

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

Before Commissioners: Andrew J. French, Chairperson  
Dwight D. Keen  
Annie Kuether

In the Matter of the Suspension of Operating )  
Authority of **Epic Excavating LLC of Olathe,** )  
**Kansas,** for Failure to Comply with New Entrant )  
Safety Requirements as Required by the Motor ) Docket No. 25-TRAM-262-OOS  
Carrier Safety Statutes, Rules and Regulations. )  
)

**ORDER ADOPTING THE FEDERAL MOTOR CARRIER SAFETY  
ADMINISTRATION'S ORDER AND SUSPENDING OPERATING AUTHORITY**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the records and being duly advised in the premises, the Commission makes the following findings:

**I. Legal Standards**

1. Pursuant to K.S.A. 66-1,108b, 66-1,111, 66-1,112g, and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. 390.5 and as adopted by K.A.R. 82-4-3f, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.

2. Pursuant to K.S.A. 66-1,129a, 66-1,130, and 66-1,142b, the Commission may suspend operations, revoke, or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision, or regulation of the Commission.

3. Pursuant to K.S.A. 66-1,129(a)(7), no public motor carrier of property, household goods or passengers or private motor carrier of property shall operate, or allow the operation of, any commercial motor vehicle on any public highway in this state without following rules and regulations consistent with the federal motor carrier safety assistance program.

## **II. Analysis**

4. On October 28, 2024, the Federal Motor Carrier Safety Administration (FMCSA) forwarded a notice (Federal Notice) to Epic Excavating LLC (Carrier) of a proposed Unsatisfactory Safety Rating as a result of violation(s) of the federal motor carrier safety regulations found during an onsite compliance reviewed completed on October 23, 2024. Carrier was given 60 days to improve its safety rating, otherwise the proposed Unsatisfactory safety rating would become final.<sup>1</sup> A copy of the Notice is attached hereto as Attachment “A” and is hereby incorporated by reference. Carrier failed to act upon the FMCSA’s Federal Notice.

5. On December 28, 2024, the proposed Unsatisfactory safety rating became final due to Carrier’s failure to improve its safety rating. *See* OOS Record, attached hereto as Attachment “B” and hereby incorporated by reference.

6. Pursuant to the Federal Order, Carrier’s operations were placed out of service immediately and Carrier must immediately cease all interstate motor carrier operations in the United States.<sup>2</sup>

7. Carrier is a motor carrier as defined in 49 C.F.R. 390.5 and as adopted in K.A.R. 82-4-3f, which operates commercial motor vehicle(s) in interstate commerce in a manner that requires Commission authority.

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<sup>1</sup> See Attachment A.

<sup>2</sup> See Attachment B.

8. Carrier is registered as a motor carrier with the U.S. Department of Transportation (USDOT), and operates under USDOT Number 3835862.

9. The Commission finds Carrier's failure to improve its safety rating is a violation of K.S.A. 66-1,129(a)(7).

10. Therefore, the Commission finds that the Federal Order be adopted and that the Carrier's intrastate motor carrier operations be suspended, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 66-1,129, until such time as the carrier takes the necessary steps to become compliant. This includes submitting to the Commission verifiable evidence of the correction of the violation(s) noted in Federal Order including, but not limited to, proof of federal reinstatement and attendance of a Commission-sponsored safety seminar within thirty (30) days from the date of this Order. A schedule of dates and locations for the safety seminar can be found at the Commission's website [http://www.kcc.state.ks.us/trans/safety\\_meetings.htm](http://www.kcc.state.ks.us/trans/safety_meetings.htm). The proof of attendance at the safety seminar should be timely submitted to Litigation Counsel within five (5) days of completion.

**THEREFORE, THE COMMISSION ORDERS:**

A. The Federal Motor Carrier Safety Administration's proposed Unsatisfactory safety rating, which became final on December 28, 2024, is hereby accepted and adopted.

B. Epic Excavating LLC of Olathe, Kansas is to be suspended and ordered to immediately cease all intrastate Kansas commercial motor carrier operations, other than such motor carrier operations excepted from the Commission's regulation under K.S.A. 66-1,129, until such time as Carrier presents to Staff verifiable evidence, including, but not limited to, proof of federal reinstatement documenting the correction of the safety concerns identified in the FMCSA's October 28, 2024 Federal Notice. This Order may also attach and apply to the operations of

successor entities, including any motor carrier entity or entities established or used to avoid the consequences of any Order to cease operations or suspend operating authority.

C. Epic Excavating LLC is hereby ordered to attend a Commission-sponsored safety seminar within thirty (30) days from the date of this Order and timely provide Litigation Counsel with written proof of attendance within five (5) days of completion.

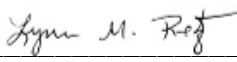
D. **Pursuant to K.S.A. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Executive Director, at 1500 S.W. Arrowhead Road Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Order.** Pursuant to K.S.A. 66-1,129a, hearings will be held within ten (10) days upon written request. Failure to timely request a hearing will result in a waiver of Carrier's right to a hearing, and this Order will become a Final Order.

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

**BY THE COMMISSION IT IS SO ORDERED.**

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 01/08/2025

  
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Lynn M. Retz  
Executive Director

AAL/km

# **ATTACHMENT “A”**



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

**Federal Motor Carrier  
Safety Administration**

**EPIC EXCAVATING LLC  
21023 W 114TH TER  
OLATHE, KS 66061**

60 Day Property Carrier

October 28, 2024

In reply refer to:  
USDOT Number: **3835862**  
Review No.: 2178621/CR

Dear DENNIS MENDOZA:

The proposed motor carrier safety rating for your company is:

### UNSATISFACTORY

This proposed UNSATISFACTORY rating is the result of an onsite compliance review and evaluation of your safety fitness completed on October 23, 2024. An UNSATISFACTORY rating indicates that your company does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences of violations listed in 49 CFR 385.5(a-k), and indicates that your company is operating at an unacceptable level of compliance.

Under 49 CFR 385.13, a motor carrier that receives a final safety rating of UNSATISFACTORY is prohibited from operating a commercial motor vehicle in interstate and intrastate commerce. Additionally, 49 USC 31144 and 49 CFR 385.13(a)(1) provide that this prohibition takes effect unless, within 60 days of the date of this notice, you take the necessary steps to improve the rating to conditional or satisfactory.

Pursuant to 49 USC 13905(f)(1)(B), the registration of a motor carrier that has been prohibited from operating in interstate and intrastate commerce for failure to comply with the safety fitness requirement shall be revoked.

**UNLESS YOU IMPROVE YOUR PROPOSED UNSATISFACTORY RATING, IT WILL BECOME FINAL AND YOU WILL BE PROHIBITED FROM OPERATING COMMERCIAL MOTOR VEHICLES IN INTERSTATE AND INTRASTATE COMMERCE BEGINNING ON DECEMBER 28, 2024, AND YOUR REGISTRATION SHALL BE REVOKED, IF APPLICABLE.**

If you have been subject to any Order(s), prohibition(s), registration suspension(s) and/or registration revocation(s) in any other case(s) or proceeding(s), the prohibitions and registration revocation in this case will be in addition to, and will not supersede, amend, or modify any Orders, notices, and/or requirements in any other case(s) or proceeding(s). Further, the orders, prohibitions and/or registration revocation may also attach and apply to the operations of successor entities, including any motor carrier entity or entities established or used to avoid the consequences of a "final" unsatisfactory safety rating.

Immediate action must be taken to correct any deficiencies or violations discovered during the compliance review. Your operation was found to be deficient with respect to the applicable safety regulations in the following areas:

- Part 391 QUALIFICATIONS OF DRIVERS
- Part 392 DRIVING OF MOTOR VEHICLES
- Part 382 CONTROLLED SUBSTANCE AND ALCOHOL USE AND TESTING
- Part 390 GENERAL REGULATIONS
- Part 396 INSPECTION, REPAIR AND MAINTENANCE
- Part 395 HOURS OF SERVICE OF DRIVERS

## INSPECTION OUT OF SERVICE RATE

Please refer to the copy of the compliance review left at your office for more specific guidance regarding areas in need of corrective action.

**APPEAL RIGHTS:** Owners or operators of commercial motor vehicles may appeal the proposed safety rating in the following manners:

<A> **REQUESTS FOR A CHANGE TO SAFETY RATING BASED UPON CORRECTIVE ACTIONS (49 CFR 385.17):** A request for a change to a safety rating for a corrective action may be made at any time. This request must be made in writing to the FMCSA Service Center for the geographic area where the carrier maintains its principal place of business (See 49 CFR 390.27). The request must be based upon evidence that the carrier has taken corrective actions and that its operations currently meet the safety fitness standards and factors specified in 49 CFR 385.5 and 385.7. The FMCSA will make a final determination based upon the documentation submitted and any other additional relevant information. A written decision will be issued by the FMCSA. Any motor carrier whose request for change is denied may, within 90 days after the denial, request administrative review under 49 CFR 385.15.

<B> **ADMINISTRATIVE REVIEW (49 CFR 385.15):** A request may be made to the FMCSA to conduct an administrative review if you believe that an error was committed in assigning the proposed safety rating or when your request under 49 CFR 385.17 was denied. This request must be made within 90 days of the date of the proposed safety rating issued under 49 CFR 385.11(c) or within 90 days of an Order denying your request for a rating change under 49 CFR 385.17.

Owners or operators may seek administrative review (49 CFR 385.15) by filing a Petition for Review at the following address: U.S. DOT Dockets, United States Department of Transportation, 1200 New Jersey Ave., S.E., Washington, DC 20590. A copy of the Petition **MUST** also be sent to: The Chief Safety Officer, Federal Motor Carrier Safety Administration (Attention: Adjudications Counsel), 1200 New Jersey Ave., S.E., Washington, DC 20590. The appeal should include a copy of this compliance review and the forthcoming official notice from the FMCSA headquarters office. All subsequent filings must also be served in the same manner.

The FMCSA will conduct a review of the request and issue a decision within 30 days of receipt of that request (49 CFR 385.15(e)(1) and 385.17(e)(1)). The FMCSA highly recommends that hazardous material and passenger owners and operators file requests for administrative review (49 CFR 385.15) within 15 days from the date on the notice of the "proposed" rating (49 CFR 385(c)(1)). This will allow sufficient time to review the request and issue a written decision before the prohibitions on operating in interstate and intrastate commerce take effect. Administrative review requests must be made within 90 days of the date on the notice of the "proposed" rating (49 CFR 385.15(c)(2)). However, failure to petition within 15 days from the date on the notice of the "proposed" rating may prevent the FMCSA from issuing a final decision before the prohibitions on interstate and intrastate transportation and, if applicable, the registration revocation take effect (49 CFR 385.15(c)(1)).

A petition to contest the rating or a request for a change in the rating will not automatically postpone the effective date of your final rating.

You may obtain further information from the local Federal Motor Carrier Safety Information office listed below:

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
1303 SW FIRST AMERICAN PL STE 200  
TOPEKA, KS 66604-4040  
Telephone No.: 785-271-1260

Sincerely,



David J. Yessen  
Chief, Compliance Division

\*\* The rating for Part 396 was comprised of the vehicles placed out-of-service during roadside inspections in the twelve months prior to the compliance review and/or inspected at the time of the review, and non-compliance with the Part 396 inspection, repair and maintenance systems requirements.

## **ATTACHMENT “B”**





Exit MCMIS

## Out of Service Records

USDOT Number:	3835862	Company Type:	CARRIER	Status:	INACTIVE
Legal Name:	EPIC EXCAVATING LLC				
Physical Address:	21023 W 114TH TER, OLATHE, KS 66061				
Carrier is currently under a Federal OOS					

OOS Date	State	Rescind Date	Reason Description
12/28/2024			UNSATISFACTORY = UNFIT

Options for this Company

December 31, 2024

[Cargo Tank Search](#) | [Company Information](#) | [Crash](#) | [Inspection](#) | [Monitoring](#) | [Reports](#) | [Review](#) | [Safety Audit](#)



**CERTIFICATE OF SERVICE**

25-TRAM-262-OOS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 01/08/2025.

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
ahsan.latif@ks.gov

Dennis Mendoza, OWNER  
Epic Excavating LLC  
21023 W 114th Ter  
Olathe, KS 66061  
epicexcavating7@gmail.com

/S/ KCC Docket Room  
KCC Docket Room