



1500 SW Arrowhead Road
Topeka, KS 66604-4027

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

Dwight D. Keen, Chair
Shari Feist Albrecht, Commissioner
Susan K. Duffy, Commissioner

Laura Kelly, Governor

NOTICE OF PENALTY ASSESSMENT
20-TRAM-118-PEN

September 17, 2019

Olivia Hernandez, Co-Owner
Oscar Hernandez
6060 Weldon Road
Garden City, KS 67846

This is a notice of a penalty assessment against Oscar Hernandez (Oscar Hernandez) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on August 16, 2019, by Kansas Corporation Commission Special Investigator Penny Fryback. Penalties are assessed in accordance with the FY 2020 Uniform Penalty Assessment Matrix, approved by the Commission on July 16, 2019. 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: Oscar Hernandez has been assessed a \$1,300 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$1,300, 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 Oscar Hernandez to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety_meetings.htm. 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. Oscar Hernandez 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 Executive Director 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. 2018 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$1,300 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,

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

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. Oscar Hernandez (Oscar Hernandez) operates under USDOT number 1475307.

5. Oscar Hernandez attended the Procedures for Safety Compliance Seminar presented by the Kansas Corporation Commission, on July 29, 2019, on behalf of Oscar Hernandez.

6. Oscar Hernandez is a common motor carrier which primarily hauls road materials.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on August 16, 2019, Commission Staff (Staff) Special Investigator Penny Fryback conducted a safety compliance review of the operations of Oscar Hernandez. 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 four (4) violation(s) of the Motor Carrier Safety Regulations.

- a. On July 16, 2019, Oscar Hernandez required or permitted its driver, Oscar Hernandez-Mendoza, to operate a CDL-required commercial motor vehicle, a 2006 Peterbilt, VIN ending in 641113, GVWR 56,000 lbs., in interstate commerce from Alma, Oklahoma to Great Bend, Kansas. This

trip is evidenced by a Driver's Daily Log, dated July 16, 2019, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Oscar Hernandez had not paid his 2019 Unified Carrier Registration (UCR) fees. The carrier's failure to annually register its commercial motor vehicle(s) operating in interstate commerce and to pay the appropriate Unified Carrier Registration (UCR) fees as set out in 49 C.F.R. 367.60, is a violation of K.A.R. 82-4-30a, authorized by K.S.A. 66-1,139a and K.S.A. 66-1,129. Staff recommends a fine of \$300.

- b. During the transportation described in paragraph a, above, Oscar Hernandez did not obtain a fuel permit for Kansas or obtain an IFTA license as he made five trips to Oklahoma during the month of July. The carrier's failure to obtain a fuel permit for Kansas or obtain an IFTA license is a violation of 49 C.F.R. 392.2 and adopted by K.A.R. 79-34,102. Staff recommends a fine of \$500.
- c. On July 8, 2019, Oscar Hernandez required or permitted its driver, Oscar Hernandez-Mendoza, to operate a CDL-required commercial motor vehicle, a 2006 Peterbilt, VIN ending in 641113, GVWR 56,000 lbs., in interstate commerce from Garden City, Kansas to Alva, Oklahoma. This trip is evidenced by a Driver's Daily Log, dated July 8, 2019, a copy of which is attached hereto as Attachment "C" and is hereby incorporated by reference. At the time of this transportation, Oscar Hernandez had not obtained a pre-employment alcohol and controlled substance test with a

negative result for its driver. The carrier's failure to require its driver to submit to a pre-employment alcohol and/or controlled substances USDOT regulated test and to obtain a negative test result within 30 days of him/her employment and prior to requiring or permitting him/her to operate a commercial motor vehicle is a violation of 49 C.F.R. 382.301(a), adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$250.

- d. During the transportation described in paragraph c, above, Oscar Hernandez-Mendoza drove more than 11 hours following his last 10 hour break. The carrier's failure to require its driver to cease driving after the 11th hour during the 14-hour consecutive hours of driving time after coming on duty following 10 consecutive hours off duty is in violation of 49 C.F.R. 395.3(a)(3)(i), adopted by K.A.R. 82-4-3, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends a fine of \$250.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission finds Oscar Hernandez committed four (4) 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 \$1,300 for four (4) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from Oscar Hernandez 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 Oscar Hernandez 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 Oscar Hernandez because it is a motor carrier as defined in K.A.R. 82-4-1.

13. The Commission finds Oscar Hernandez committed four (4) 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. Oscar Hernandez, of Garden City, KS is hereby assessed a \$1,300 civil penalty for four (4) 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. Oscar Hernandez 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. Carrier is hereby ordered to submit a written, comprehensive corrective action plan (CAP) to Transportation Staff within thirty (30) days of the date of this order.

D. Oscar Hernandez 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.

E. Pursuant to K.S.A. 2018 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 Executive Director 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 Oscar Hernandez's right to a hearing, and this Penalty Order will become a Final Order assessing a \$1,300 civil penalty against Oscar Hernandez, and ordering a representative from Oscar Hernandez to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order and provide Litigation Counsel with written proof of attendance, and to submit to a safety compliance review within 18 months from the date of this Order.

F. 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. 2018 Supp. 66-1,142b(e) and amendments thereto.

G. If you do not request a hearing, the payment of the civil penalty of \$1,300 is due in thirty (30) days from the date of service of this Order. Payment of \$1,300 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.

H. Failure to pay the \$1,300 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 Oscar Hernandez's motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

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.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 09/17/2019




Lynn M. Retz
Executive Director

AAL

ATTACHMENT "A"

UNITED STATES DEPARTMENT OF TRANSPORTATION

		U.S. DOT#: 1475307 MC/MX#:	Legal: OSCAR HERNANDEZ Operating (DBA):	Investigation Date: 08/16/19
Investigation Type: Onsite Comprehensive Investigation		Location of Investigation: Company principal place of business (PPOB) Extent of Operations: Entire Operation		
Physical Address		Mailing Address		
6060 WELDON ROAD GARDEN CITY, KS 67846 United States		6060 WELDON ROAD GARDEN CITY, KS 67846 United States		
Contact Information				
Contact Name: OLIVIA HERNANDEZ Email: [REDACTED] Phone: [REDACTED]				
Business and Financial				
Business Type: Other Gross Revenue: [REDACTED] For Year Ending: 12/31/18 Federal Tax ID: [REDACTED] (N)				
Operation Classification and Type			Cargo	
Type of Operation: Non-HM Intrastate Carrier Operation Classification For-Hire Motor Carrier Property Other Non-Hazardous Freight			Other (Road Materials)	
Equipment			Driver Information	
	Owned	Term Leased	Drivers	
			Intrastate	Interstate
Straight Trucks	1		< 100 Miles	
			>= 100 Miles	1
Power units used in the U.S.: 1 Percentage of time used in the U.S.: 100.0%			Average trip leased driver/month: 0 Drivers with CDL: 1 Total Drivers: 1	

Person(s) Interviewed

Name: OLIVIA HERNANDEZ

Title: PARTNER

Questions

Questions about this report or the Federal Motor Carrier Safety or Hazardous Materials regulations may be addressed to the Federal Motor Carrier Safety Administration at:

1303 SW FIRST AMERICAN PLACE, SUITE 200
TOPEKA, KS 66604-4040
Phone: (785) 271-1260
Fax: (785) 228-9725

This report will be used to assess your safety compliance.

Violations

1. Primary: 367.40

Fail to pay current years UCR and operating in interstate commerce.

Violations Discovered

Fed	State	Total
	1	1

Violations Checked

Fed	State	Total
	1	1

Example/Notes:

Driver Oscar Hernandez-Mendoza
 Trip Date: 7/16/2019

On July 16, 2019, Oscar Hernandez-Mendoza operator from Alva, Oklahoma to Great Bend, KS and failed to pay UCR fees for 2019

Drivers/Vehicles

In Violation	Checked
1	1

2. Primary: 391.51 (b)(1)

Secondary: 391.21

Using a driver with an incomplete application for employment

Violations Discovered

Fed	State	Total
1		1

Violations Checked

Fed	State	Total
1		1

Example/Notes:

Driver: Oscar Hernandez-Mendoza
 Trip Date: July 16, 2019

Driver, Oscar Hernandez-Mendoza's application for employment was missing a signature and traffic convictions

Drivers/Vehicles

In Violation	Checked
1	1

3. Primary: 392.2

Secondary: K.S.A. 79-34,201

Operating in violation of local State laws-IFTA

Violations Discovered

Fed	State	Total
	1	1

	Violations Checked		
	Fed	State	Total
		1	1
Example/Notes:	Drivers/Vehicles		
	In Violation	Checked	
Driver Oscar Hernandez-Mendoza Trip Date: 7/16/2019	1	1	
On July 16, 2019 Driver Oscar Hernandez-Mendoza operated Unit H7 from Alva, Oklahoma to Great Bend, Kansas and did not obtain a fuel Permit or an IFTA license when returning to Kansas			

4. Primary: 382.301(a)	Violations Discovered		
	Fed	State	Total
Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.	1		1
	Violations Checked		
	Fed	State	Total
	1		1

Example/Notes:	Drivers/Vehicles		
	In Violation	Checked	
Driver name, Oscar Hernandez-Mendoza Trip date, July 16, 2019 Hire date March 2, 2009	1	1	
Driver Oscar Hernandez-Mendoza operated Unit H7 from Alva, Oklahoma to Great Bend, Kansas prior to obtaining a pre-employment test. Driver Oscar Hernandez had a roadside inspection conducted on September 8, 2017 prior to having a pre-employment test conducted.			

5. Primary: 391.51(b)(6)	Violations Discovered		
	Fed	State	Total
Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 391.27.	1		1
	Violations Checked		
	Fed	State	Total
	1		1

Example/Notes:

Driver name Oscar Hernandez-Mendoza
Trip date July 16, 2019
Description of violation

Driver had not completed Certificate of Violations and signed and dated it

Drivers/Vehicles

In Violation	Checked
1	1

6. Primary: 395.3(a)(3)(i)

Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

Violations Discovered

Fed	State	Total
1		1

Violations Checked

Fed	State	Total
1		1

Example/Notes:

Trip date: July 8, 2019
Driver name Oscar Hernandez-Mendoza
Violation description. On July 8, 2019 Driver Oscar Hernandez-Mendoza drove from Garden City, Kansas to Alva, Oklahoma and his record of duty status shows he drove 11 1/2 hours.

Drivers/Vehicles

In Violation	Checked
1	1

7. Primary: 395.8(f)

Failing to require driver to prepare record of duty status in form and manner prescribed.

Violations Discovered

Fed	State	Total
1		1

Violations Checked

Fed	State	Total
30		30

Example/Notes:

Driver name(s), Oscar Hernandez-Mendoza
Trip date July 8, 2019

Driver failed to enter total hours

Drivers/Vehicles

In Violation	Checked
1	1

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 Oscar Hernandez operating authority and/or the impoundment of Oscar Hernandez vehicles.

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

x Olivia Hernandez
Signature

x 8/16/2019
Date

ATTACHMENT "B"



DRIVER'S DAILY LOG

(24 HOURS)

7, 16, 19
(Month) (Day) (Year)

Original - File at home terminal
Duplicate - Driver retains in his/her possession for eight days

455116 379
Total Miles Driving Today Total Mileage Today

Oscar Hernandez
Name of Carrier or Carriers
6060 E. Weldon Rd. Garden City, KS
Main Office Address
6060 E. Weldon Rd. Garden City, KS
Home Terminal Address

RECAP
Complete at
end of workday.

On-duty hours
today (Total
Hours 24)

70 Hour/
8 Day
Drivers

H-7

Truck/Tractor and Trailer Numbers or
License Plate(s) / State (show each unit)

I certify these entries are true and correct:
Oscar Hernandez
Driver's Full Signature

Co-Driver's Name

A. Total hours on
duty last 7 days,
including today.

B. Total hours
available
tomorrow,
70 hr. minus A.*

C. Total hours on
duty last 8 days,
including today.

60 Hour/
7 Day
Drivers

A. Total hours on
duty last 6 days,
including today.

B. Total hours
available
tomorrow,
60 hr. minus A.*

C. Total hours on
duty last 7 days,
including today.

*If you meet the
34-hour restart
requirements
in §395.2, you
have 60/70
hours available
again.

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	TOTAL HOURS
1. OFF DUTY																									13
2. SLEEPER BERTH																									0
3. DRIVING																									11
4. ON DUTY (NOT DRIVING)																									0
REMARKS																									24

SHIPPING DOCUMENTS:
B/L or Manifest No. or
Shipper & Commodity

From: Alva OK To: Great bend KS

Enter name of place you reported and where released from work and when and where each change of duty occurred

8527



USE TIME STANDARD AT HOME TERMINAL

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ATTACHMENT "C"

CERTIFICATE OF SERVICE

20-TRAM-118-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail/hand delivered on 09/18/2019.

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

OLIVIA HERNANDEZ, CO-OWNER
OSCAR HERNANDEZ
6060 WELDON ROAD
GARDEN CITY, KS 67846
ohernandez@gckschools.com

/S/ DeeAnn Shupe
DeeAnn Shupe