov/trans/safety\\_meetings.htm](http://kcc.ks.gov/trans/safety_meetings.htm).

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

## **V. CONCLUSIONS OF LAW**

12. The Commission finds it has jurisdiction over Fairchild Tree Service because it is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108.

13. The Commission finds Fairchild Tree Service committed three (3) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

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

A. Fairchild Tree Service, L.L.C., of Kingman, KS is hereby assessed a \$850 civil penalty for three (3) violation(s) of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

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

C. Fairchild 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 carrier to set up the appointment.

D. Pursuant to K.S.A. 2017 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. The request may be electronically filed with the Commission's electronic filing system at <https://puc.kcc.ks.gov/e-filing/e-express/>, within fifteen (15) days from the date of service of this Order, and a copy of the request mailed to the Litigation Division. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Fairchild Tree Service's right to a hearing, and this Penalty Order will become a Final Order assessing a \$850 civil penalty against Fairchild Tree Service, and ordering a representative from Fairchild Tree Service 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, and to submit to a safety compliance review within 18 months from the date of this Order.

E. If a request for hearing is filed, attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties 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 less than \$500, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2017 Supp. 66-1,142b(e) and amendments thereto.

F. If you do not request a hearing, the payment of the civil penalty of \$850 is due in thirty (30) days from the date of service of this Order. Payment of \$850 must be made through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. You must have an account through KTRAN to pay the penalty.

G. Failure to pay the \$850 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Fairchild Tree Service'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 revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

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.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/27/2018




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Lynn M. Retz  
Secretary to the Commission

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## **ATTACHMENT “A”**

	<b>US DOT #</b> 1692655	<b>Legal:</b> FAIRCHILD TREE SERVICE LLC <b>Operating (DBA):</b> FAIRCHILD TREE SERVICE				
<b>MC/MX #:</b>		<b>State #:</b> 169581		<b>Federal Tax ID:</b> [REDACTED] (EIN)		
<b>Review Type:</b> Compliance Review (CR)						
<b>Scope:</b> Principal Office		<b>Location of Review/Audit:</b> Company facility in the U. S.			<b>Territory:</b> F	
<b>Operation Types</b>		<b>Interstate</b> <b>Intrastate</b>				
<b>Carrier:</b> N/A		<b>HM</b>		<b>Business:</b> Corporation		
<b>Shipper:</b> N/A		<b>N/A</b>		<b>Gross Revenue:</b> [REDACTED]		
<b>Cargo Tank:</b> N/A		<b>for year ending:</b> 12/31/2017				
<b>Company Physical Address:</b>						
[REDACTED] KINGMAN, KS 67068-8292						
<b>Contact Name:</b> Stephanie Fairchild						
<b>Phone numbers: (1)</b> [REDACTED]		<b>Fax</b>				
<b>E-Mail Address:</b> [REDACTED]						
<b>Company Mailing Address:</b>						
[REDACTED] KINGMAN, KS 67068-8292						
<b>Carrier Classification</b>						
Private Property						
<b>Cargo Classification</b>						
Logs, Poles, Beams, Lumber Machinery, Large Objects						
<b>Hazardous Materials</b>						
9 Miscellaneous HM Carried Non-Bulk						
<b>Equipment</b>						
	<b>Owned</b>		<b>Term Leased</b>		<b>Trip Leased</b>	
Truck	2	0	0	Trailer	2	0
						0
Power units used in the U.S.: 2						
Percentage of time used in the U.S.: 100						
<b>Does carrier transport placardable quantities of HM?</b> No						
<b>Is an HM Permit required?</b> N/A						
<b>Driver Information</b>						
	<b>Inter</b>	<b>Intra</b>	<b>Average trip leased drivers/month:</b> 0			
<b>&lt; 100 Miles:</b>	2		<b>Total Drivers:</b> 2			
<b>&gt;= 100 Miles:</b>			<b>CDL Drivers:</b> 2			



**FAIRCHILD TREE SERVICE (FAIRCHILD TREE SERVICE LLC dba)**

U.S. DOT #: 1692655

State #: [REDACTED]

Review Date:

10/25/2018

**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:** Todd Fairchild

**Title:** Managing Member

**Name:** Stephanie Fairchild

**Title:** Member



FAIRCHILD TREE SERVICE (FAIRCHILD TREE SERVICE LLC dba)

U.S. DOT #: 1692655

State #: [REDACTED]


Review Date:

10/25/2018

## Part B Violations

1 STATE CRITICAL	Primary: 391.45(b)(1) Secondary: 391.11(a) CFR Equivalent: 391.45(b)(1)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
<b>Description</b> Using a driver not medically examined and certified during the preceding 24 months. <b>Example</b> Driver Name Todd Fairchild Trip Date 05/10/2018 Carrier made an Intrastate Trip from Kingman, Ks. to Cheney, Ks. Invoice #599 Driver qualification file provided a medical certification completed on 05/11/2018. The last medical certification completed prior to 05/11/2018 was issued on 09/03/2015 with an expiration date of 09/30/2016.					
2 STATE	Primary: 382.603 CFR Equivalent: 382.603	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
<b>Description</b> Failing to ensure person designated to determine that drivers undergo reasonable suspicion testing receive 60 minutes training for alcohol and/or 60 minutes of training for controlled substances. <b>Example</b> Driver Name Todd Fairchild Trip Date 05/10/2018 Carrier made an Intrastate Trip from Kingman, Ks. to Cheney, Ks. Invoice #599 Supervisor/Company Contact: Stephanie Fairchild Carrier failed to provide a certification indicating the training was completed as required.					
3 STATE	Primary: 391.25(a) CFR Equivalent: 391.25(a)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
<b>Description</b> 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. <b>Example</b> Driver Name Todd Fairchild Trip Date 09/05/2018 Carrier made an Intrastate Trip from Kingman, Ks. to Hutchinson, Ks. Invoice #621  Carrier driver qualification file provided an MVR obtained on 10/15/2018. The driver qualification file provided had no record for 2016-2017. The last MVR was obtained on 04/07/2015.					
4 STATE	Primary: 391.51(b)(5) CFR Equivalent: 391.51(b)(5)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
<b>Description</b> Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2). <b>Example</b> Driver Name Todd Fairchild Trip Date 09/05/2018 Carrier made an Intrastate Trip from Kingman, Ks. to Hutchinson, Ks. Invoice #621  Carrier driver qualification file provided an annual review that was completed on 04/07/2015. The driver qualification file provided had no record of annual review for 2016-2018.					



	<b>FAIRCHILD TREE SERVICE (FAIRCHILD TREE SERVICE LLC dba)</b>	Review Date:
	U.S. DOT #: 1692655	State #: <span style="background-color: black; color: black;">[REDACTED]</span> 10/25/2018

### Part B Violations

5 STATE	Primary: 391.51(b)(6)  CFR Equivalent: 391.51(b)(6)	Discovered 2	Checked 2	Drivers/Vehicles In Violation 2	Checked 2
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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 Name Todd Fairchild

Trip Date 09/05/2018

Carrier made an Intrastate Trip from Kingman, Ks. to Hutchinson, Ks. Invoice #621

Carrier driver qualification file an Certification of violations that was completed on 04/07/2015. The driver qualification file provided had no record of certification of violations for 2016-2018.

6 STATE	Primary: 66-1,112g  CFR Equivalent: 392.2	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
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#### Description

Operating a commercial motor vehicle without the proper authority.

#### Example

Driver Name Todd Fairchild

Trip Date 09/05/2018

Carrier made an Intrastate Trip from Kingman, Ks. to Hutchinson, Ks. Invoice #621

Carrier had PRI-D authority originally granted on May, 31, 2013. The authority was cancelled for failure to renew on January 20, 2016.

<b>Safety Fitness Rating Information:</b>	<b>OOS Vehicle (CR): 0</b>
Total Miles Operated 15,000	Number of Vehicle Inspected (CR): 0
Recordable Accidents 0	OOS Vehicle (MCMIS): 0
Recordable Accidents/Million Miles 0.00	Number of Vehicles Inspected (MCMIS): 0

Your proposed safety rating is :      <b>SATISFACTORY</b>	Rating Factors		Acute	Critical
	Factor 1:	S	0	0
	Factor 2:	C	0	1
	Factor 3:	S	0	0
	Factor 4:	S	0	0
	Factor 5:	S	0	0
	Factor 6:	S	-	-



**FAIRCHILD TREE SERVICE (FAIRCHILD TREE SERVICE LLC dba)**

U.S. DOT #: 1692655

State #: [REDACTED]

Review Date:

10/25/2018

### Part B Requirements and/or Recommendations

1. Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers. [www.fmcsa.dot.gov/safety-security/eta/index.htm](http://www.fmcsa.dot.gov/safety-security/eta/index.htm)
2. 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 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







**FAIRCHILD TREE SERVICE (FAIRCHILD TREE SERVICE LLC dba)**

U.S. DOT #: 1692855

State #: [REDACTED]

Review Date:

10/25/2018

### **Part B Requirements and/or Recommendations**

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

#### **3. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN: Policies and Procedures**

**DESCRIPTION OF PROCESS BREAKDOWN-** Fairchild Tree Service, LLC/DBA Fairchild Tree Service failed to have a designated person trained to determine reasonable suspicion testing.

##### **BASIC SPECIFIC RECOMMENDED REMEDIES**

**Implement Safety Improvement Practices:** The following are recommended practices related to Policies and Procedures.

- Develop a written company policy incorporating by reference all regulations regarding controlled substances and alcohol use, testing, training, and records retention for all employees.
- Develop a policy requiring drivers to submit copies of all citations for moving violations to carrier management within 24 hours.
- Establish a process to ensure that drivers who are randomly tested can be immediately removed if they are found to be positive and that they do not return to safety-sensitive duties until they have complied with the "return-to-duty" process.
- Establish written policies and procedures that promote, verify, and enforce adherence to all controlled-substance and alcohol rules and regulations. Procedures should be tailored to company operations and should provide specific checks and guidelines for interacting with a consortium, if applicable.
- Establish a process to ensure that test results are properly safeguarded from unauthorized disclosure to prospective employers without specific written consent and from disclosure under any circumstances to insurance companies and other nonqualified parties, in accordance with regulations.
- Develop a policy to ensure that all alcohol testing is conducted immediately before or after the period that employees are performing a safety-sensitive function. Drivers can be tested on their day off only for controlled substances. Once notified of their selection, drivers must proceed immediately to the testing facility. If a driver refuses to go, this should be considered as equivalent to a positive result.
- Consider developing a driver selection protocol that uses valid random-number-generator software on a monthly basis to select, by driver identification number, 5 to 8 percent of drivers for controlled-substance testing and 2 to 5 percent for alcohol testing. This will ensure selection of 50 percent of drivers for controlled-substances testing and 10 percent for alcohol testing per year, given fluctuations in the driver workforce over the course of the year.
- Develop a written and progressive disciplinary policy focused on taking corrective action to ensure drivers comply with regulations and policies. A progressive disciplinary policy could include, among other things, written warnings, suspensions, or work restrictions, monetary penalties, and termination. This policy should also specify consequences for any carrier official who knowingly and willfully allows controlled-substance and alcohol violations.

##### **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.

#### **4. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Monitoring and Tracking**

**DESCRIPTION OF PROCESS BREAKDOWN-** Fairchild Tree Service, LLC/DBA Fairchild Tree Service failed to have driver medically examined at least once every 24 months. Carrier failed to complete a certification of violations and annual reviews. They failed to obtain an MVR for 2016-2017.

##### **BASIC SPECIFIC RECOMMENDED REMEDIES**

**Implement Safety Improvement Practices:** The following are recommended practices related to Monitoring and





FAIRCHILD TREE SERVICE (FAIRCHILD TREE SERVICE LLC dba)

U.S. DOT #: 1692655

State #: [REDACTED]

Review Date:

10/25/2018

## Part B Requirements and/or Recommendations

### Tracking Processes.

- Implement an effective process for monitoring and documenting all drivers' job functions, training, qualifications, renewal dates, disclosed medical conditions, and operational restrictions, including those of drivers on a waiver program or with impairments that may be satisfied by a Skill Performance Evaluation certificate, to ensure that assignments are covered by qualified drivers.
- Review and retain each driver's Motor Vehicle Record (MVR) at least annually to ensure compliance with company policies, Federal regulations, and State and local laws and ordinances related to driver fitness. If a driver seems to have numerous violations, the MVR should be reviewed more often. Random MVR checks in addition to annual checks are also effective. File the MVR in each driver's driver qualification file after review.
- Maintain each driver's investigation history file in a secure location with limited and controlled access for as long as the driver is employed and for three years thereafter.
- Maintain roadside inspection reports, moving violation records, training records, the Commercial Driver's License (CDL), the dispatch schedule, bills of lading, and the medical report to help evaluate the performance of all staff involved in qualifying drivers (dispatchers and managers) and the effectiveness of the policies and procedures.
- Implement a system for keeping accurate records of employee driver fitness training needs, such as entry-level and HAZMAT training, and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- Evaluate personnel who are monitoring driver fitness performance by making sure they are reviewing driver-assignment and qualification files; applying the performance standards fairly, consistently, and equitably; and documenting the evaluations.
- Regularly evaluate the company's driver fitness-related inspection results via the Federal Motor Carrier Safety Administration's (FMCSA) website at <http://ai.fmcsa.dot.gov/SMS>. Assess violations for process breakdowns and how to remedy them. Use data to help implement an effective process beyond self-reporting to monitor, document, and evaluate compliance with driver-fitness regulations and company policies.
- When monitoring and tracking any driver-fitness-related issue, always assess whether it is individual or represents a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.)

### 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.

5. This report contains citations of regulations that are deemed serious in nature and could result in penalties against your company and/or your drivers.
6. For all investigations that could result in a Penalty Order.

**PLEASE NOTE:** The violations discovered during this compliance investigation 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 the receipt of this report acknowledges your understanding that the violations discovered by the KCC during this investigation may be used to calculate any civil penalty proposed as a result of this investigation. Your signature is not an admission to the violations identified.

7. I 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 the Kansas Motor Carrier Safety Statutes and Regulations could result in suspension of Fairchild Tree Service, LLC/DBA Fairchild Tree Service operating authority and/or the impoundment of Fairchild Tree Service, LLC/DBA Fairchild Tree Service vehicles.

Stephanie Fairchild, Member







**FAIRCHILD TREE SERVICE (FAIRCHILD TREE SERVICE LLC dba)**  
U.S. DOT #: 1692655

State #: [REDACTED]

Review Date:  
10/25/2018

**Part B Requirements and/or Recommendations**

10-25-18

Date



## **ATTACHMENT “B”**

# DRIVER'S TIME RECORD

Driver's Name (print) Todd Fairchild Employee No. \_\_\_\_\_ Month May Year 2018

DRIVERS MAY PREPARE THIS REPORT INSTEAD OF "DRIVERS DAILY LOG" IF THE FOLLOWING APPLIES:

- \*Operates within 100 air-mile radius of headquarters.
- \*Returns to headquarters and is released from work within 12 consecutive hours
- \*At least 8 hours off duty for passenger carriers and 10 hours off duty for property carriers.

## INTERMITTENT DRIVERS

Shall complete this form for 7 days preceding any day driving is performed. This includes the preceding month.

Date	Start Time	End Time	Total Hours	Truck Number	Trip Information TO - FROM
1	8	3	6	1	Smith's
2	8	4	7	1	Waves
3					
4	8	5	8	1	Steve Veran
5					
6					
7	8	5	8	1	Kingman Rec
8	8	5	8	1	Tom Helsel
9	8	5	8	1	Cindy Miller
10	8	3	6	1	Houma
11	8	5	8	1	Bred George
12					
13					
14					
15	8	1	5		City of Kingman
16	8	1	5		City of Kingman
17	8	1	5		City of Kingman
18					
19					
20					
21					
22	8	5	8	1	Vonda Bauer
23	8	5	8	1	Steve Freund
24	8	3	6	1	Kevin Miller
25	8	5	8	1	Steve Smith
26	8	5	8	1	Steve Smith
27					
28					
29	8	5	8	1	Tim Fairchild
30	8	5	8	1	Jon Brittenbaugh
31	8	5	8	1	Mattie Greter

☐ To be prepared monthly by each DOT certified driver unless time record is exclusively kept on Driver's Daily Log. Indicate "days off." Check box if no driving is performed during this month and the first 7 days of the following month. Mail this report to your Division Manager of Administration.



## **ATTACHMENT “C”**

## DRIVER'S TIME RECORD

Driver's Name (print) Todd Fenchel Employee No. \_\_\_\_\_ Month Sept Year 2018

**DRIVERS MAY PREPARE THIS REPORT INSTEAD OF "DRIVERS DAILY LOG" IF THE FOLLOWING APPLIES:**

- \*Operates within 100 air-mile radius of headquarters.
- \*Returns to headquarters and is released from work within 12 consecutive hours
- \*At least 8 hours off duty for passenger carriers and 10 hours off duty for property carriers.

### INTERMITTENT DRIVERS

Shall complete this form for 7 days preceding any day driving is performed. This includes the preceding month.

Date	Start Time	End Time	Total Hours	Truck Number	Trip Information TO - FROM
1					
2					
3					
4					
5	8	5	8	1	Young Construction
6					
7					
8					
9					
10					
11	8	5	8	1	Pratt
12	8	5	8	1	Pratt
13	8	5	8	1	Pratt
14					
15					
16					
17	8	5	8	1	Inke
18	8	5	8	1	Inke
19	8	5	8	1	Inke
20	8	5	8	1	Inke
21	8	3	6	1	Pratt
22					
23					
24	8	5	8	1	G. Parsons
25					
26	8	5	8	1	G. Parsons
27					
28	8	3	6	1	David Fenchel
29					
30					
31					

☐ To be prepared monthly by each DOT certified driver unless time record is exclusively kept on Driver's Daily Log. Indicate "days off." Check box if no driving is performed during this month and the first 7 days of the following month. Mail this report to your Division Manager of Administration.

**CERTIFICATE OF SERVICE**

19-TRAM-202-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 11/28/2018.

TODD M. FAIRCHILD, MANAGING MEMBER  
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tscfairchild@gmail.com

AHSAN LATIF, LITIGATION COUNSEL  
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/S/ DeeAnn Shupe

DeeAnn Shupe