

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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

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

Sam Brownback, Governor

## NOTICE OF PENALTY ASSESSMENT

July 30, 2015

16-TRAM-019-PEN

Doris Lawrence, Office Manager  
Farmers' Cooperative Grain Association  
of Wellington, Kansas  
9011 North A Street  
Wellington, Kansas 67152

This is a notice of a penalty assessment for violation of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on May 5, 2015, by Kansas Corporation Commission Special Investigator Gary Goeller. For a full description of the penalty and process please refer to the Order that is attached to this notice.

### IF YOU ACCEPT THE PENALTY:

You have been assessed a \$4,100 penalty. You have thirty (30) days from service of this Penalty Order to pay the fine amount. Check or money order must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Transportation Division of the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and must include a reference to the docket number of this proceeding. Credit card payment may be made by faxing your credit card information to the Transportation Office at 785-271-3124, using the KCC's credit card payment form found at <http://kcc.ks.gov/trans/creditcard.pdf>.

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

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


### IF YOU CONTEST THE PENALTY:

You have the right to request a hearing. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Respondent must submit an original and seven (7) copies of the request to the Commission's Secretary at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date stamped on the last page of the Penalty Order. K.A.R. 82-1-215; K.S.A. 2014 Supp. 77-542.

### IF YOU FAIL TO ACT:

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

Respectfully,

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

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

Before Commissioners:      Shari Feist Albrecht, Chair  
                                 Jay Scott Emler  
                                 Pat Apple

In the Matter of the Investigation of **Farmers'**      )  
**Cooperative Grain Association of Wellington,**      )  
**Kansas, of Wellington, Kansas,** Regarding the      )  
Violation of the Motor Carrier Safety Statutes,      ) Docket No. 16-TRAM-019-PEN  
Rules and Regulations and the Commission's      )  
Authority to Impose Penalties, Sanctions and/or      )  
the Revocation of Motor Carrier Authority.      )

**PENALTY ORDER**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). The Commission, having been briefed on the issue by the Director of the Commission's Transportation Division, finds and concludes as follows:

**I.      JURISDICTION**

1.      Pursuant to K.S.A. 2014 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. 2014 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. 2014 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. Farmers' Cooperative Grain Association of Wellington, Kansas (Farmers' Cooperative) obtained private and common operating authority from the Commission on April 2, 1962 and May 31, 2012, respectively, and operates under KSMCID number 113376 and USDOT number 65010.

5. Vicki White attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on May 8, 2012, on behalf of Farmers' Cooperative.

6. Farmers' Cooperative is a private and common motor carrier which primarily hauls general freight, liquids/gases in cargo tanks, grain, feed, hay, chemicals, commodities dry bulk and farm supplies.

## **III. STATEMENT OF FACTS**

7. Pursuant to the jurisdiction and authority cited above, on May 5, 2015, Commission Staff (Staff) Special Investigator Gary Goeller conducted a compliance review of the operations of Farmers' Cooperative. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, Mr. Goeller identified five (5) violations of the Motor Carrier Safety Regulations.

- a. On March 17, 2015, Farmers' Cooperative required or permitted its driver, Michael Farley, to operate a commercial motor vehicle, a 2005

International, pulling a T22 trailer, in interstate commerce from Wellington, Kansas to Inola, Oklahoma. This trip is evidenced by Driver's Daily Log, dated March 17, 2015, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, driver Michael Farley was selected in a random pool selection for drug and alcohol testing during a time between January 8, 2015 and March 25, 2015. *See* Pool Name (Regulation): FMCSA National Pool 5 (FMCSA), a copy of which is attached hereto as Attachment "C" and is hereby incorporated by reference. However, Farmers' Cooperative failed to send Mr. Farley for the random testing. Farmers' Cooperative's failure to conduct a controlled substance test on its randomly selected driver during the selection period is in violation of 49 C.F.R. 382.305(i)(3), as adopted by K.A.R. 82-4-3c and authorized by K.S.A. 2014 Supp. 66-1,129. Staff recommends a fine of \$1,000.

- b. During the transportation described in paragraph a., above, Farmers' Cooperative failed to provide driver Michael Farley with a written policy on misuse of alcohol and controlled substances that meets the requirements of the motor carrier regulations. Farmers' Cooperative's failure to provide controlled substance use educational materials that comply with 49 C.F.R. 382.601(b) to each of its drivers subsequent to hiring or testing is a violation of 49 C.F.R. 382.601(a)(1), as adopted by K.A.R. 82-4-3c as authorized by K.S.A. 2014 Supp. 66-1,129. Staff recommends a fine of \$500.

- c. During the transportation described in paragraph a., above, Farmers' Cooperative had not designated a person to supervise staff for the purposes of making reasonable suspicion determinations regarding alcohol and drug usage. This designated person must then undergo reasonable suspicion training to include 60 minutes of alcohol training and 60 minutes of controlled substance training. Farmers' Cooperative's inability to produce documentation of this training and its failure to have a designated person to attend 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substances use is a violation of 49 C.F.R. 382.603, as adopted by K.A.R. 82-4-3c and as authorized by K.S.A. 2014 Supp. 66-1,129. Staff recommends a fine of \$100.
- d. During the transportation described in paragraph a., above, Michael Farley drove after the end of the 14<sup>th</sup> hour after coming on duty. Mr. Farley's time record shows him on-duty from before 8:00 a.m. until 5:50 p.m. on March 16, 2015, and then back on-duty at 2:00 a.m. on March 17, 2015, which is less than a 10 hour break. *See* Mike Farley's time record, a copy of which is attached hereto as Attachment "D" and is hereby incorporated by reference. The special investigator found four violations of this type. Farmers' Cooperative's failure to require driver Michael Farley to cease his driving at the 14<sup>th</sup> hour is in violation of 49 C.F.R. 395.3(a)(2), as adopted by K.A.R. 82-4-3a and authorized by K.S.A. 2014 Supp. 66-1,129. Staff recommends a fine of \$500.

- e. On March 16, 2015, Farmers' Cooperative required or permitted its driver, Michael Farley, to operate a commercial motor vehicle, a 2005 International, pulling a T22 trailer, in interstate commerce from Wellington, Kansas to Inola, Oklahoma. This trip is evidenced by Mr. Farley's time record, dated March 16, 2015. *See* Attachment "D." At the time of this transportation, driver Michael Farley made a false record of duty status, showing himself off-duty for the entire 24 hours of March 16, 2015. *See* Driver's Daily Log, dated March 16, 2015, a copy of which is attached hereto as Attachment "E" and is hereby incorporated by reference. The special investigator found eight violations of this type. Farmers' Cooperative's falsification of records of duty status is a violation of 49 C.F.R. 395.8(e), as adopted by K.A.R. 82-4-3a, and as authorized by K.S.A. 2014 Supp. 66-1,129. Staff recommends a fine of \$2,000.

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

8. Based upon the available facts, Staff recommends the Commission find Farmers' Cooperative committed five (5) violations of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

9. Additionally, Staff recommends a civil penalty of \$4,100 for five (5) violations of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that Farmers' Cooperative be required to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with

written proof of attendance. A schedule of the dates and locations for the safety seminar can be found on the Commission's website at [http://kcc.ks.gov/trans/safety\\_meetings.htm](http://kcc.ks.gov/trans/safety_meetings.htm).

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

## **V. CONCLUSIONS OF LAW**

12. The Commission finds it has jurisdiction over Farmers' Cooperative because it is a motor carrier as defined in K.S.A. 2014 Supp. 66-1,108.

13. The Commission finds Farmers' Cooperative committed five (5) violations of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

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

A. Farmers' Cooperative Grain Association of Wellington, Kansas, of Wellington, Kansas is hereby assessed a \$4,100 civil penalty for five (5) violations of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. Farmers' Cooperative is hereby ordered to attend a Commission-sponsored safety seminar within the next ninety (90) days and is to provide Staff with written proof of attendance. Further, Farmers' Cooperative is ordered to submit to one follow-up safety compliance review within the next eighteen (18) months.

C. **Pursuant to K.S.A. 2014 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issues by submitting a written request, setting forth the**

specific grounds upon which relief is sought, to the Commission's Secretary, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order. If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Farmers' Cooperative's right to a hearing, and this Penalty Order will become a Final Order assessing a \$4,100 civil penalty against Farmers' Cooperative, and ordering Farmers' Cooperative to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance, and to submit to a safety compliance review within eighteen (18) months from the date of service of this Order.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. 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 of \$500 or less, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2014 Supp. 66-1,142b(e) and amendments thereto.

E. If you do not request a hearing, the payment of the civil penalty is due in thirty (30) days from date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payments shall be mailed to the Transportation Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. *The payment shall include a reference to the docket number of this proceeding.*



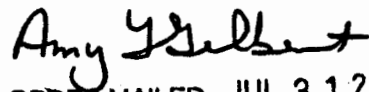
F. Failure to pay the \$4,100 civil penalty within thirty (30) days of the service of this Penalty Order, and/or failure to comply with the provisions of this Order, may result in revocation of Farmers' Cooperative's motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of out-of-service and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

G. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

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

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner


Dated: JUL 30 2015

  
ORDER MAILED JUL 31 2015

Amy L. Gilbert  
Secretary to the Commission

MJD

## **ATTACHMENT “A”**

	<b>US DOT #</b> 65010	<b>Legal: FARMERS COOPERATIVE GRAIN ASSOCIATION OF WELLINGTON KANSAS</b> <b>Operating (DBA):</b>					
<b>MC/MX #:</b> 788177		<b>State #:</b>		<b>Federal Tax ID:</b> (EIN)			
<b>Review Type:</b> Compliance Review (CR)							
<b>Scope:</b> Principal Office		<b>Location of Review/Audit:</b> Company facility in the U. S.			<b>Territory:</b> F		
<b>Operation Types</b>		<b>Business:</b> Corporation					
<b>Carrier:</b> HM      HM <b>Shipper:</b> N/A      HM <b>Cargo Tank:</b> N/A		<b>Gross Revenue:</b> for year ending: 11/30/2014					
<b>Company Physical Address:</b>							
<b>Contact Name:</b> Doris Lawrence							
<b>Phone numbers: (1)</b>		<b>(2)</b>		<b>Fax</b>			
<b>E-Mail Address:</b>							
<b>Company Mailing Address:</b>							
9011 N A ST WELLINGTON, KS 67152							
<b>Carrier Classification</b>							
Authorized for Hire			Private Property				
<b>Cargo Classification</b>							
General Freight Chemicals		Liquids / Gases in Cargo Tanks Commodities Dry Bulk		Grain, Feed, Hay Farm Supply			
<b>Hazardous Materials</b>							
2.1 LPG	Carr./Ship.	Bulk	2.2 Anhydrous ammonia	Carr./Ship.	Bulk		
3 Flammable liquid	Carr./Ship.	Bulk	3 Combustible liquid	Carr./Ship.	Bulk/Non-Bulk		
6.1 (Poison)	Carr./Ship.	Non-Bulk	8 Corrosive material	Carr./Ship.	Non-Bulk		
9 Miscellaneous HM	Carried	Non-Bulk	9 (Hazardous substance)	Carr./Ship.	Non-Bulk		
<b>Equipment</b>							
	Owned	Term Leased	Trip Leased		Owned	Term Leased	Trip Leased
Truck	5	0	0	Truck Tractor	5	0	0
Trailer	8	0	0	HM Cargo Tank Truck	2	0	0
Power units used in the U.S.:12 Percentage of time used in the U.S.:100							
<b>Does carrier transport placardable quantities of HM?</b> Yes							
<b>Is an HM Permit required?</b> No							
<b>Driver Information</b>							
<b>Inter</b> <b>Intra</b>		<b>Average trip leased drivers/month:</b> 0					
<b>&lt; 100 Miles:</b>		<b>Total Drivers:</b> 13					
<b>&gt;= 100 Miles:</b> 13		<b>CDL Drivers:</b> 13					





FARMERS COOPERATIVE GRAIN ASSOCIATION OF WELLINGTON KAN  
U.S. DOT #: 65010 State #:

Review Date:  
05/07/2015

**Part A**

QUESTIONS regarding this report or the Federal Motor Carrier Safety or  
Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

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

**This report will be used to assess your safety compliance.**

**Person(s) Interviewed**

Name:

Title:

Name:

Title:





FARMERS COOPERATIVE GRAIN ASSOCIATION OF WELLINGTON KAN

U.S. DOT #: 65010

State #:

Review Date:

05/07/2015

## Part B Violations

1 FEDERAL	Primary: 382.305(i)(3)	Discovered 5	Checked 13	Drivers/Vehicles In Violation 5	Checked 13
<b>Description</b> Failing to ensure that drivers are tested within the selection period. <b>Example</b> Trip date 03.17.2015 Selection Period January 8, 2015 - March 25, 2015 Carrier draw date was January 8, 2015, 5 of the Carrier's 13 drivers were selected to test and to be completed by March 25, 2015, no collections were made.					
2 FEDERAL	Primary: 382.601(b)	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
<b>Description</b> Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11. <b>Example</b> Trip date 03.17.2015 No controlled substance and/or alcohol testing policy					
3 FEDERAL	Primary: 382.603	Discovered 1	Checked 1	Drivers/Vehicles In Violation	Checked
<b>Description</b> Failing to ensure person designated to determine that drivers undergo reasonable suspicion testing receive 60 minutes training for alcohol and/or 60 minutes of training for controlled substances. <b>Example</b> Trip date 03.17.2015 No reasonable suspicion training or certificates on file.					
4 FEDERAL	Primary: 395.3(a)(2)	Discovered 4	Checked 150	Drivers/Vehicles In Violation 1	Checked 5
<b>Description</b> Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty. <b>Example</b> Trip date 03.17.2015 Log shows off duty on the 16th but time record and scale ticket shows operation on the 16th outside of MAP21 exceptions and on duty at 07.91 off duty at 1750hrs., on duty on the 17th at 0200am violation of 14 hr rule at 04:00am shows driving at the cimieron Tumpike/US177 entrance and again at the Hallet SH99 Pike entry plaza.					





FARMERS COOPERATIVE GRAIN ASSOCIATION OF WELLINGTON KAN

U.S. DOT #: 65010

State #:

Review Date:

05/07/2015

## Part B Violations

5 FEDERAL	Primary: 395.8(e)	Discovered 8	Checked 150	Drivers/Vehicles In Violation 2	Checked 5
<b>Description</b> False reports of records of duty status. <b>Example</b> Trip Date 03.16.2015 Log Book shows off duty, Scale ticket shows loading at 1552-1611hrs time sheets shows 07.94-1750hrs 3.17.15 log book shows leaving Inola, OK at 1100am and arriving Rome, KS at 1330, scale ticket from Catoosa shows weighing out at 12:58 pm. 3.20.15 Log shows local delivery and scale ticket from Catoosa, OK shows weigh out at 09:50 AM.					
<b>Safety Fitness Rating Information:</b> Total Miles Operated 134,644 Recordable Accidents 0 Recordable Accidents/Million Miles 0.00		OOS Vehicle (CR): 0 Number of Vehicle Inspected (CR): 0 OOS Vehicle (MCMIS): 0 Number of Vehicles Inspected (MCMIS): 0			
Your proposed safety rating is :  <b>SATISFACTORY</b>		<b>Rating Factors</b>		<b>Acute</b>	<b>Critical</b>
		Factor 1:	S	0	0
		Factor 2:	S	0	0
		Factor 3:	S	0	0
		Factor 4:	S	0	0
		Factor 5:	S	0	0
		Factor 6:	S	-	-

Corrective actions must be taken for any violations (deficiencies) identified on Part B of this report.





FARMERS COOPERATIVE GRAIN ASSOCIATION OF WELLINGTON KAN

U.S. DOT #: 65010

State #:

Review Date:

05/07/2015

**Security Contact Q & A**  
**Sensitive Security Information****Security Assessment**

- |   |  |             |
|---|--|-------------|
| 1 | Does plan include a specific assessment of possible HM transp. security risks? | Answer: Yes |
| 2 | Does assessment adequately capture specific threats and vulnerabilities (T&V)? | Answer: Yes |
| 3 | Does the assessment adequately capture specific T&V of personnel security?     | Answer: Yes |
| 4 | Does the assessment adequately capture specific T&V of unauthorized access?    | Answer: Yes |
| 5 | Does the assessment adequately capture specific T&V of en route security?      | Answer: Yes |
| 6 | Is the organization's security posture periodically assessed?                  | Answer: Yes |

**Security Plan**

- |    |  |             |
|----|--|-------------|
| 7  | Does the security plan correlate to the security assessment in question 2 above? | Answer: Yes |
| 8  | Is the security plan "specific" to the organization?                             | Answer: Yes |
| 9  | Are there written procedures on actions to take in event of a security breach?   | Answer: Yes |
| 10 | Are there written procedures to report the above to law enforcement?             | Answer: Yes |
| 11 | Do security plan measures "vary commensurate with the level of threat"?          | Answer: Yes |

**Personnel Security**

- |    |  |             |
|----|--|-------------|
| 12 | Are the personnel security measures appropriate for the assessment as written?   | Answer: Yes |
| 13 | Are the personnel security measures adequate even if not all risks identified?   | Answer: Yes |
| 14 | Are the security plan's personnel security measures being followed?              | Answer: Yes |
| 15 | Do all drivers required to have valid CDLs with required endorsements have them? | Answer: Yes |
| 16 | Are required background checks on drivers conducted?                             | Answer: Yes |
| 17 | Is information confirmed for applicants applying for positions dealing with HM?  | Answer: Yes |
| 18 | Are performance standards or PSOs used in the approach to personnel security?    | Answer: Yes |
| 19 | Is citizenship or legal residence status confirmed for all employees?            | Answer: Yes |

**Unauthorized Access**

- |    |   |             |
|----|---|-------------|
| 20 | Is the security plan's approach to unauthorized access operation specific?      | Answer: Yes |
| 21 | Are the unauthorized access measures appropriate for the assessment as written? | Answer: Yes |
| 22 | Are the unauthorized access measures adequate even if not all risks identified? | Answer: Yes |
| 23 | Are the security plan's unauthorized access measures being followed?            | Answer: Yes |

**En Route Security**

- |    |   |             |
|----|---|-------------|
| 24 | Is the security plan's approach to en route security operation specific?        | Answer: Yes |
| 25 | Are the en route security measures appropriate for the assessment as written?   | Answer: Yes |
| 26 | Are State/Indian tribe NRHM (non-RAM) routing designations being followed?      | Answer: Yes |
| 27 | Are written route plans provided to drivers of Division 1.1, 1.2, and 1.3 HM?   | Answer: N/A |
| 28 | Are drivers of vehicles transporting HRCQ RAM complying with preferred routing? | Answer: N/A |





FARMERS COOPERATIVE GRAIN ASSOCIATION OF WELLINGTON KAN

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05/07/2015

**Security Contact Q & A**  
**Sensitive Security Information**

29 Are routing guidelines being followed for vehicles transporting NRHM (non-RAM)? Answer: Yes

30 Are hazardous materials delivered expeditiously? Answer: Yes

31 Are the routing regs. and ER instr. provided for Div. 1.1, 1.2, and 1.3 HM? Answer: N/A

**Security Plan Administration**

32 Is the security plan written? Answer: Yes

33 Is the security plan retained for as long as it remains in effect? Answer: Yes

34 Is the plan (or parts) available to employees responsible for implementing it? Answer: Yes

35 Are all copies of the security plan updated and revised as necessary? Answer: Yes

36 Does the organization have fixed management responsibility for security? Answer: Yes

**Security Training**

37 Has security awareness training been provided to all HM employees on schedule? Answer: Yes

38 Has in-depth training been provided to HM employees with plan responsibilities? Answer: Yes

39 Does the in-depth training include company security objectives? Answer: Yes

40 Does the in-depth training include specific personnel security procedures? Answer: Yes

41 Does in-depth training material include specific unauthorized access procedures? Answer: Yes

42 Does in-depth training material include specific en route security procedures? Answer: Yes

43 Does the in-depth training material include employee responsibilities? Answer: Yes

44 Does in-depth training include actions to take in event of a security breach? Answer: Yes

45 Does in-depth training material include an organizational security structure? Answer: Yes

**Additional Security Management**

46 Has the organization established partnerships with other agencies for security? Answer: Yes

**Security Plan**

47 Overall, does the Security Plan conform to Part 172, Subpart 1? Answer: Yes

**Security Plan Administration**

48 Ensure the individual for security reports to top management. Answer: Yes







FARMERS COOPERATIVE GRAIN ASSOCIATION OF WELLINGTON KAN

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05/07/2015

## Part B Requirements and/or Recommendations

1. Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers. [www.fmcsa.dot.gov/safety-security/eta/index.htm](http://www.fmcsa.dot.gov/safety-security/eta/index.htm)
2. A copy of your carrier profile can be obtained for \$20 from the SAFER website (<http://safer.fmcsa.dot.gov>) or by calling 800-832-5660 or 703 280-4001. You can also write: Computing Technologies Inc. P.O. Box 3248, Merrifield, VA 22116-3248. Profile cost if ordered by mail or phone is \$27.50.
3. 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 (MCNIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information:  
<http://www.psp.fmcsa.dot.gov/Pages/default.aspx>

- All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities.

For all Investigations that could result in a Penalty Order:

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

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





FARMERS COOPERATIVE GRAIN ASSOCIATION OF WELLINGTON KAN

U.S. DOT #: 65010

State #:

Review Date:

05/07/2015

## Part B Requirements and/or Recommendations

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

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

4. 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.

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

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

Safety Improvement Resources (SIRs) is a compilation of articles, reports, and other tools designed to assist motor carriers with improving their current safety management practices. SIRs are searchable by resource number, BASIC or safety management practice (SMP). Please refer to any Safety Improvement Resource numbers included within the recommendations.

You are encouraged to view all of the SIRs at the following website:  
[http://ai.fmcsa.dot.gov/sms/Data/carrier\\_sir.aspx](http://ai.fmcsa.dot.gov/sms/Data/carrier_sir.aspx)

6. HOS COMPLIANCE BASIC PROCESS BREAKDOWN: Roles and Responsibilities

DESCRIPTION OF PROCESS BREAKDOWN: Carrier needs to establish person with authority to monitor drivers logs and time records with supporting documents to ensure accuracy of driver's records and have the authority to take corrective and disciplinary action when discrepancies are found and make sure that those actions are documented.

### BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Roles and Responsibilities.

- Define and document roles and responsibilities of managers and supervisors for monitoring compliance with Hours-of-Service (HOS) policies.
- Ensure that managers are responsible for reviewing Records of Duty Status (RODS) for accuracy and for



**Part B Requirements and/or Recommendations**

disciplining those who falsify their logs.

- Assign responsibility for making sure that all Records of Duty Status (RODS) are collected and stored for six months.
- Prior to accepting shipments, ensure that dispatchers are responsible for mapping out routes, asking drivers how many hours they have driven recently, and verifying that the route can be completed without breaking Hours-of-Service (HOS) regulations.
- Ensure that drivers are responsible for informing the carrier when they are sick, keeping accurate Records of Duty Status (RODS), and planning their route so that it can be completed efficiently within Hours-of-Service (HOS) rules.
- Define and document roles and responsibilities of drivers and dispatchers as they pertain to Hours-of-Service (HOS) policies and procedures.

HAZMAT Carrier Only:

- Ensure that managers and dispatchers ascertain that drivers who may already be stressed for time due to non-driving HAZMAT responsibilities are not overburdened.

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.

**7. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN: Policies and Procedures**

**DESCRIPTION OF PROCESS BREAKDOWN:** Carrier needs to develop a controlled substance and alcohol testing policy and provide training to its CDL drivers.

**BASIC SPECIFIC RECOMMENDED REMEDIES**

**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 nonqualified 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,





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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 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.

## 8. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN: Roles and Responsibilities

**DESCRIPTION OF PROCESS BREAKDOWN:** Carrier needs to establish more than one DER so that if someone is gone or otherwise doesn't forward notifications that someone else can access the TPA's website or contact them by phone.

### BASIC SPECIFIC RECOMMENDED REMEDIES

**Implement Safety Improvement Practices:** The following are recommended practices related to Roles and Responsibilities.

- Ensure that managers are responsible for ascertaining that employees receive training concerning controlled substances and alcohol in accordance with State or Federal regulations and company policy.
- Ensure that managers are responsible for telling employees of a failed test and its implications.
- Regardless of carrier membership in a consortium, ensure that the carrier defines and documents the role and responsibilities of the designated employer representative (DER) in monitoring test procedures and checking results.
- If the carrier elects to join a consortium, ensure that the respective roles and responsibilities of the carrier and the consortium for controlled-substance and alcohol testing and reporting are defined and documented.

### 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.

## 9. CONTROLLED SUBSTANCES AND ALCOHOL BASIC PROCESS BREAKDOWN: Training and Communication

**DESCRIPTION OF PROCESS BREAKDOWN:** Carrier need to make sure that supervisors are trained in reasonable suspicion testing and have supervisors at all locations that have drivers based at those facilities. Training for reasonable suspicion testing is available for free through a link on the KCC website to the National Drug-Free Work Place Alliance.

### BASIC SPECIFIC RECOMMENDED REMEDIES

**Implement Safety Improvement Practices:** The following are recommended practices related to Communication and Training.

- Convey expectations to all applicable staff for adhering to controlled substance and alcohol regulations and to company policies and procedures, and for executing responsibilities by providing new-hire and refresher training. Establish communication channels such as newsletters and/or meetings focused on resolving conflicts: for example, for drivers, between testing requirements and lifestyle decisions with regard to controlled substance and alcohol abuse or misuse.
- Encourage disclosure of personal problems with controlled substances and alcohol within a safe environment by having an open-door policy with management or using an Employee Assistance Program (EAP). An EAP enables drivers to alert management of concerns about other personnel and to seek help for their own substance abuse and/or alcohol problems.



**Part B Requirements and/or Recommendations**

- After selection of drivers for random testing, the program coordinator should send confidential correspondence to whoever is informing the selected drivers, noting the selection date, selected names, proper notification procedure, testing location, and when test results need to be completed. Drivers should be reminded that refusal to take the test will be equivalent to a positive result.
- Ensure that managers and supervisors regularly communicate and demonstrate their ongoing commitment to abiding by regulations and company policies regarding controlled-substance and alcohol use.
- Communicate the carrier's Controlled Substances and Alcohol BASIC percentile to all staff, and explain to them individually what they can do to help improve compliance.
- Provide new-hire and refresher training, to all drivers, managers, other designated personnel, and the designated employer representative (DER), on controlled-substance and alcohol regulations and related company policies and procedures, including those pertaining to prohibited behavior; testing protocols and monitoring, for example, on grounds of "reasonable suspicion"; the consequences of a positive test result; referral to a Substance Abuse Professional (SAP); and confidentiality requirements in relation to record keeping.
- Ensure that personnel in safety-sensitive positions receive required training on the importance of responsible lifestyle behaviors and personal choices regarding controlled-substance and alcohol use.
- Train all staff who are required to monitor and track controlled-substance and alcohol compliance on the appropriate company policies, including those related to discipline and incentives.
- Ensure that drivers are trained on driver Out-of-Service (OOS) rules, their responsibility in adhering to them, and the carrier's procedures for reporting OOS violations and communicating appropriately with other personnel.
- Reinforce training about controlled-substance and alcohol policies, procedures, and responsibilities to drivers, controlled-substance and alcohol-testing personnel, and other employees, using job aids, post-training testing, and/or refresher training. Encourage informal feedback among all involved with the testing so that they can help each other to improve.
- Provide hiring officials with guidance on how best to attract, screen, and qualify applicants who are most likely to adhere to controlled-substance and alcohol-use regulations and related company policies and procedures.

**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.

10. Require all drivers to prepare complete and accurate records of duty status for each day, and to submit them within 13 days. Maintain all duty status records on file, with all supporting documents, for at least 6 months.
11. If you want some drivers to use the 100 air-mile radius exemption, make sure that the drivers meet all terms of the exemption, including being released from duty no more than 12 hours from when they report for duty. Logs must be prepared if a driver does not meet the 12 hour requirement.
12. Ensure that all drivers records of duty status (logs) are accurate. Check them against "supporting documents" to verify accuracy. Prohibit falsification of logs by any driver. Review the rules on supporting documents. Take appropriate action against drivers who falsify logs.
13. This review will result in a Safety Rating.
14. This report contains citations of regulations that are deemed serious in nature and could result in penalties against your company and/or your drivers.
15. 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 Farmers Cooperative Grain Association of Wellington Kansas's operating authority and/or the impoundment of Farmers Cooperative Grain Association of Wellington Kansas's vehicles.





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**Part B Requirements and/or Recommendations**

Signed

date 05.07..2015

Curt Guinn



## **ATTACHMENT “B”**





## **ATTACHMENT “C”**

**Pool Name (Regulation): FMCSA National Pool 5 (FMCSA)**

**Random Draw Date: January, 08, 2015**

**Random testing Due Date: March, 25, 2015**

**Selection Period: 1 of 4**

Location	First Name	Last Name	SSN	Notified	Drug	Alcohol	Collection Site	Time of Collection	COC#	Comments	Flex Field	Selected
Farmers Coop Grain Assn/Wingtn					Selected							SELECTED DRUG
Farmers Coop Grain Assn/Wingtn					Selected							SELECTED DRUG
Farmers Coop Grain Assn/Wingtn					Selected	Selected						SELECTED DRUG/ALC
Farmers Coop Grain Assn/Wingtn					Selected	Selected						SELECTED DRUG/ALC
Farmers Coop Grain Assn/Wingtn					Selected	Selected						SELECTED DRUG/ALC

## **ATTACHMENT "D"**



## **ATTACHMENT “E”**



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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
DORIS LAWRENCE, OFFICE MANAGER FARMERS' COOPERATIVE GRAIN ASSOCIATION OF WELLINGTC 9011 N A STREET WELLINGTON, KS 67152		
MICHAEL DUENES, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		

**ORDER MAILED JUL 31 2015**

The Docket Room hereby certified that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.