

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

Sam Brownback, Governor

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

NOTICE OF PENALTY ASSESSMENT 15-TRAM-294-PEN

January 27, 2015

Omar Brambila, Owner Party Hardy Bus, LLC 2163 S Milstead Wichita, Kansas 67209

This is a notice of a penalty assessment for violation of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on November 24, 2014 and December 5, 2014, by Kansas Corporation Commission Special Investigator Gary Goeller. For a full description of the penalty and process please refer to the Order that is attached to this notice.

IF YOU ACCEPT THE PENALTY:

You have been assessed a \$1,250 penalty. You have thirty (30) days from service of this Penalty Order to pay the fine amount. Check or money order must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Transportation Division of the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and must include a reference to the docket number of this proceeding. Credit card payment may be made by faxing your credit card information to the Transportation Office at 785-271-3124, using the KCC's credit card payment form found at http://kcc.ks.gov/trans/creditcard.pdf.

You must attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm.

You must submit to one follow-up safety compliance review within the next 18 months. Staff will contact you at a later date to determine an appropriate time for this review.

IF YOU CONTEST THE PENALTY:

You have the right to request a hearing. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Respondent must submit an original and seven (7) copies of the request to the Commission's Acting Secretary at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date stamped on the last page of the Penalty Order. K.A.R. 82-1-215; K.S.A. 2013 Supp. 77-542.

IF YOU FAIL TO ACT:

Failure to pay the fine amount within thirty (30) days of service of the Penalty Order, or in the alternative, provide a written request for a hearing within fifteen (15) days from service of the Penalty Order will result in the attached Order becoming a Final Order and may result in the additional sanction of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

Michael J. Duenes Litigation Counsel (785) 271-3181

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners:

Shari Feist Albrecht, Chair

Jay Scott Emler

Pat Apple

In the Matter of the Investigation of Party)	
Hardy Bus, LLC, of Wichita, Kansas,)	
Regarding the Violation of the Motor Carrier)	
Safety Statutes, Rules and Regulations and the)	Docket No. 15-TRAM-294-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). 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. 2013 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. 2013 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. 2013 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. Party Hardy Bus, LLC (Party Hardy Bus) operates under USDOT number 1915422.
- 5. Party Hardy Bus is a party bus service located in Wichita, Kansas. It primarily operates on Fridays and weekends as customer dictate. It operates within a 25 mile radius of its principle place of business and is exempt from KCC authority.
 - 6. Party Hardy Bus is a common motor carrier which primarily hauls passengers.

III. STATEMENT OF FACTS

- 7. Pursuant to the jurisdiction and authority cited above, on November 24, 2014 and December 5, 2014, Commission Staff (Staff) Special Investigator Gary Goeller conducted a compliance review of the operations of Party Hardy Bus. 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, Mr. Goeller identified three (3) violations of the Motor Carrier Safety Regulations.
 - a. On November 15, 2014, Party Hardy Bus required or permitted its driver, Christopher Bush, to operate a commercial motor vehicle, a 1986 Neoplain 45 passenger bus, in intrastate commerce in and around the area of Wichita, Kansas. This trip is evidenced by Christopher Bush's timesheet, a copy of which is attached hereto as Attachment "B" and is

hereby incorporated by reference. At the time of this transportation, driver Christopher Bush did not have an Air Brake Restriction endorsement on his commercial driver's license, which is required to operate a bus. Party Hardy Bus' failure to ensure that its drivers have the proper class or endorsements on their commercial driver's licenses is a violation of 49 C.F.R. Parts 383.37(a) and 392.2, as implemented by K.S.A. 8-2,132. Staff recommends a fine of \$500.

- b. During the transportation described in paragraph a., above, Party Hardy Bus had not made 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. The special investigator found three (3) violations of this type. Party Hardy Bus' failure to inquire into its driver's driving record at least once every 12 months and maintain a copy of the driving record in the driver qualification file is a violation of 49 C.F.R. Part 391.25(a) and (c), as adopted by K.A.R. 82-4-3g, as authorized by K.S.A. 2013 Supp. 66-1,112. Staff recommends a fine of \$250.
- c. On October 17, 2014, Party Hardy Bus required or permitted its driver, Salvador Brambila, to operate a commercial motor vehicle, a 1986 Neoplain 45 passenger bus, in intrastate commerce in and around the area of Wichita, Kansas. This trip is evidenced by Salvador Brambila's timesheet, a copy of which is attached hereto as Attachment "C" and is hereby incorporated by reference. At the time of this transportation, Party

Hardy Bus had not required Salvador Brambila to be medically examined and certified during the preceding 24 months. Mr. Brambila's medical certificate expired on October 13, 2014 and was not renewed until December 4, 2014. The special investigator found two violations of this type. Party Hardy Bus' failure to confirm that each of its drivers are medically examined and certified prior to requiring or permitting the operation of a commercial motor vehicle and maintaining documentation of the medical certificate in the driver qualification file is a violation of 49 C.F.R. 391.45(b)(1) and 49 C.F.R. 391.51(b)(7)(i), as adopted by K.A.R. 82-4-3g, and as authorized by K.S.A. 2013 Supp. 66-1,129. Staff recommends a fine in the amount of \$500.

IV. STAFF'S RECOMMENDATIONS

- 8. Based upon the available facts, Staff recommends the Commission find Party Hardy Bus committed three (3) violations 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 \$1,250 for three (3) violations of the Motor Carrier Safety Statutes, Rules and Regulations.
- 10. Staff further recommends that Party Hardy Bus be required to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. A schedule of the dates and locations for the safety seminar can be found on the Commission's website at http://kcc.ks.gov/trans/safety meetings.htm.

11. Finally, Staff recommends that Party Hardy Bus submit to one follow-up safety compliance review within the next eighteen (18) months. Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

V. CONCLUSIONS OF LAW

- 12. The Commission finds it has jurisdiction over Party Hardy Bus because it is a motor carrier as defined in K.S.A. 2013 Supp. 66-1,108.
- 13. The Commission finds Party Hardy Bus committed three (3) violations 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. Party Hardy Bus, LLC, of Wichita, Kansas is hereby assessed a \$1,250 civil penalty for three (3) violations 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. Party Hardy Bus is hereby ordered to attend a Commission-sponsored safety seminar within the next ninety (90) days and is to provide Staff with written proof of attendance. Further, Party Hardy Bus is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.
- C. Pursuant to K.S.A. 2013 Supp. 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 Commission's Acting Secretary, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of

service of this Order. If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Party Hardy Bus' right to a hearing, and this Penalty Order will become a Final Order assessing a \$1,250 civil penalty against Party Hardy Bus, and ordering Party Hardy Bus to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance, and to submit to a safety compliance review within eighteen (18) months from the date of service of this Order.

- D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. A corporation shall not be permitted to enter an appearance, except by its attorney. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2).
- E. If you do not request a hearing, the payment of the civil penalty is due in thirty (30) days from date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payments shall be mailed to the Transportation Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. *The payment shall include a reference to the docket number of this proceeding*.
- F. Failure to pay the \$1,250 civil penalty within thirty (30) days of the service of this Penalty Order, and/or failure to comply with the provisions of this Order, may result in revocation of Party Hardy Bus' motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of out-of-service and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

G. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

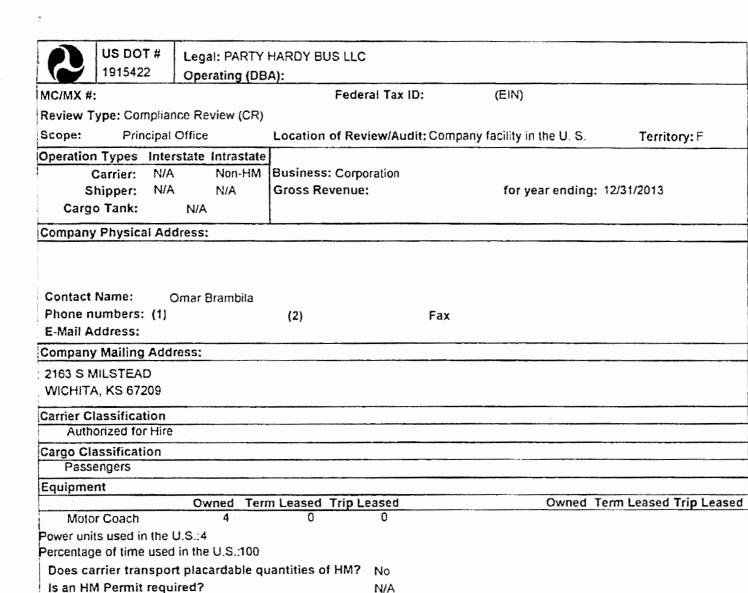
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ORDER MAILED JAN 2 82015

Neysa Thomas
Acting Secretary

MJD

ATTACHMENT "A"



Driver Information

< 100 Miles:

>= 100 Miles:

Inter

Intra

4

N/A

Average trip leased drivers/month: 0

Total Drivers: 4

CDL Drivers: 4



U.S. DOT #: 1915422

12/11/2014

Review Date:

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:

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

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Omar Brambila

Title: Owner

Name:

Title:



U.S. DOT #: 1915422

Review Date: 12/11/2014

Part B Violations

1	Primary: 292.2			Drivers/V	ehicles
STATE	Secondary: 8-2,132	Discovered	Checked	In Violation	Checked
	CFR Equivalent: 383,37(a)	11	4	1	4

Description

Knowingly allowing, requiring, permitting, or authorizing an employee to operate a CMV during any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a CMV who violates any restriction on the driver's CLP or CDL.

Example

Christopher Bush Trip date 11.15.2014 1986 Neop 42 foot bus

Operated a 1986 NEOP 45 passenger bus KS tag Brake restriction.

/ 42 foot bus on a trip in Wichita, KS with a Class B CDL with Air

2 FEDERAL

Primary: 390.19(a) Secondary: 390.19(4)(h)(i) Discovered Checked In Violation Checked

Description

Failed to upated MCS 150 every 12 months per Kansas

Example

Trip Date 11.21.2014

Carrier failed to update MCS150 as required by the State of Kansas every 12 months. Carrier's last mcs150 update was on 09.07.2013. Per MCMIS report on 11.24.2014 and on 12.10.2014

3	Primary: 391.21(a)			Drivers/V	ehicles
STATE	, , ,	Discovered	Checked	In Violation	Checked
	CFR Equivalent: 391.21(a)	2	4	2	4

Description

Using a driver who has not completed and furnished an employment application.

Example

Trip date 11:08.2014

hire date

Application does not meet requirements for a commercial driver application

	4	Primary: 391.23(a)			Drivers/V	ehicles
١	STATE	Secondary: 391.23(a)(1)	Discovered	Checked	In Violation	Checked
1		CFR Equivalent: 391.23(a)	1	4	1	4

Description

Failing to investigate driver's background.

Example

Hire Date

trip date 11.08.2014

Carrier failed to make an inquiry to each State where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.



U.S. DOT #: 1915422

Review Date: 12/11/2014

Part B Violations

5	Primary: 391.25(a)			Drivers/V	ehicles
STATE	• , , ,	Discovered	Checked	In Violation	Checked
	CFR Equivalent: 391.25(a)	3	4	3	4

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

Christopher Bush Trip date 11.15.2014

Carrier failed 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.

6	Primary: 391.45(b)(1)			Drivers/V	ehicles
STATE	Secondary: 391.11(a)	Discovered	Checked	In Violation	Checked
	CFR Equivalent: 391.45(b)(1)	2	4	2	4

Description

Using a driver not medically examined and certified during the preceding 24 months.

Example

Salvador Brambila Trip date 10.17.2014 last exam date

Trip date 11.21.2014 Last exam date

Operated the Bus named Platunum a 1986 Neoplain KS tag on 10.17.2014 on a trip in Wichita, KS without having been medically examined and certified every 24 months. Driver new medical on 12.04.2014

7	Primary: 391.51(b)(5)			Drivers/V	ehicles
STATE	, , , , ,	Discovered	Checked	In Violation	Checked
	CFR Equivalent: 391.51(b)(5)	3	4	3	4

Description

Failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).

Example

Christopher Bush Trip date 11.15,2014

8	Primary; 391.51(b)(6)			Drivers/V	ehicles
STATE		Discovered	Checked	In Violation	Checked
	CFR Equivalent: 391.51(b)(6)	3	4	3	4

Description

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

Example

Christopher Bush Trip date 11.15.2014

NFJMCVKS850AA



PARTY HARDY BUS LLC U.S. DOT #: 1915422

Review Date: 12/11/2014

Part B Violations

Safety Fitness Rating Information:

Total Miles Operated Recordable Accidents 1,200

0

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:

This Review is not Rated.





U.S. DOT #: 1915422

Review Date: 12/11/2014

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.

For all Investigations that could result in a Penalty Order:

 PLEASE NOTE: The violations discovered during this compliance review may affect the civil penalty proposed in any subsequent Penalty Order. In addition, your history of prior violations of the Federal Motor Carrier Safety Regulations, Federal Hazardous Material Regulations or the Federal Motor Carrier Commercial Regulations may also affect the civil penalty proposed in any subsequent Penalty Order. Your signature for receipt of this report acknowledges your understanding that the violations discovered by the KCC during this review may be used to calculate any civil penalty proposed as a result of this review. Your signature is not an admission of the violations identified.

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

KCC requires that you prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. Submit this letter within 15 days and any additional evidence necessary to prove the corrective action has been taken to:

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





U.S. DOT #: 1915422

Rassevi Date 11/24/2014

Part B Requirements and/or Recommendations

2. FMCSA recently announced planned improvements to the Carrol Safety Measurement System (SMS) which was implemented in December 2010 as part of the Agency's breader Compliance. Safety, Accountability (CSA) initiative. A preview of these improvements is currently available to motor carriers. The system changes are scheduled to be available to the public in July 2012. There will be additional opportunity for public comment on the changes after the preview period ends in July 2012.

The improvements to SMS are based on ongoing analysis and feedback from enforcement personnel, the motor carrier industry, and other stakeholders. The changes more effectively identify and prioritize high-risk and other unsafe motor carriers for enforcement interventions designed to reduce commercial motor vehicle crashes and

hazardous materials incidents

Motor carrier's currently have the ability to preview how the improvements impact their individual safety data in SMS. These improvements include: (1) Changes to the SMS methodology that identify eigher 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.dol.pov/. During the data preview period, the Agency requests

comments on the impacts of the changes.

 You are encouraged to review your company's safety record at the following website: https://ai.fmcsa.dot.gov/login/default.asp

You will need to enter your US COT # Personnel Identification Number (PIN) that was been provided to you by FMCSA in the log in form at the bottom of the page. If you have forgotten your PIN you only need to chok on a link on the webpage to make a request for your PIN to be forwarded to you by U.S. mail.

Safety Improvement Resources (SIRs) is a compilation of articles, reports, and other tools designed to assist motor carriers with improving their current safety management practices. SIRs are searchable by resource number.

BASIC or safety management practice (SMR). Please refer to any Safety Improvement Resource numbers included within the recommendations.

You are encouraged to view all of the SIRs at the following website:

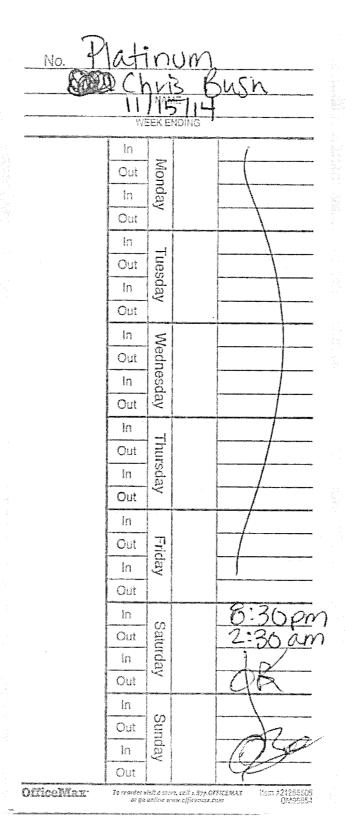
http://ai.tmcsa.dot.gov/sms/Data/carrier_sic.aspx

- 4. Ensure that all drivers are fully and properly qualified before operating in interstate commerce. Maintain a complete file as required for each driver, documenting the qualification process.
- 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/ela/index.htm.
- Do not allow drivers to drive intrastate unless may have been physically re-examined each 24 months.
- 7. This report contains offations of regulations that are deemed serious in nature and could result in penalties against your company and/or your drivers.
- 8. Lacknowledge that these requirements and/or recommendations have been discussed with me and my questions have been answered. Funderstand that failure to satisfactorily remedy the above-letted requirements, and/or failure to comply with Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of Party Hardy Bus LLOis objecting estimation for the impoundment of Party Hardy Bus LLOis vehicles.

Summe

Date 12.05 2014

ATTACHMENT "B"



ATTACHMENT "C"

No. Platinum Salvador Brambila

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Office Max

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

NO. CERT. COPIES NO. PLAIN COPIES

NAME AND ADDRESS

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

OMAR BRAMBILA, OWNER/MEMBER PARTY HARDY BUS, LLC 2163 S MILSTEAD WICHITA, KS 67209