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 COLVER, M.D. Shari Feist Albrecht, Chair | Jay Scott Emler, Commissioner | Dwight D. Keen, Commissioner

NOTICE OF PENALTY ASSESSMENT 19-TRAM-109-PEN

Casey Kuntz, President Kuntz Farms Harvesting, Inc. 22035 200th Avenue Wakeeney, KS 67673

September 25, 2018

This is a notice of a penalty assessment against Kuntz Farms Harvesting, Inc. (Kuntz Farms) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on July 24, 2018, by Kansas Corporation Commission Special Investigator Verna Jackson. 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: Kuntz Farms has been assessed a \$500 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$500, 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 Kuntz Farms 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 <u>http://www.kcc.state.ks.us/trans/safety_meetings.htm</u>. 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. Kuntz Farms 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 \$500 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, 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
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In the Matter of the Investigation of **Kuntz**) Farms Harvesting, Inc., of Wakeeney, KS,) Regarding the Violation of the Motor Carrier) Safety Statutes, Rules and Regulations and the) Docket No. 19-TRAM-109-PEN Commission's Authority to Impose Penalties, Sanctions and/or the Revocation of Motor) Carrier Authority.

PENALTY ORDER

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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. Kuntz Farms Harvesting, Inc. (Kuntz Farms) has private and common operating authority with the Commission and further operates USDOT number 2291491.

5. Randy Heier attended a Commission-sponsored Motor Carrier Education and Safety Instructional Meeting on February 12, 2013, on behalf of Kuntz Farms.

6. Kuntz Farms is a private and common motor carrier which primarily hauls general freight, machiner, large objects, livestock, grain, feed, hay, commodities dry bulk, and silage.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on July 24, 2018, Commission Staff (Staff) Special Investigator Verna Jackson conducted a compliance review of the operations of Kuntz Farms. 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 one (1) violation(s) of the Motor Carrier Safety Regulations.

a. On April 19, 2018, Kuntz Farms required or permitted its driver, Casey Kuntz, to operate a CDL-required commercial motor vehicle, a 1990 Peterbilt, VIN ending in 292678, GVWR 85,500 lbs., pulling a 1999

Travis End Dump, VIN ending in 1247801, in interstate commerce from Central City, Nebraska to Grainfield, Kansas. This trip is evidenced by Driver's Record of Duty Status, dated April 19, 2018, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Kuntz Farms 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. This carrier was charged with the same violation in a compliance review conducted on January 3, 2017. Kuntz Farms' 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. 2017 Supp. 66-1,112. Staff recommends an enhanced fine of \$500.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission finds Kuntz Farms committed one (1) 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 \$500 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from Kuntz Farms 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.

11. Finally, Staff recommends that Kuntz Farms 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 Kuntz Farms because it is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108.

13. The Commission finds Kuntz Farms committed one (1) 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. Kuntz Farms Harvesting, Inc., of Wakeeney, KS is hereby assessed a \$500 civil penalty for one (1) 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. Kuntz Farms 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. Kuntz Farms 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 Kuntz Farms' right to a hearing, and this Penalty Order will become a Final Order assessing a \$500 civil penalty against Kuntz Farms, and ordering a representative from Kuntz Farms to attend a Commissionsponsored 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 \$500 is due in thirty (30) days from the date of service of this Order. Payment of \$500 must be made through your personal account with the Kansas Corporation Commission's KTRAN system located at <u>https://puc.kcc.ks.gov/ktran/</u>. You must have an account through KTRAN to pay the penalty.

G. Failure to pay the \$500 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 Kuntz Farms' 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

09/25/2018 Dated:

Lynn M. Ref

Lynn M. Retz Secretary to the Commission

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ATTACHMENT "A"

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US DOT # Legal: KUNTZ FARMS HARVESTING INC												
	2291491 Operating (DBA):											
MC/MX #:	857456				Fede	ral Tax	k ID:	(EIN)				
Review T	ype: Non	-ratable	Review	w - CSA								
Scope:	Prine	cipal Off	ice		Location of Rev	/iew/Au	udit: Company fa	cility in the U_S	Territory:			
Operation	Types	Interst	ate Int	rastate					·····			
Carrier: Non-HM Non-HM			Business: Corporation									
S	hipper:	N/A	N	/A	Gross Revenue: for			for year ending:	r year ending: 12/31/2017			
Cargo	o Tank:	1	N/A							1		
Company	Physica	I Addre	ss:									
WAKEEN	IEY, KS 6	67672-2	789									
Contact I	Name:			***								
Phone nu	umbers:	(1										
E-Mail Ac	idress:											
Company	Mailing	Addres	s:									
				-								
WAKEEN	IEY, KS 6	57672 - 2	789									
Carrier Cl	assificati	ion						· · · · · · · · · · · · · · · · · · ·	,,h.:			
Autho	orized for	Hire			Exempt for	r Hire		Private Prop	perty			
Cargo Cla												
	ral Freigh				unery, Large Obje		Livestock					
	Feed, H	ay		Com	modities Dry Bulk	<	Other Silage					
Equipmer	nt		0	al T	Langed Tribula			0				
Truck	Tractor		<u>Owned</u> 3		Leased Trip Le	ased 0	Trailer	Owned Te	rm Leased Trip	Leased		
Power unit		the U.S	.' 3		Ū	Ŭ	maner	·	Ū	U		
Percentage				3:100								
Does car	rier tran	sport p	acarda	able qua	Intities of HM?	No		<u> </u>				
Is an HM Permit required? N/A												
Driver Information												
		Inte	r In	tra	Average trip le	eased 4	drivers/month: ()				
< 1	00 Miles	:					Total Drivers: 2					
>= 1	00 Miles	: 2	2				CDL Drivers: 2					

×,

PCBG4JKS863AA

	KUNTZ FARMS HARVESTING INC						
\sim	U.S DOT #. 2291491						

Part A

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Kansas Corporation Commission at

> 1500 SW Arrowhead Rd Topeka KS 66604-4027 Phone 785-271-3104

This report will be used to assess your safety compliance.

Person(s) Interviewed

Name: Casey Kuntz

Name:

Title: President Title: VPresident, Sec, Treas





Part B Violations

1	1 Primary 391.51(b)(4)					Drivers/Vehicles		
FEDERAL				Discovered	Checked	In Violation	Checked	
				2	2	2	2	
Description Failing to main Example	tain the responses of eacl	n State agency to the	annual dri	ver record inqui	ry required by	391.25(a).		
Casey Kuntz 4/19/2018	E to Grainfield, KS							
	arvesting Inc failed to mai	ntain the driver's annu	ual driving	record in the dr	iver qualification	on file.		
Safety Fitness F	Rating Information:		OOS Vehicle (CR): 0					
	es Operated	203,000	Number of Vehicle Inspected (CR): 0					
Recordat	le Accidents	0	OOS Vehicle (MCMIS): 0					
			Number of Vehicles Inspected (MCMIS): 0					
Your proposed s	safety rating is :							
	This	Review is no	t Rate	d.				





Safety Management Process Breakdowns and Remedies

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. Repeated violations means violation(s) of an acute regulation of the same Part 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 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 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 Notice of Claim

• PLÉASE NOTE The violations discovered during this compliance review may affect the civil penalty proposed in any subsequent Notice of Claim. 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 Notice of Claim. Your signature for receipt of this report acknowledges your understanding that the violations discovered by the FMCSA 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





Safety Management Process Breakdowns and Remedies

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. DRIVER FITNESS BASIC PROCESS BREAKDOWN. Monitoring and Tracking

DESCRIPTION OF PROCESS BREAKDOWN. Kuntz Farms Harvesting Inc failed to maintain a copy of the driver's driving record (MVR) in the driver qualification file for records obtained once every 12 months. Without the information, the motor carrier cannot verify the driver is qualified.

BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices⁻ The following are recommended practices related to Monitoring and Tracking Processes.

• 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.

• 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.

- 3. As required by 391 25(a), motor carriers shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.
- 4. I acknowledge that the requirements and/or recommendations resulting from this off-site, focused review have been discussed with me and my questions have been answered. I further acknowledge that KCC recommendations only cover the scope of this focused review, and that areas not reviewed by the KCC have not necessarily been endorsed as compliant. 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 Kuntz Farms Harvesting Inc's operating authority and/or the impoundment of Kuntz Farms Harvesting Inc's vehicles.

Date

Printed name and Title

After reviewing these Requirements and/or Recommendations, please sign and date where indicated, and return to the Kansas Corporation Commission, ATTN Verna Jackson, Transportation Division, 1500 SW Arrowhead Rd, Topeka, Kansas 66604-4027, or fax 785-271-3124.

7/25/2018 2 56 01 PM



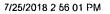


Safety Management Process Breakdowns and Remedies

5. I understand that monetary penalties will be assessed as a result of violations found in this compliance investigation. The penalty schedule can be found at this web site http://kcc.ks.gov/trans.penalty_assessment_table.htm

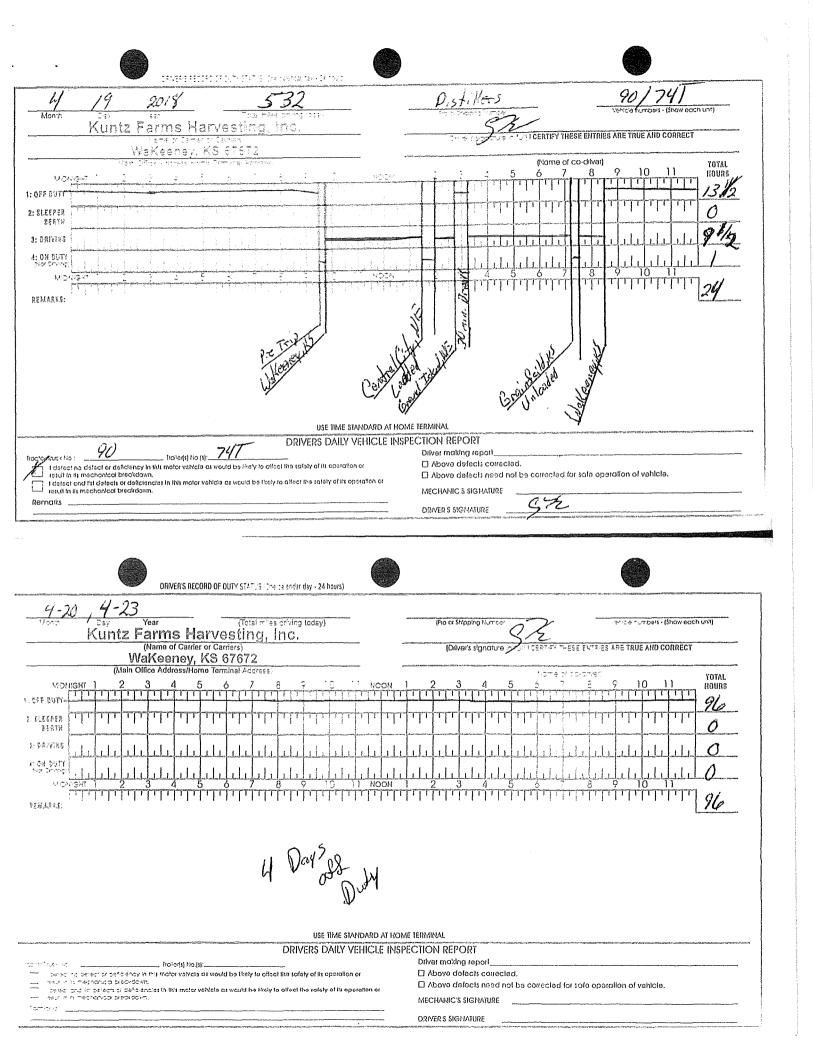
Carrier Name

Carrier Official





ATTACHMENT "B"



CERTIFICATE OF SERVICE

19-TRAM-109-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 ____09/26/2018

AHSAN LATIF, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 a.latif@kcc.ks.gov CASEY KUNTZ, PRESIDENT KUNTZ FARMS HARVESTING, INC. 22035 200TH AVE WAKEENEY, KS 67672-2789 Fax: 785-783-5396 kuntzfarmsharvesting@gmail.com

/S/ DeeAnn Shupe DeeAnn Shupe