

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**

August 7, 2018

19-TRAM-050-PEN

Tyson Orear, Manager  
Orear Fencing LLC  
1024 Road 350  
Allen, KS 66833

This is a notice of a penalty assessment against Orear Fencing LLC (Orear Fencing) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on June 20, 2018, by Kansas Corporation Commission Special Investigator Jared Smith. Penalty amounts are assessed in accordance with the FY 2018 Uniform Penalty Assessment Matrix, approved by the Commission on June 27, 2017. For a full description of the penalty and terms and obligations, please refer to the Penalty Order attached to this notice.

**IF YOU ACCEPT THE PENALTY:**

Orear Fencing has been assessed a \$1,200 penalty. You have thirty (30) days from the date of service of this Penalty Order to pay the fine, unless you choose the reduced penalty option explained below. Please remit payment of \$1,200 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.

**OREAR FENCING IS A NEW ENTRANT MOTOR CARRIER AND MAY BE ELIGIBLE FOR A PENALTY REDUCTION OF FIFTY PERCENT (50%) UNDER THE FOLLOWING TERMS:**

New Entrant motor carriers are eligible for a one-time, fifty-percent (50%) reduction in the penalty assessed motor carriers. You have to agree to meet the terms and obligations set out in the attached Reduced Penalty Agreement to be eligible for the reduction. A fifty-percent (50%) reduction in the penalty assessed may be available if:

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

(2) within thirty (30) days from the date of this Penalty Order, the carrier submits to Transportation Staff a Corrective Action Plan (CAP) documenting the violation(s) described in the attached Order, including specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future;

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

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

If a carrier is approved for a fifty-percent (50%) reduced penalty, an Order Amending Penalty Assessment assessing the reduced penalty and setting out the terms and conditions stated above may be issued by the Commission. Payment of the reduced penalty of \$600 would be due within 30 days from the date of service of the Order Amending Penalty Assessment.

**IF YOU CONTEST THE PENALTY ORDER:**

**You have the right to request a hearing if you contest the terms of the Penalty Order.** A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Orear Fencing LLC 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 Litigation Counsel at the above address. If you do not have access to the internet, you can mail an original and seven (7) copies of the request to the Secretary to the Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2017 Supp. 77-542.

**IF YOU FAIL TO ACT:**

Failure to adhere to the terms and obligations set out in the attached Penalty Order, including payment of the penalty of \$1,200 within thirty (30) days from the date of service of the Penalty Order, or in the alternative, provide a written request for a hearing within 15 days from the date of service of the Penalty Order, will result in the Order becoming final and the terms and conditions set out therein will be enforced. If Orear Fencing submits the attached Reduced Penalty Agreement as explained above, an Order Amending Penalty Assessment may be issued assessing the reduced penalty of \$600 and that payment would become due within thirty (30) days from the date of service of the Order Amending Penalty Assessment.

Respectfully,



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

# STATE OF KANSAS



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## **REDUCED PENALTY AGREEMENT**

### **19-TRAM-050-PEN**

Orear Fencing LLC (Orear Fencing) hereby submits this Reduced Penalty Agreement for approval of a fifty percent (50%) reduction in the penalty assessed in the Penalty Order dated August 7, 2018. Orear Fencing has agreed to comply with the following terms and obligations:

1. Orear Fencing has submitted, within fifteen (15) days from the date of the Penalty Order this signed and dated Reduced Penalty Agreement to Litigation Counsel.
2. Orear Fencing will, within thirty (30) days from the date of the Penalty Order, submit to Transportation Staff a Corrective Action Plan (CAP) documenting the violation(s) and describing specific and detailed information explaining its efforts and concrete steps taken to ensure the violation(s) do not occur in the future. I understand the CAP must be approved by Transportation Staff to become eligible for the 50% reduced penalty.
3. Orear Fencing will, within thirty (30) days from the date of the Penalty Order, send an individual responsible for safety compliance to attend a Commission-sponsored safety seminar, and proof of attendance will be submitted to the Litigation Counsel.
4. Orear Fencing will be available within eighteen (18) months from the date of the Penalty Order for a follow-up Safety Compliance Review. Transportation Staff will contact the carrier to schedule the review.

Orear Fencing LLC understands that if approved, an Order Amending Penalty Assessment will be issued by the Commission assessing a reduced penalty of \$600, and will set out the terms and conditions stated above. Once the Order Amending Penalty Assessment is issued by the Commission, Orear Fencing will have thirty (30) days from the date of service of that Order to pay the reduced penalty assessed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018.

Orear Fencing LLC

\_\_\_\_\_  
Tyson Orear  
Manager

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

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

## PENALTY ORDER

## I. 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 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. Orear Fencing LLC (Orear Fencing) has private operating authority with the Commission and further operates under USDOT number 2846444.

5. Tyson Orear attended a Commission-sponsored Motor Carrier Education and Safety Instructional Meeting on August 22, 2016, on behalf of Orear Fencing.

6. Orear Fencing is a private motor carrier which primarily hauls fencing products.

7. Orear Fencing is a New Entrant motor carrier and may be eligible for a fifty-percent (50%) reduction of the penalty(s) assessed below.

## **III. STATEMENT OF FACTS**

8. Pursuant to the jurisdiction and authority cited above, on June 20, 2018, Commission Staff (Staff) Special Investigator Jared Smith conducted a compliance review of the operations of Orear Fencing. A copy of the safety compliance review is attached hereto as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, the special investigator identified three (3) violation(s) of the Motor Carrier Safety Regulations.

- a. On April 24, 2018, Orear Fencing required or permitted its driver, Tyson Orear, to operate a CDL-required commercial motor vehicle, a 1995 Freightliner, VIN ending in 634969, GVWR 52,000 lbs., pulling a 1999 Transcraft trailer, VIN ending in 1058955, in intrastate commerce from Allen, Kansas to Harveyville, Kansas. This trip is evidenced by Driver's

Time Record (100 air-mile radius), dated April 24, 2018, a copy of which is attached hereto as Attachment “B” and is hereby incorporated by reference. At the time of this transportation, Orear Fencing did not have implemented an alcohol and controlled substance testing program for its CDL driver. The carrier’s failure to establish an alcohol and controlled substances testing program for its CDL drivers that complies with the procedures established in 49 C.F.R. 382.105 as adopted by K.A.R. 82-4-3c is a violation of 49 C.F.R. 382.115(a), adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 2017 Supp. 66-1,129. Staff recommends a fine of \$350.

- b. During the transportation described in paragraph a., above, Orear Fencing failed to make an inquiry every 12 months into the annual motor vehicle record (MVR) of its driver and maintain the response(s) of each state agency in the driver qualification file. The carrier’s failure to inquire into its driver’s MVR at least once every 12 months and maintain a copy of the MVR in the driver qualification file is a violation of 49 C.F.R. Part 391.25(a) and (c)(1), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2017 Supp. 66-1,112. Staff recommends a fine of \$100.
- c. During the transportation described in paragraph a., above, Orear Fencing failed to maintain minimum records of inspections and vehicle maintenance on the commercial motor vehicle operated. The special investigator found two (2) violations of this type. The carrier’s failure to maintain the required records of vehicle inspection, maintenance, and

repair on the commercial motor vehicles owned for 30 days is in violation of 49 C.F.R. 396.3(b), adopted by K.A.R. 82-4-3j, and authorized by K.S.A. 2017 Supp. 66-1,129. Staff recommends a fine of \$750.

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

9. Based upon the available facts, Staff recommends the Commission find Orear Fencing 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.

10. Staff recommends a civil penalty of \$1,200 for three (3) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

11. Staff provides notice to the Commission that Orear Fencing LLC is a New Entrant motor carrier and may be eligible for a fifty-percent (50%) reduced civil penalty. The carrier must submit to Litigation Counsel within fifteen (15) days of the date of this Penalty Order the signed and dated Reduced Penalty Agreement and Transportation Staff must approve the carrier's Corrective Action Plan (CAP).

12. Staff recommends Orear Fencing LLC submit a Corrective Action Plan (CAP) within thirty (30) days of the date of this Penalty Order, to Transportation Staff, documenting the violation(s) described in this Penalty Order, including specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future. The CAP must be approved by Transportation Staff to qualify for the fifty-percent (50%) discount.

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

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

## **V. CONCLUSIONS OF LAW**

15. The Commission finds it has jurisdiction over Orear Fencing because it is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108.

16. The Commission finds a penalty of \$1,200 should be assessed to Orear Fencing for committing 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.

17. The Commission finds Orear Fencing is a New Entrant motor carrier and may be eligible for a fifty-percent (50%) reduction in the penalty(s) assessed herein.

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

A. Orear Fencing LLC, of Allen, KS is hereby assessed a penalty of \$1,200 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. Payment of \$1,200 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 owed.

B. A representative from Orear Fencing is ordered to attend a Commission-sponsored safety meeting within ninety (90) days from the date of this Order, and provide proof of attendance to Litigation Counsel. A schedule of dates and locations for 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).

C. Orear Fencing must submit a Corrective Action Plan (CAP) within thirty (30) days of the date of this Penalty Order, to Transportation Staff, documenting the violation(s) described above, including specific and detailed information explaining the carrier's efforts and concrete steps taken to ensure the violation(s) do not occur in the future.

D. Orear Fencing is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

E. If Orear Fencing does not submit the Reduced Penalty Agreement and fails to pay the penalty of \$1,200 within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or fails to comply with the provisions of this Order, the Commission will have the right to order further sanctions, including suspension of Orear Fencing's motor carrier operating authority without further notice. Additionally, the Commission may issue and enforce revocation of motor carrier authority and/or issue cease and desist order(s), and may order other remedies available to the Commission by law, without further notice.

F. On August 7, 2018, this Order was mailed via Certified Mail, Return Receipt Requested, Receipt Number 70161970000105745643. Service of this Order is deemed complete upon the date delivered shown on the Domestic Return Receipt.

G. 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, within fifteen (15) days from the date of service of this Penalty Order. The request may be electronically filed with the Commission's electronic filing system at <https://puc.kcc.ks.gov/e-filing/e-express/>, and a copy mailed to the Litigation Counsel. 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 Litigation Counsel. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Orear Fencing's right to a hearing.

H. 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.

I. 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: 08/07/2018


A handwritten signature in cursive script, reading "Lynn M. Retz".

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Lynn M. Retz  
Secretary to the Commission

AAL

## **ATTACHMENT “A”**

	<b>US DOT #</b> 2846444	<b>Legal:</b> OREAR FENCING LLC <b>Operating (DBA):</b>			
<b>MC/MX #:</b>		<b>Federal Tax ID:</b> <span style="background-color: black; color: black;">XXXXXXXXXX</span> (EIN)			
<b>Review Type:</b> Non-ratable Review - Commercial					
<b>Scope:</b> Principal Office		<b>Location of Review/Audit:</b> Company facility in the U. S.			<b>Territory:</b>
<b>Operation Types</b>		<b>Interstate 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> <span style="background-color: black; color: black;">XXXXXXXXXX</span>		<b>for year ending:</b> 12/31/2017	
<b>Cargo Tank:</b> N/A					
<b>Company Physical Address:</b>					
<span style="background-color: black; color: black;">XXXXXXXXXX</span> ALLEN, KS 66833-9351					
<b>Contact Name:</b> Tyson Orear					
<b>Phone numbers: (1)</b> <span style="background-color: black; color: black;">XXXXXXXXXX</span>		<b>Fax</b>			
<b>E-Mail Address:</b> <span style="background-color: black; color: black;">XXXXXXXXXX</span>					
<b>Company Mailing Address:</b>					
<span style="background-color: black; color: black;">XXXXXXXXXX</span> ALLEN, KS 66833-9351					
<b>Carrier Classification</b>					
Private Property					
<b>Cargo Classification</b>					
Other. fencing products					
<b>Hazardous Materials</b>					
9 Miscellaneous HM      Carried      Non-Bulk					
<b>Equipment</b>					
		<b>Owned Term Leased Trip Leased</b>		<b>Owned Term Leased Trip Leased</b>	
Truck	1	0	0	Trailer	1 0 0
Power units used in the U.S. 1					
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>					
	Inter	Intra	<b>Average trip leased drivers/month:</b> 0		
< 100 Miles:	0	1	<b>Total Drivers:</b> 1		
>= 100 Miles:			<b>CDL Drivers:</b> 1		



	<b>OREAR FENCING LLC</b> U.S. DOT #. 2846444	Review Date: 06/26/2018
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**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:** Tyson Orear

**Title:** Owner

**Name:**

**Title:**



	<b>OREAR FENCING LLC</b>	Review Date:
	U.S. DOT #: 2846444	06/26/2018

### Part B Violations

1 STATE	Primary: 382.115(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations. <b>Example</b> On April 24, 2018 Orear Fencing LLC had driver Tyson Orear (KS CDL# [REDACTED]) operate a 1995 Freightliner (Unit # 001, VIN # [REDACTED] 634969, GVWR 52,000 lbs.) in combination with a 1999 Transcraft (VIN # [REDACTED] 1058955). Driver Tyson Orear operated in commerce on an intrastate trip from Allen, Kansas to Harveyville, Kansas. At the time of the trip carrier was found to be in violation of failing to implement an alcohol and/or controlled substances testing program on the date the employer begins commercial motor vehicle operations.					
2 STATE	Primary 391.51(b)(1)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to maintain driver's employment application in driver's qualification file <b>Example</b> On April 24, 2018 Orear Fencing LLC had driver Tyson Orear (KS CDL# [REDACTED]) operate a 1995 Freightliner (Unit # 001, VIN # [REDACTED] 634969, GVWR 52,000 lbs.) in combination with a 1999 Transcraft (VIN # [REDACTED] 1058955). Driver Tyson Orear operated in commerce on an intrastate trip from Allen, Kansas to Harveyville, Kansas. At the time of the trip carrier was found to be in violation of failing to maintain driver's employment application in driver's qualification file					
3 STATE	Primary 391.51(b)(4)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<b>Description</b> Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a). <b>Example</b> On April 24, 2018 Orear Fencing LLC had driver Tyson Orear (KS CDL# [REDACTED]) operate a 1995 Freightliner (Unit # 001, VIN # [REDACTED] 634969, GVWR 52,000 lbs.) in combination with a 1999 Transcraft (VIN # [REDACTED] 1058955). Driver Tyson Orear operated in commerce on an intrastate trip from Allen, Kansas to Harveyville, Kansas. At the time of the trip carrier was found to be in violation of failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a).					
4 STATE	Primary: 391.51(b)(5)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
<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> On April 24, 2018 Orear Fencing LLC had driver Tyson Orear (KS CDL# [REDACTED]) operate a 1995 Freightliner (Unit # 001, VIN # [REDACTED] 634969, GVWR 52,000 lbs.) in combination with a 1999 Transcraft (VIN # [REDACTED] 1058955). Driver Tyson Orear operated in commerce on an intrastate trip from Allen, Kansas to Harveyville, Kansas. At the time of the trip carrier was found to be in violation of failing to maintain a note relating to the annual review of the driver's driving record as required by 391.25(c)(2).					



	<b>OREAR FENCING LLC</b>	<b>Review Date</b>
	U.S. DOT # 2846444	06/26/2018

### Part B Violations

<b>5</b> STATE	Primary 391.51(b)(6)	<b>Discovered</b> 1	<b>Checked</b> 1	<b>Drivers/Vehicles</b> <b>In Violation</b> 1	<b>Checked</b> 1
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#### Description

Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27  
On April 24, 2018 Orear Fencing LLC had driver Tyson Orear (KS CDL# [REDACTED]) operate a 1995 Freightliner (Unit # 001, VIN # [REDACTED] 634969, GVWR 52,000 lbs.) in combination with a 1999 Transcraft (VIN # [REDACTED] 1058955). Driver Tyson Orear operated in commerce on an intrastate trip from Allen, Kansas to Harveyville, Kansas. At the time of the trip carrier was found to be in violation of failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.

<b>6</b> STATE	Primary. 391.51(b)(9)	<b>Discovered</b> 1	<b>Checked</b> 1	<b>Drivers/Vehicles</b> <b>In Violation</b> 1	<b>Checked</b> 1
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#### Description

Failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners required by 391.23(m) in driver qualification file(s).

#### Example

On April 24, 2018 Orear Fencing LLC had driver Tyson Orear (KS CDL# [REDACTED]) operate a 1995 Freightliner (Unit # 001, VIN # [REDACTED] 634969, GVWR 52,000 lbs.) in combination with a 1999 Transcraft (VIN # [REDACTED] 1058955). Driver Tyson Orear operated in commerce on an intrastate trip from Allen, Kansas to Harveyville, Kansas. At the time of the trip carrier was found to be in violation of failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified Medical Examiners required by 391.23(m) in driver qualification file(s).

<b>7</b> STATE	Primary 396 3(b)	<b>Discovered</b> 2	<b>Checked</b> 2	<b>Drivers/Vehicles</b> <b>In Violation</b> 2	<b>Checked</b> 2
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#### Description

Failing to keep minimum records of inspection and vehicle maintenance.

#### Example

On April 24, 2018 Orear Fencing LLC had driver Tyson Orear (KS CDL# [REDACTED]) operate a 1995 Freightliner (Unit # 001, VIN # [REDACTED] 634969, GVWR 52,000 lbs.) in combination with a 1999 Transcraft (VIN # [REDACTED] 1058955). Driver Tyson Orear operated in commerce on an intrastate trip from Allen, Kansas to Harveyville, Kansas. At the time of the trip carrier was found to be in violation of failing to keep minimum records of inspection and vehicle maintenance.

<b>Safety Fitness Rating Information:</b>		<b>OOS Vehicle (CR): 0</b>	
<b>Total Miles Operated</b>	5,000	<b>Number of Vehicle Inspected (CR): 0</b>	
<b>Recordable Accidents</b>	0	<b>OOS Vehicle (MCMIS): 0</b>	
		<b>Number of Vehicles Inspected (MCMIS): 0</b>	

Your proposed safety rating is :

**This Review is not Rated.**







OREAR FENCING LLC  
U.S. DOT #: 2846444

Review Date  
06/26/2018

## Part B Requirements and/or Recommendations

1. 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.

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 web site 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 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



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violations identified within this report. Submit this letter within 30 days outlining the carrier's updated changes to their policies and procedures regarding all listed violations. Explain in detail how, as a carrier representative, you will rectify these deficiencies and prevent their reoccurrence going forward. Include any supporting documentation and evidence as indicated in the recommendations above, (example vehicle inspections performed, proof of drug and alcohol testing in place, etc.) necessary to prove that corrective action has been taken. Mail the letter along with copies of your supporting evidence to.

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

### 3. DRIVER FITNESS BASIC PROCESS BREAKDOWN Monitoring and Tracking

**DESCRIPTION OF PROCESS BREAKDOWN:** Orear Fencing LLC's violations occurred due to a breakdown regarding the monitoring and tracking elements of compliance within this section. Carrier needs to develop an organized driver qualification file and develop a methodology for ensuring that driver Tyson Orear has all the requisite paperwork in his file. It is incumbent upon the carrier to execute all annual requirements for their commercial motor vehicle drivers. These duties and the documents verifying their completion require continued monitoring and tracking by carrier officials to ensure compliance. Utilize the documents and instructions provided to you during this review to assist you in correcting the deficiencies.

**BASIC SPECIFIC RECOMMENDED REMEDIES** Complete the driver application given to you at the time of this review. Make sure that you have drivers complete a listing of driver violations when you run the MVRs (page 18 of KCC's Redbook). Then sign the certificate qualifying them for another year if they meet the standards (bottom of page 18). Utilize the documents provided to you at the time of this review to complete these requirements.

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



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

**DESCRIPTION OF PROCESS BREAKDOWN:** Orear Fencing LLC's violations occurred due to a breakdown regarding the policies and procedures elements within this section of the regulations. Carrier failed to have a drug and alcohol-testing program in place at the time of this review

**BASIC SPECIFIC RECOMMENDED REMEDIES** All drivers must have a negative substance abuse test on file prior to operating a commercial motor vehicle. Utilize the materials provide to you at the time of this review to enroll in a program with a drug and alcohol -testing consortium or formulate your own testing program. Make sure that all drivers receive a copy of your alcohol and substance abuse policy and retain a signed receipt indicating that all drivers received a copy.

**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 non qualified 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 web site: <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. VEHICLE MAINTENANCE BASIC - INSPECTION-REPAIR-MAINTENANCE PROCESS BREAKDOWN Monitoring and Tracking



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## Part B Requirements and/or Recommendations

**DESCRIPTION OF PROCESS BREAKDOWN** Orear Fencing LLC's violations occurred due to a breakdown regarding the policies and procedures elements of compliance within this section. Carrier neglected to establish the appropriate maintenance file on his commercial motor vehicle. Carrier must create the policies and procedures necessary to effectively maintain his fleet. This includes establishing your maintenance file. All pertinent information must be kept in this file. Follow the directions given to you at the time of our review. All of the required maintenance documents were provided to you from the "Red Book". These duties and the documents verifying their completion require continued monitoring and tracking by carrier officials to ensure compliance. Utilize the documents and instructions provided to you during this review to assist you in correcting the deficiencies.

**BASIC SPECIFIC RECOMMENDED REMEDIES** Create your maintenance file, schedules, and maintain all evidence of repairs in this file. Utilize the checklist we provided to you during the review. If you have any questions or needs, please don't hesitate to contact me.

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

- Check all inspections and relevant records, such as Driver Vehicle Inspection Records (DVIRs), pre-trip and annual inspections, and maintenance and repair records, to ensure that company inspection, repairing, and maintenance policies and procedures are adhered to and properly documented.
- Ensure that Driver Vehicle Inspection Records (DVIRs) are effectively coordinated with maintenance and operations, result in timely corrective measures, and are verified during pre-trip inspections as applicable.
- Require mechanics to note whether parts came from inventory or were ordered, to ensure accuracy of maintenance records.
- Monitor and track roadside inspection results to ensure that vehicle defects are repaired and documented promptly and to prevent Out-of-Service (OOS) vehicles from operating prior to being repaired.
- Monitor manufacturer recalls through <http://www.nhtsa.dot.gov> and consult with manufacturer service representatives to keep current with service bulletins for proactive maintenance.
- Implement a system for keeping accurate records of employee inspection, repair, and maintenance training needs, including updates on a carrier's fleet or equipment and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- Regularly evaluate the company's vehicle-maintenance-related inspection results via the Federal Motor Carrier Administration's (FMCSA) website at <http://a1.fmcsa.dot.gov/SMS>. Assess violations for process breakdowns and how to remedy them.
- Maintain inspection, repair, maintenance, vehicle identification, and communication records to help evaluate the performance of all staff (drivers, dispatchers, mechanics, and managers) involved in fleet maintenance and the effectiveness of compliance with vehicle maintenance policies, procedures, and regulations.
- Evaluate personnel who are monitoring vehicle maintenance performance by making sure they are using Driver Vehicle Inspection Records (DVIRs), roadside inspections, and other data, applying performance standards fairly, consistently, and equitably, and documenting evaluations.
- When monitoring and tracking vehicle maintenance issues, always assess whether an issue 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://a1.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.

6. 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 Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of Orear Fencing LLC's operating authority and/or the impoundment of Orear Fencing LLC's commercial motor vehicles.

\_\_\_\_\_  
Carrier Representative

\_\_\_\_\_  
Date



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**Part B Requirements and/or Recommendations**



## **ATTACHMENT “B”**



# DRIVER'S TIME RECORD (100 air-mile radius)

Driver's Name (print)

Tyson J. Drear

Employee No.

1

Month

4

Year

2018

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

- \*Operates within 100 air-mile radius of the normal work reporting location.
- \*Returns to normal work reporting location and is released from work within 12 consecutive hours.
- \*At least 10 consecutive hours off duty separate each 12 hours on duty.

## 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	OFF				
2	8:00 am	5:00 pm	8.5	001	Allen to Haverhill
3					from CMV
4					
5					
6					
7					
8	OFF				
9					
10					
11					
12					
13					
14					
15	OFF				
16					
17					
18					
19					
20					
21					
22	OFF				
23					
24	8:00 am	5:30 pm	9-	001	Haverhill to Allen
25	9:00 am	6- pm	8.5	001	Allen to Ottawa
26					from CMV
27					
28	OFF				
29					
30					

Prepared monthly by each DOT certified driver unless time record is exclusively kept on log. Indicate "days off." Check box if no driving is performed during this month and the following month. Mail this report to your Division Manager of Administration.

**CERTIFICATE OF SERVICE**

19-TRAM-050-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 08/08/2018.

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

TYSON OREAR, MANAGER  
OREAR FENCING LLC  
1024 ROAD 350  
ALLEN, KS 66833-9351  
orearcowboygear@gmail.com

/S/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe