CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT

595:35-1-2. Definitions [AMENDED]

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act [47 O.S. §230.1 et seq.].

"Commissioner" means the Commissioner of Public Safety.

"Compliance review" as defined by 49C.F.R. 385.3.

"Department" means the Department of Public Safety.

"Representative" means any employee of the Department authorized by the Commissioner to carry out the provisions of the Act or a rule adopted by the Commissioner to carry out the Act.

"Respondent" means the individual, corporation, or entity charged with a violation of the Act or of a rule adopted by the Commissioner to carry out the Act.

"Troop S" means the Oklahoma Highway Patrol Troop of the Department authorized by the Commissioner to enforce the provisions of the Act or of any rule adopted by the Commissioner to carry out the Act.

(a) Any statute, law, or regulation of the United States or statute of the State of Oklahoma now existent, or duly enacted in the future shall supersede any conflicting provision of this Chapter to the extent of such conflict, but shall not affect the remaining provisions herein.

(b) Any violation of the rules of this Chapter or of the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act may result in the assessment of an administrative penalty. [47 O.S. §§ 230.6 and 230.9]

(c) Interested parties may obtain information or make submission related to this Chapter by contacting: Commercial Vehicle Enforcement Section, Troop S, Department of Public Safety, P.O. Box 11415 200 NE 38th Terrace, Oklahoma City, Oklahoma 73136-0415, Phone: (405) 521-6103 6060.

595:35-1-4. Adoption by reference [AMENDED]

The Department of Public Safety adopts by reference the United States Department of Transportation regulations pertaining to motor carrier safety and hazardous materials transportation, as contained in Title 49 of the Code of Federal Regulations (49 CFR) [47 O.S. §230.5(2)]. Information relative to this adoption is available through various sources, such as the Labelmaster publication, "Federal Motor Carrier Safety Regulations." Copies of this publication are available by contacting the Oklahoma Trucking Association at (405) 843 525-9488. Those regulations pertaining to motor carrier safety and hazardous materials transportation adopted by reference under this Section are:

(1) Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs. [49 CFR §40.1 et seq.]
(2) Part 107 Hazardous Materials Programs and Procedures. [49 CFR §107.1 et seq.]
(3) Part 171 Hazardous Materials Regulations...General Information, Regulations, and Definitions. [49 CFR §171.1 et seq.]
(5) Part 173 Shippers-General Requirements for Shipments and Packagings. [49 CFR §173.1 et seq.]
(6) Part 177 Carriage by Public Highway. [49 CFR §177.800 et seq.]
(7) Part 178 Shipping Container Specifications. [49 CFR §178.0 et seq.]
(8) Part 180 Continuing Qualification and Maintenance of Packagings. [49 CFR §180.00 et seq.]
(9) Part 382 Controlled Substances and Alcohol Use and Testing. [49 CFR §382 et seq.]
(10) Part 383 Commercial Driver's License Standards; Requirements and Penalties [49 CFR §383.1 et seq.], in so much as it does not conflict with state law
(11) Part 385 Safety Fitness Procedures. [49 CFR §385.1 et seq.]
(14) Part 391 Qualifications of Drivers. [49 CFR §391.1 et seq.]
(15) Part 392 Driving of Motor Vehicles. [49 CFR §392.1 et seq.]
(16) Part 393 Parts and Accessories Necessary for Safe Operation. [49 CFR §393.1 et seq.]
(17) Part 395 Hours of Service of Drivers. [49 CFR §395.1 et seq.]
(18) Part 396 Inspection, Repair, and Maintenance. [49 CFR §396.1 et seq.]

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference [AMENDED]
(a) Changes. The changes in this Section to the federal rules adopted by reference in 595:35-1-4 apply only to intrastate commerce.
(b) Terminology. Unless otherwise specified, the following terminology shall apply:
   (1) "Department," as defined in 595:35-1-2, shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.
   (2) "Commissioner," as defined in 595:35-1-2, shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.
   (3) "Troop S," as defined in 595:35-1-2, shall be substituted wherever the term "Office of Motor Carriers" or "Motor Carrier Division" is used.
(c) Scope of Definitions. The definitions provided in (b) of this Section are limited in
application to the Act and the rules adopted to carry out the Act. These definitions do not alter, replace or change any other definitions contained in Title 47 of the Oklahoma Statutes.

(d) **Exceptions in the transportation of hazardous materials.**

(1) Cargo Tank Specifications [49 CFR §173.33(a)], concerning the qualifications and maintenance of cargo tanks used to transport hazardous materials, shall include the following exemption: Intrastate movements of petroleum products in nonspecification cargo tanks of 3,500 gallons and less by motor carriers transporting petroleum products solely in intrastate commerce may continue, provided the cargo tanks meet the general packaging requirements of 49 CFR §173.24, except specification packages as stated in paragraph (c), and have been in actual operation transporting similar materials prior to October 1, 1987. This provision will expire on January 1, 1999. Any retrofitting of cargo tanks after October 1, 1987 shall be made to meet specification requirements for the type of hazardous material transported in them. This exemption does not apply if at any time after October 1, 1987 the cargo tank is sold or ownership of the cargo tank is otherwise transferred.

(2) The transportation of agricultural product other than a Class 2 material, over local roads between fields of the same farm, is excepted from the requirements of 49 CFR §§100 through 199 when transported by a farmer who is an intrastate private motor carrier.

(3) The transportation of an agricultural product to and from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of 49 CFR §§100 through 199 when:

   (A) It is transported by a farmer who is an intrastate private motor carrier.
   (B) The packaging conforms to the requirements of 49 CFR §173.24 in so far as it does not leak, and the total amount of the agricultural product being transported on a single vehicle does not exceed:
      (i) 16,094 pounds (7,300 kilograms) of ammonium nitrate fertilizer properly classed as Division 5.1, PG III, in a bulk packaging, or
      (ii) 502 gallons (1,900 liters), for liquids or gases, or 5,070 pounds (2,300 kilograms), for solids, of any other agricultural product.
   (C) Each person having any responsibility for transporting the agricultural product or preparing the product for shipment has been instructed in the applicable requirements of 49 CFR §§100 through 199.
   (D) Formulated liquid agricultural products in specification packagings of 58 gallons (220 liters) or less capacity, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or transported for loading aboard an airplane for aerial application.
   (E) Pertaining to nurse tanks of anhydrous ammonia [see 49 CFR §173.315(m)].

(4) Permission to drive a transport vehicle in intrastate commerce containing a hazardous material in an emergency without the proper markings or placards, as provided under Marking and Placarding Motor Vehicles [49 CFR §177.823(a)(2)] shall be obtained
from the following: Department of Public Safety, Troop S, Commercial Vehicle
Enforcement Division, P. O. Box 11415, Oklahoma City, OK 73136-0415, Phone: (405)
521-6104.

(e) **Motor Carrier Identification Report.**

(1) **Applicability.** All motor carriers conducting operations in intrastate commerce
shall file a Motor Carrier Identification Report (Form MCS-150) before commencing
operations, or if already operating, as soon as practical.

(2) **Availability.** The Motor Carrier Identification Report with complete instructions,
is available from:

(A) Department of Public Safety:
   (i) in person: Troop S Headquarters, 220 NE 38th Terrace, Oklahoma
       City
   (ii) by mail: Troop S, P.O. Box 11415, 220 NE 38th Terrace, Oklahoma
       City, OK 73136-0415
   (iii) by telephone: (405) 521-6104

(B) Corporation Commission:
   (i) in person: 2101 N. Lincoln Blvd., Oklahoma City
   (ii) by mail: P.O. Box 52000, Oklahoma City, OK 73152-2000
   (iii) by telephone: (405) 521-2251

(C) Oklahoma Division Office of the Federal Motor Carrier Safety
   Administration:
   (i) in person or by mail: 300 N. Meridian, Suite 106 S., Oklahoma
       City, OK 73107
   (ii) by telephone: (800) 823-5660
   (iii) from the internet: http://www.fmcsa.dot.gov/

(3) **Filing.** The completed Motor Carrier Identification Report shall be filed:

(A) **Intrastate carriers.** For intrastate carriers, the Report must be filed with
   either:
   (i) Department of Public Safety, Commercial Vehicle Enforcement
       Section, 220 200 NE 38th Terrace, P.O. Box 11415, Oklahoma City, OK
       73136-0415, or
   (ii) Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000,
       Oklahoma City, OK 73152-2000.

(B) **Interstate carriers.** For interstate carriers, the Report must be filed at the
   address as indicated on the Motor Carrier Identification Report.

(4) **Motor carrier name.** Only the legal name or single trade name of the motor
   carrier may be used on the Motor Carrier Identification Report.

(5) **Penalties.** A motor carrier who fails to file a Motor Carrier Identification Report
   or who, upon the report, furnishes misleading information or makes false statements is
   subject to the penalties prescribed in 47 O.S., § 230.9.

(6) **Issuance and display of USDOT number.** Upon receipt and processing of the
    Motor Carrier Identification Report, an identification number (USDOT number) will be
    issued to the motor carrier. The motor carrier must display the number on each self-
propelled commercial motor vehicle, as defined in 595:35-1-5, along with the additional information required by 49 C.F.R., Part 390.21. Intrastate USDOT numbers shall be displayed as follows:

(A) the letters "USDOT",
(B) the identification number itself, and
(C) the suffix letters "OK".

(f) Qualification of drivers. The following addition is made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older: A driver in solely intrastate commerce must be at least eighteen (18) years old and be at least twenty-one (21) years old for the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823 or for transporting more than eight (8) passengers for compensation or more than fifteen (15) passengers not for compensation.

(g) Relief from regulations.

(1) Anyone requesting relief from the hours of service regulations must contact the Troop Commander or, if declared to be unavailable by personnel at the Troop headquarters, the duty supervisor at the Troop headquarters for the region in which the emergency exists. This contact must be made and the prior approval obtained before the requesting party may claim relief from the regulations. The requesting party must provide the following information:

(A) the type of emergency,
(B) if applicable, the company on whose behalf the requesting party is seeking the exception,
(C) the region the emergency covers,
(D) the type of work required to restore services in the area, and
(E) the approximate time to restore those services.

(2) The decision to declare an emergency and grant relief from the regulations rests in the sound discretion of the Troop Commander or duty supervisor.

(3) Upon completion of the emergency restoration services, any on duty hours accumulated during the emergency will be counted against the driver's allowable on duty hours and the driver may not drive as long as the amount of accumulated on duty hours exceeds those allowed by 49 CFR §395.3. However, any period of eight (8) consecutive days may end with the beginning of an off-duty period of twenty-four (24) or more successive hours when taken at the end of any emergency restoration service.

(4) Within thirty (30) days after completion of the emergency restoration services, the individual who had been granted relief from the hours of service regulations must submit a report detailing the following:

(A) Nature and extent of the emergency,
(B) Type of services restored during the emergency,
(C) Names and driver license numbers of those drivers for which the exemption was granted, and
(D) Total hours on duty during the declared emergency for each driver.

(5) Said report must be sent to the following address: Department of Public Safety, Troop S, P.O. Box 11415 200 NE 38th Terrace, Oklahoma City, OK 73105-0415.
595:35-1-8. **Administrative penalty and notice of probable violation claim** [AMENDED]

The Commissioner or the Commissioner's representative may assess an administrative penalty against a person or entity that the Commissioner or the representative has determined violated the Act [47 O.S. §§ 230.6 and 230.9].

1. Where the Commissioner or the representative has determined that a minor violation or violations exist which may be readily corrected by the person involved, the Commissioner or the representative may informally notify such person by mail or telephone of the minor violation within a specified period of time. If the person does not correct the violation within the specified time, the Commissioner or the representative may then assess the administrative penalty with the procedure specified. However, whether the violation is one justifying an administrative penalty or a request for compliance is a decision purely within the discretion of the Commissioner or the representative.

2. When the Commissioner or the representative has determined that a violation justifying the imposition of an administrative penalty has taken place, the Department shall send a Notice of Probable Violation claim to the respondent at the respondent's last known address. The Notice of Probable Violation claim shall contain:
   
   (A) the amount of the administrative penalty that the Commissioner or the representative has assessed;
   (B) a statement of the maximum civil penalty for which the respondent may be liable, and
   (C) a description of the manner in which the respondent makes payment of the penalty to the Department.

3. The administrative penalty shall be due and owing twenty-five (25) days after the date the Notice of Probable Violation claim was sent, unless the concerned party requests a hearing as provided in 595:35-1-9.

595:35-1-9. **Hearings** [AMENDED]

(a) In responding to the Notice of Probable Violation Claim, the respondent may submit to the official who issued the notice written explanations, information, or arguments in response to the allegations or the amount of the assessed penalty set forth in the Notice of Probable Violation Claim. The contents of the informal response will be reviewed by the Commissioner's representative who may choose to amend, dismiss, or let the Notice of Probable Violation claim remain as issued. If the Commissioner's representative does not dismiss the administrative penalty in whole, the respondent shall be notified as soon as reasonably possible. The respondent shall then be given either the longer of the twenty-five (25) days still outstanding or at least ten (10) days to pay the penalty. Should a proposed settlement be rejected by the respondent, the amount of the assessed penalty set forth in the Notice of Probable Violation claim shall be reinstated.

(b) Any request for a hearing must be filed by the respondent with the Department of Public Safety, Troop S, P.O. Box 11415 200 NE 38th Terrace, Oklahoma City, OK 73136-0415 73105 within twenty-five (25) days after the Notice of Probable Violation claim was sent.

(c) The request for a hearing must be in writing and must:
   
   (1) state the name and address of the respondent and of the person submitting the request if different from the respondent,
   (2) state which allegations of violations, if any, are admitted,
(3) state generally the issues to be raised by the respondent at the hearing, but issues not raised in the written request are not barred from presentation at the hearing, and
(4) be addressed to the official who issued the notice.

(d) If the hearing is timely requested, such hearing shall be scheduled either at the Department or by telephone.
(e) The Commissioner shall designate the hearing officer. Each party shall be afforded the opportunity to respond and present evidence and argument on all issues involved. Either party may make application for a continuance of the hearing. The granting or denial of such a continuance is within the reasonable discretion of the hearing officer.
(f) The Commissioner or the hearing officer will determine, at his discretion, whether the hearing will be conducted in person or telephonically. Where a telephonic hearing is designated, the procedure specifically applicable to telephonic hearings will be provided to the respondent and the respondent's attorney, if designated, along with the notice letter confirming that the hearing has been scheduled.

(1) Within ten (10) days after receiving notice that the hearing is being held telephonically, the respondent must provide to the Department:
   (A) the name, mailing address, and phone number of the respondent's attorney, if the respondent is being represented by an attorney,
   (B) the name, mailing address(es), and telephone numbers of any witnesses on the respondent's behalf who the respondent desires to have present, and
   (C) the telephone number at which the respondent will be available.

(2) If the respondent, the investigating officer, or a witness desires to have additional exhibits or documentary evidence included in the hearing, the exhibits or evidence must be delivered to the Department's Legal Division at least ten (10) days prior to the hearing. The hearing officer may consider documentary evidence if it is received in time for the hearing. The materials shall be mailed to: Department of Public Safety, Legal Division MCSAP Hearing Officer, P.O. Box 11415, Oklahoma City, OK  73136-0415.

(3) At or near the time scheduled for the hearing, the hearing officer will call all parties to the hearing at the telephone number(s) provided. If the telephone line for any of the parties is busy, or a party fails to answer, the hearing officer will call again approximately three (3) minutes later.
   (A) All parties will be sworn in prior to testimony.
   (B) If the rule of sequestration is invoked pursuant to 12 O.S. §2615, the appropriate witness will be disconnected from the conference call by the hearing officer and reconnected prior to testimony.

(4) When the respondent or the designated attorney fails to provide a telephone number or to answer the telephone number provided to the Department, or the line is busy after the hearing officer has attempted a second call after the three (3) minutes as provided in (3) of this subsection, the hearing officer will not call again and an order of default will be entered. It is the responsibility of the respondent to keep the line(s) open to receive the call from the hearing officer.

(5) Should a necessary witness adverse to the licensee, such as an officer, fail to provide a telephone number or to answer or the line is busy, after the procedure provided in (3) of this subsection has been followed, the case will be set aside.

(g) The hearing officer shall render a decision based upon the law and the evidence presented. Each party shall be promptly notified of the decision either personally or by mail.
(h) Unless the hearing officer timely receives a written request for a rehearing, reopening, or reconsideration of the decision as provided by the Administrative Procedures Act [75 O.S. §317], the hearing officer shall, after twenty (20) days from the entry of the decision, enter an appropriate final order. Each party shall be notified of the final order personally or by mail.

(i) If the respondent fails to appear at the scheduled hearing without good cause, the hearing officer shall record the nonappearance and enter a final order reflecting the effective date of twenty-five (25) days after the date of the Notice of Probable Violation Claim in lieu of the decision and final order as described in (h) of this Section.

(j) If the representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter a final order dismissing the administrative penalty action, with prejudice. The parties shall be notified that the department action has been dismissed with prejudice. However such a dismissal affects only those violations listed in the Notice of Probable Violation Claim and does not affect the same or other violations occurring at another time.

(k) A party aggrieved with the hearing officer's decision may file an appeal with the Commissioner requesting reopening or reconsideration of the case [75 O.S. §317]. Such an appeal must:

1. be in writing,
2. be within twenty (20) days of the entry of the decision by the hearing officer, and
3. state the grounds for the appeal and include all arguments and information pertinent to the grounds for appeal.

(l) Where a timely written request for a rehearing, reopening, or reconsideration of the case is received, the administrative penalty will be suspended until a final order has been entered. Grounds for rehearing are limited to those in the Administrative Procedures Act [75 O.S. §317].

(m) The administrative penalty assessed shall be due immediately upon issuance of the final order. If, within twenty-five (25) days after the issuance of a final order, the concerned party does not comply with the terms of the order by paying any administrative penalty assessed or correcting the violation, or both, if required, or by filing an appeal of the final order, the case may be prosecuted by the Commissioner or the representative for enforcement through the Oklahoma County District Court.

(n) A respondent aggrieved with both the hearing officer's and the Commissioner's decisions may file an appeal with the Oklahoma County District Court.

(o) At any time prior to the Commissioner or the representative bringing an action in Oklahoma County District Court for enforcement of the final order, either the respondent or the Commissioner's representative, whose names appear on the Notice of Probable Violation Claim, may recommend a compromise of the amount of the penalty by submitting an offer for a specific amount to the other party. An offer of compromise shall be submitted to the representative who may, after consultation with the Troop S Commander, accept or reject it.

1. A compromise offer stays the running of any response period then outstanding.
2. Any compromise agreed to by the parties is also subject to approval by the hearing officer. If a compromise is agreed to by the parties and approved by the hearing officer, the respondent will be notified in writing. Upon receipt of payment by the Department, the respondent will be notified in writing that acceptance of the payment is in full satisfaction of the administrative penalty proposed or assessed, and the Department closes the case with prejudice to the respondent.
3. If a compromise cannot be agreed to, the respondent will be notified, either
personally or by mail, and shall be given ten (10) days or the amount of time remaining in
the then outstanding response period, whichever is longer, to respond to whatever action
has been taken by Troop S or any other representative authorized to enforce the
provisions of the Act.

(p) The administrative penalty is not a substitute for compliance and is not intended to
preclude injunctive relief or other non-duplicative remedies, particularly if the Commissioner has
determined an order requiring compliance is necessary under the circumstances. Money
penalties are not fees allowing the concerned party to continue to operate in violation of the Act
or of any rules adopted to carry out the Act. [47 O.S. §230.9(F)]

595:35-1-10. Administrative penalty assessment guidelines [AMENDED]
(a) General. The Act does not recommend or suggest specific penalties for violation of the
Act or any rules adopted to carry out the Act. Instead, the Act lists certain elements which the
Commissioner or the Commissioner's representative may take into account in assessing penalties
and establishes the maximum penalty for categories of violations. These guidelines serve to
ensure the public and the respondent that assessment decisions will be made rationally and
objectively on the merits of each case. [47 O.S. §§ 230.6 and 230.9]

(1) These guidelines are not meant to be used to determine when enforcement action
will be taken, nor are they meant to be a rigid requirement. Instead, they are meant to
assist the Commissioner or the representative in assessing each administrative penalty
based on the seriousness of the underlying offense. For example, the fine for violations
such as stop light violations or horn or other similar equipment failure violations would
not exceed that authorized by statute if adjudged in a court of competent jurisdiction.
However, repeated violations of this nature would evidence a pattern of safety violations
which would fall within one of the categories set forth in (b) of this Section.
(2) If a hearing is necessary, the hearing officer may eventually assess an
administrative penalty which is different than the original administrative penalty imposed
in the Notice of Probable Violation Claim.
(3) Because of the volume of violations, the examples in this section are not all
inclusive; they are only intended to serve as a guide for the types of violation categories.
The Code of Federal Regulations incorporated by reference contains the complete listing
of all violations covered by this Act.

(b) Categories of violations. The Act separates the types of violations into the following
four categories:

(1) Record keeping violations. [47 O.S. §230.9(B)(1)] These are violations of the
administrative requirements of the Act, including failure to make, require, or keep
records, or the falsification of entries in the records required by the Department of
Transportation regulations pertaining to motor carrier safety as adopted and contained in
(A) The Act provides for a penalty not to exceed one hundred dollars
($100.00) for each record keeping offense.
(B) The Act further provides that each day of a violation shall constitute a
separate offense against any respondent, provided that the total penalties for all
offenses relating to any single violation shall not exceed five hundred dollars
($500.00).
(C) Some examples of record keeping violations include:
(i) Failure to properly maintain complete driver qualification files on each driver employed [49 CFR §391.51].
(ii) Record of duty status violations [49 CFR §395.8].
(iii) Failure to keep maintenance and inspection records [49 CFR §396.3].
(iv) Failure to prepare or retain driver's vehicle inspection reports. [49 CFR §396.11].

(2) **Serious pattern of safety violations.** [47 O.S. §230.9(B)(2)] The Act provides for a fine of Two Hundred Dollars ($200.00) for each offense not to exceed One Thousand Dollars ($1,000.00) for each serious pattern of safety violation. The Commissioner or the representative may find a serious pattern of safety violations exists if the respondent has repeatedly violated equipment and operational requirements of the Act, and such violations are of a nature which indicates they are not the result of isolated human error but are of a tolerated pattern which the respondent could have detected and corrected if he or she wanted to meet his or her full safety responsibility to the public. Although any single violation may not by itself have a high probability of causing an accident, the violations taken as a whole may collectively demonstrate the respondent's unwillingness to exercise proper safety supervision or control which will eventually lead to accidents. Examples of some violations which may be included in a serious pattern of safety violations are:

(A) Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed [49 CFR §392.6].
(B) Light violations [49 CFR §393.11].
(C) Failure to cover a battery [49 CFR §393.30].
(D) Failure to protect or support electrical wiring [49 CFR §393.28].
(E) Making detachable wiring connections by twisting together wires [49 CFR §393.32].
(F) Failure to maintain a motor vehicle windshield free of prohibited damage, or using prohibited vision reducing matter upon windshield or windows [49 CFR §393.60].
(G) Failure to mark push out or escape windows [49 CFR §393.63].
(H) Sleeper berth violations [49 CFR §393.76].
(I) Heater violations [49 CFR §393.77].
(J) Failure to maintain a motor vehicle with:
   (i) a defroster [49 CFR §393.79],
   (ii) two rear vision mirrors [49 CFR §393.80].
   (iii) an operative horn [49 CFR §393.81], or
   (iv) an operable speedometer [49 CFR §393.82].
(K) Failure to mark bus emergency exits [49 CFR §393.92].
(L) Violations of the driver's requirements including:
   (i) hours of service violations [49 CFR §395.3], or
   (ii) failure to maintain a log book [49 CFR §395.8].
(M) Inspection violations as per 49 CFR 396.3(A)(2), §396.98.

(3) **Substantial health or safety violations.** [47 O.S. §230.9(B)(3)] The Act provides for a penalty not to exceed One Thousand Dollars ($1,000.00) per violation. This category includes any violation which, if allowed to continue, would result in
accidents, deaths, injuries, and public property damage. Acts which are substantial health or safety violations are of a nature so blatant that no carriers or drivers could have operated vehicles on the public highway without knowing the defects existed, and therefore chose to disregard public safety. Substantial health or safety violations are listed in the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria and include but are not limited to the following:

(A) Using a driver lacking training or experience to determine if the cargo or baggage has been properly located or secured [49 CFR §391.11(b)(4) or (5)], or a physically unqualified or disqualified driver [49 CFR §391.11(b)(6) and (9)].

(B) Brake violations:
   (i) failure to maintain motor vehicle with adequate parking brake [49 CFR §393.41],
   (ii) brake hose or tubing violation [49 CFR §393.45; §393.46],
   (iii) failure to maintain motor vehicle with operative brakes [49 CFR §393.48],
   (iv) failure to maintain motor vehicle with adequate brake linings [49 CFR §393.47], or
   (v) failure to securely attach air or vacuum reservoir to motor vehicle [49 CFR §393.50].

(C) Fuel tank violations: Failure to securely attach fuel tank to motor vehicle [49 CFR §393.65].

(D) Violations and defects of lower and upper fifth wheels and certain safety devices [49 CFR §393.70].

(E) Violations of coupling devices and tow away methods [49 CFR §393.71].

(F) Tire violations [49 CFR §393.75].

(G) Exhaust system violations [49 CFR §393.83].

(H) Failure to load or equip vehicle so as to prevent shifting or falling of cargo [49 CFR §393.100].

(I) Failure to maintain vehicle with a header board or similar structure to prevent load shifting [49 CFR §393.106].

(J) Failure to obey any hazardous material regulation [49 CFR §397.2].

(K) Violations which would normally fall within the "serious pattern" category but which may be of such a severe nature that they constitute a substantial health or safety violation.

(4) **Gross negligence or reckless disregard.** [47 O.S. §230.9(D)] The Act provides that, except for record keeping violations, an employee shall not be liable for a violation of the Act unless the Commissioner determines that such actions of the employee constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for an administrative penalty not to exceed One Thousand Dollars ($1,000.00). Gross negligence exists where the employee acts in such a way which indicates complete disregard or indifference to the safety of other people's property or welfare.

(5) **Certain misuses of vehicles or containers.** [47 O.S. §230.6] The Act provides for a civil penalty assessed to an employee of not less that One Thousand Dollars ($1,000.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00). The Act also provides for a civil penalty assessed to an employer of not less that Two Thousand
Five Hundred Dollars ($2,500.00) nor more than Ten Thousand Dollars ($10,000.00).

Some examples of certain misuses of vehicles or containers are:

(A) Operating, or requiring or permitting the operation of, a motor vehicle or container declared out of service before all required corrections are made [49 CFR § 396.9 (c)(2)].

(B) For a driver who is declared out of service, operating, or requiring or permitting the driver to operate, a motor vehicle before prescribed off duty or sleeper berth time has been accumulated [49 CFR §395.13(c)].

(c) **Factors.** The Act requires that the Commissioner or the representative take into account the following factors [47 O.S. §230.9(E)]:

1. **Nature of the violation.** A consideration of the appropriate category of the violation.
2. **Circumstances of the violation.** A broad consideration which includes both aggravating as well as mitigating factors known to the Commissioner or the representative at the time of the assessment.
3. **Extent of the violation.** Requires the Commissioner or the representative to consider the magnitude, scope, frequency, and range of a violation. This is a major factor where there are numerous violations involving a large number of vehicles or employees of the respondent. It indicates that the respondent has a greater magnitude, frequency, and range of violations.
4. **Gravity of the violation.** An evaluation of the seriousness of the violation. The seriousness is to be measured by the likelihood of the occurrence of the event, and the severity of the event if it occurred or were to occur. The gravity is not to be measured abstractly, but on a case-by-case basis taking into account all relevant factors.
5. **Culpability.** The quality of the respondent's awareness of his or her actions, and the degree to which he or she was responsible for averting such violations. In determining the culpability of a respondent, ignorance is no excuse. Instead, culpability will be determined on the basis of whether the respondent knew or should have known of the violation, and to what extent the respondent had control of the violation.
6. **History of prior offenses.** The Commissioner or representative will consider the respondent's performance record in terms of prior Notices of Probable Violation Claim, prior warnings, citations, and prior compliance efforts of the respondent. Both similar violations and different types of violations in the past should be taken into account, but the similar past violations should be given more weight.
7. **Ability to pay and ability to do business.** The Commissioner or the representative may consider the respondent's inability to pay or whether the payment of such a penalty would affect the respondent's ability to do business.
8. **Such other matters as justice and public safety may require.** These are other matters, not specifically covered by one of the other factors, which can be either aggravating or mitigating factors and should be taken into account by the Commissioner or the representative in setting the penalty if, in the interests of justice and public safety, a reduction or an increase in the amount of the assessment is required in order to achieve the purposes of the Act. Other matters might be either positive or negative, such as: cooperation or lack of cooperation; general attitude towards compliance; equities; institution or revision of a safety director or safety consultant; comprehensiveness of corrective action, such as whether the action is focused narrowly to the specific violation.
or broadly to the general area of concern; compliance or noncompliance by the date set in
the notice of claim; speed of compliance; and other matters. These matters, both negative
and positive, are to be considered together, and they may cancel out one another.

595:35-1-11. Intrastate Compliance Reviews [NEW]
(a) Intrastate Safety Rating System.
   (1) The department may issue a safety rating to a motor carrier subject to the provisions
       of this administrative regulation if all of the commercial motor vehicles operated by the
       motor carrier are operated exclusively in Oklahoma.
   (2) The department shall use the safety standards and rating criteria in 49 C.F.R. 385 in
       issuing a safety rating.
   (3) A motor carrier may request the department to conduct an administrative review if
       it believes the department has committed an error in assigning its proposed or final safety
       rating.
       (i) The request and administrative review shall comply with the procedures in
           49 C.F.R. 385.15 except that the request shall be submitted to: OHP Troop S,
           Compliance Review, 200 NE 38th Terrace, Oklahoma City, OK 73105
   (4) A motor carrier that has taken action to correct deficiencies may request the
       department to change its proposed or final safety rating at any time.
       (i) The request and determination shall comply with the procedures in 49 C.F.R.
           385.17 except that the request shall be submitted to: OHP Troop S, Compliance
           Review, 200 NE 38th Terrace, Oklahoma City, OK 73105
   (5) Safety Fitness Information.
       (i) Final ratings shall be made available to other state and federal agencies in
           writing, telephonically, or by remote computer access.
       (ii) The final safety rating assigned to a motor carrier shall be made available to
           the public pursuant to the Oklahoma Open Records Act [Title 51 O.S. Section 24A.1
           et. al.] Any person requesting the rating shall provide the department with the motor
           carrier's name, principal office address, and if known, the Oklahoma DOT number.
       (iii) Requests shall be addressed to: OHP Troop S, Compliance Review, 200 NE
           38th Terrace, Oklahoma City, OK 73105
(b) Penalties.
   (1) For violations by motor carriers in intrastate commerce resulting from an
       investigation, the department shall apply the system of administrative penalties and
       procedures in 49 U.S.C.521(b) and the U.S. Department of Transportation Uniform Fine
       Assessment program, subject to the provisions of this administrative regulation.
   (2) A respondent shall be liable to the department for any civil penalty assessed. The
       administrative penalty shall be due and owing twenty-five (25) days after the date the Notice
       of Claim was sent, unless the concerned party requests a hearing as provided in 595:35-1-9.
   (3) A respondent who does not pay the penalty or fails to arrange and abide by an
       acceptable payment plan for the penalty shall not operate in intrastate commerce beginning
       on the 91st day after the specified payment date.
(c) Appeals Process.
   (1) A respondent may ask for review of the assessed penalty by the Department. The
       request shall be made in accordance with AOC 595:35-1-9.