

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-279-PEN

January 7, 2020

Mark Overmiller, President
Overmiller Stock Farms Inc.
7011 P Road
Smith Center, KS 66967

This is a notice of a penalty assessment against Overmiller Stock Farms Inc. (Overmiller Stock Farms) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on December 20, 2019, by Kansas Corporation Commission Special Investigator Verna Jackson. 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: Overmiller Stock Farms has been assessed a \$500 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$500, through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

The attached Order requires a representative of Overmiller Stock Farms to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website 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. Overmiller Stock Farms must file, within fifteen (15) days from the date of service of this Order, the request for hearing with the Commission's electronic filing system found at <https://puc.kcc.ks.gov/e-filing/e-express/>, and mail a copy of the request for hearing to the undersigned at the above address. If you do not have access to the internet, you can mail an original and seven copies of the request to the 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 \$500 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

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

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Susan K. Duffy

In the Matter of the Investigation of **Overmiller**)
Stock Farms Inc., of Smith Center, KS,)
Regarding the Violation(s) of the Motor Carrier)
Safety Statutes, Rules and Regulations and the) Docket No. 20-TRAM-279-PEN
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). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. JURISDICTION

1. Pursuant to K.S.A 2018 Supp. 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 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f., doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to K.S.A. 2018 Supp. 66-1,129a, 66-1,130 and 66-1,142b, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard

to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

II. BACKGROUND

4. Overmiller Stock Farms Inc. (Overmiller Stock Farms) has private and common operating authority with the Commission and further operates under USDOT number 663478.

5. Marci D. Overmiller attended the Procedures for Safety Compliance Seminar presented by the Kansas Corporation Commission, on January 22, 2019, on behalf of Overmiller Stock Farms.

6. Overmiller Stock Farms is a private and common motor carrier which primarily hauls grain, feed and hay.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on December 20, 2019, Commission Staff (Staff) Special Investigator Verna Jackson conducted a safety compliance review of the operations of Overmiller Stock Farms. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, the special investigator identified one (1) violation(s) of the Motor Carrier Safety Regulations.

- a. On April 11, 2019, Overmiller Stock Farms required or permitted its driver, John Morgan, to operate a CDL-required commercial motor

vehicle, a 2003 Peterbilt, VIN ending in 598192, GVWR 50,000 lbs., pulling a 2018 Timppte trailer, VIN ending in 160372, GVWR 65,000 lbs., in interstate commerce from Sawyer, Kansas to Catoosa, Oklahoma. This trip is evidenced by Driver/Vehicle Examination Report, dated April 11, 2019, a copy of which is attached hereto as Attachment “B” and is hereby incorporated by reference. At the time of this transportation, Overmiller Stock Farms failed to make an inquiry every 12 months into the annual motor vehicle record (MVR) of its driver and maintain the response(s) of each state agency in the driver qualification file. The special investigator discovered two (2) violations of this type. Further, this carrier was cited for the same violation in a safety compliance review conducted on September 5, 2018. Overmiller Stock Farms’ failure to inquire into its driver’s MVR at least once every 12 months and maintain a copy of the MVR in the driver qualification file is a violation of 49 C.F.R. Part 391.25(a) and (c)(1), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2018 Supp. 66-1,112. Staff recommends an enhanced fine of \$500.

IV. STAFF’S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission finds Overmiller Stock Farms committed one (1) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

9. Additionally, Staff recommends a civil penalty of \$500 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from Overmiller Stock Farms be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide Litigation Counsel with written proof of attendance. A schedule of the dates and locations for safety seminars can be found on the Commission's website at http://kcc.ks.gov/trans/safety_meetings.htm.

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

V. CONCLUSIONS OF LAW

12. The Commission finds it has jurisdiction over Overmiller Stock Farms because it is a motor carrier as defined in 49 C.F.R. Part 390.5 as adopted by K.A.R. 82-4-3f.

13. The Commission finds Overmiller Stock Farms committed one (1) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

THE COMMISSION THEREFORE ORDERS THAT:

A. Overmiller Stock Farms Inc., of Smith Center, KS is hereby assessed a \$500 civil penalty for one (1) violation(s) of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. Overmiller Stock Farms is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and is to provide Litigation Counsel with written proof of attendance.

C. 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. Overmiller Stock Farms is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the carrier to set up the appointment.

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 Overmiller Stock Farms' right to a hearing, and this Penalty Order will become a Final Order assessing a \$500 civil penalty against Overmiller Stock Farms, and ordering a representative from Overmiller Stock Farms 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 \$500 is due in thirty (30) days from the date of service of this Order. Payment of \$500 must be made through your personal account with the Kansas Corporation Commission's KTRAN system located at <https://puc.kcc.ks.gov/ktran/>. You must have an account through KTRAN to pay the penalty.

H. Failure to pay the \$500 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Overmiller Stock Farms' motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

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: 01/07/2020




Lynn M. Retz
Executive Director

AAL

ATTACHMENT “A”

UNITED STATES DEPARTMENT OF TRANSPORTATION

	U.S. DOT#: 663478 MC/MX#:		Legal: OVERMILLER STOCK FARMS INC Operating (DBA):		Investigation Date: 12/20/19	
	Investigation Type: Offsite Investigation					
Physical Address				Mailing Address		
7011 P ROAD SMITH CENTER, KS 66967 United States				7011 P ROAD SMITH CENTER, KS 66967 United States		
Contact Information						
Contact Name: MARCI OVERMILLER						
Email: [REDACTED]						
Phone: [REDACTED]						
Business and Financial						
Business Type: Corporation						
Gross Revenue: [REDACTED] For Year Ending: 08/31/19						
Federal Tax ID: [REDACTED]						
Operation Classification and Type				Cargo		
Type of Operation: Non-HM Interstate Carrier, Non-HM Intrastate Carrier				Grain, Feed, Hay		
Operation Classification For-Hire Motor Carrier Property Exempt Commodities Other Non-Hazardous Freight						
Equipment				Driver Information		
	Owned	Term Leased	Trip Leased	Drivers		
Truck Tractors	1				Intrastate	Interstate
Trailers	1			< 100 Miles		
				>= 100 Miles		2
Power units used in the U.S.: 1 Percentage of time used in the U.S.: 100%				Average trip leased driver/month: 0 Drivers with CDL: 2 Total Drivers: 2		
Person(s) Interviewed						

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:

Kansas Corporation Commission 1500 SW Arrowhead Rd
Topeka, KS 66604
Phone: (785) 271-3104
Fax (785) 271-3124

This report will be used to assess your safety compliance.

Violations

1. Primary: 391.51(b)(4)

Failing to maintain the responses of each State agency to the annual driver record inquiry required by 391.25(a).

Violations Discovered

Fed	State	Total
2		2

Violations Checked

Fed	State	Total
2		2

Example/Notes:

John H Morgan,
4/11/2019.

Overmiller Stock Farms Inc failed to maintain the responses of each State agency to the annual driver record (MVR) which is required at least once every 12 months.

Drivers/Vehicles

In Violation	Checked
2	2

Safety Fitness Rating

This Investigation is Not Rated

You must take corrective actions for any violations (deficiencies) identified in the Violations section of this report.

This was an offsite investigation. An offsite investigation allows FMCSA to evaluate your safety compliance with minimal disruption to your business. An offsite investigation will not result in a safety rating.

DataQs: If you dispute the violations recorded in the Violations section of this investigation report, and the violations were not used in the calculation of your safety rating, you may submit a Request for Data Review (RDR) through DataQs. The DataQs system is the method to remove violations that did not affect your safety rating. DataQs is an online system that allows a motor carrier or driver to request and track a review of Federal and State issued data that it believes to be incomplete or incorrect. To submit an RDR, go to <https://dataqs.fmcsa dot.gov>.

Process Breakdown and Remedies

BASIC: Driver Fitness

Process Breakdown: Monitoring and Tracking

Overmiller Stock Farms Inc failed to maintain the inquiries into each State agency to the annual driver record inquiry required by 391.25(a). When not conducting the annual motor vehicle report review, the motor carrier cannot validate the driver maintains a valid license with the necessary endorsements if required for the equipment the driver is operating.

Specific Recommended Remedies

To implement Safety Improvement Practices, the following list are recommended practices related to Monitoring and Tracking:

1. 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.

Recommendations

1. **Additional Information**

Please visit the CSA outreach site for additional guidance: <https://csa.fmcsa.dot.gov>.

2. **If you have any questions concerning this report, contact KCC.**

If you have any questions concerning this report, please contact the Kansas Corporation Commission, 1500 SW Arrowhead Rd, Topeka, KS 66604 or call 785-271-3104.

3. **SMS website**

You are encouraged to review your company's SMS results and take action to make the roads safer for everyone. Your public safety records are available at the following website: <http://ai.fmcsa.dot.gov/sms> Also visit [https://portal.fmcsa dot.gov](https://portal.fmcsa.dot.gov) which provides real time data and the opportunity to review you safety data. You will need to use your PIN number that has been provided by FMCSA. Registration and access is free.

4. **Obtain a copy of each driver's driving record and review it.**

Obtain a copy of each driver's driving record and review it annually.

5. **Drug and Alcohol Clearinghouse**

Find out your responsibilities and requirements for FMCSA's Drug and Alcohol Clearinghouse by visiting <https://clearinghouse.fmcsa.dot.gov> . Implementation begins January 6, 2020.

6. **CAP Requirement**

The KCC requires that you prepare a corrective action plan, addressing the measures taken to correct all the 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. Submit the letter along with copies of your supporting evidence to:

Email: g.davenport@kcc.ks.gov

FAX: 785-271-3124

or mail:

Kansas Corporation Commission

Attn: Gary Davenport

1500 SW Arrowhead Rd

Topeka, KS 66604-4027

7. **CAP Penalty**

Motor carriers are responsible for complying with all tasks ordered by the Commission. You are required to prepare a corrective action plan (CAP), addressing the measures taken to correct all the violations identified within this report. Failure to fulfill this requirement may lead to the issuance of further penalties or other repercussions, including revocation of authority to operate intrastate in Kansas.

8. **Acknowledgement Stmt - Offsite**

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 [motor carrier's] operating authority and/or the impoundment of [motor carrier's] commercial motor vehicles.

Carrier Representative

Date

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

785-271-3124

9. **Monetary Penalties**

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

Carrier Name

Carrier Official

10. **Safety Seminar Requirement**

Motor carriers are responsible for complying with all tasks ordered by the Commission in its Penalty Order. In addition to paying any civil fines issued, carriers are also required to attend a Commission sponsored safety seminar. Failure to fulfill this requirement may lead to the issuance of further penalties or other repercussions, including revocation of authority to operate intrastate in Kansas.

ATTACHMENT “B”

DRIVER/VEHICLE EXAMINATION REPORT

Query Central 3.4

Kansas Highway Patrol
MOTOR CARRIER SAFETY ASSISTANCE
 700 SW Jackson, Ste 704
 Topeka, KS 66603
 Phone: (785)296-7189 Fax: (785)296-2858

Report Number: KSHP92123195
Inspection Date: 04/11/2019
Start: 11:12 AM CT **End:** 11:28 AM CT
Inspection Level: II - Walk-Around
HM Inspection Type: None

OVERMILLER STOCK FARMS INC
 7011 P ROAD
 SMITH CENTER, KS 66967
USDOT#: 00663478
MC/MX#: 00000000
State#:

Phone#:
Fax#:

Driver: MORGAN, JOHN H
License#:
Date of Birth:
CoDriver:
License#:
Date of Birth:
State: KS
State:

Location: WELLINGTON
Highway: 160
County:

MilePost: 293
Origin: SAWYER,KS
Destination: CATOOSA,OK

Shipper: FARMERS CO-OP
Bill of Lading: 12026
Cargo: GRAIN, FEED, HAY

VEHICLE IDENTIFICATION

Unit	Type	Make	Year	State	Plate #	Equipment ID	VIN	GVWR	CVSA #	New CVSA #	OOS#
1	TT	PTRB	2003	KS	166409		598192	50,000			
2	ST	TIMP	2018	KS	630994		160372	65,000			

BRAKE ADJUSTMENTS: No Brake Measurements Required For Level 2

VIOLATIONS

HazMat: No HM Transported.

Placard: No **Cargo Tank:**

Special Checks: Size & Weight;

* NOTE TO MECHANIC: The undersigned certifies that all mechanical defects listed on this report HAVE BEEN CORRECTED at the time of signature.

Signature Of Repairer X: _____ Facility: _____ Date: _____

*** DRIVER, THIS FORM IS REQUIRED TO BE RETURNED TO THE CARRIER BY REGULATION. ***
 must be corrected or acknowledged PRIOR TO RE-DISPATCH and then certified by a responsible carrier official who must sign below. RETURN THIS FORM WITHIN 15 DAYS to the Motor Carrier Division of the KANSAS HIGHWAY PATROL at the address listed at the top of this form.

*CARRIER CERTIFICATION: All defects on this sheet

Signature Of Motor Carrier X: _____ Title: _____ Date: _____

Report Prepared By:
 A.K. Boyle

Badge #:
 9212

Copy Received By:
 JOHN MORGAN

Page 1 of 1



00663478 KS KSHP92123195

X _____

X _____

CERTIFICATE OF SERVICE

20-TRAM-279-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 01/08/2020.

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

MARK OVERMILLER, PRESIDENT
OVERMILLER STOCK FARMS, INC.
7011 P ROAD
SMITH CENTER, KS 66967
marci.overmiller@gmail.com

/S/ DeeAnn Shupe

DeeAnn Shupe