

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

Before Commissioners:

Mark Sievers, Chairman
Ward Loyd
Thomas E. Wright


JUN 14 2012

In the Matter of the State Corporation)
Commission of the State of Kansas Approving)
Uniform Penalty Assessments for the Regulation)
of Motor Carriers and Persons Operating in)
Kansas Who Fail to Obey Any Order, Decision)
or Regulation of the Commission)

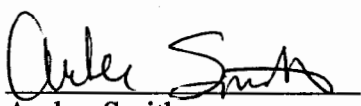
Docket No. 12-TRAM-825-MIS

The above-captioned matter comes on for consideration before the State Corporation Commission of the State of Kansas (Commission). Being duly advised in the premises, the Commission, on June 14, 2012, voted to approve the attached Order, thereby approving the Transportation Division's Uniform Penalty Assessment Table.

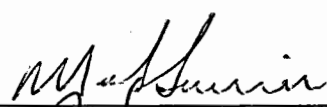
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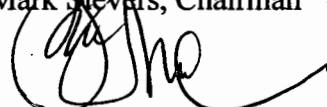

Patrice Petersen-Klein
Executive Director

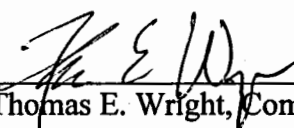
Approved:


Amber Smith
Litigation Counsel

For the Commission:


Mark Sievers, Chairman


Ward Loyd, Commissioner


Thomas E. Wright, Commissioner

AS

**THE STATE CORPORATION COMMISSION
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In the Matter of the State Corporation)
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Uniform Penalty Assessments for the Regulation)
of Motor Carriers and Persons Operating in) Docket No. 12-TRAM-825-MIS
Kansas Who Fail to Obey Any Order, Decision)
or Regulation of the Commission.)

ORDER DESIGNATING GUIDANCE DOCUMENT
AND APPROVING STAFF'S USE OF THE TRANSPORTATION DIVISION'S
UNIFORM PENALTY ASSESSMENT TABLE

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). The Commission, being duly advised in the premises, and after having examined its files and records, finds and concludes as follows:

I. JURISDICTION

1. Pursuant to K.S.A. 2011 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. 2011 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. 2011 Supp. 66-1,142b, the Commission may 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. Also pursuant to K.S.A. 2011 Supp. 66-1,142b, the Commission is authorized to assess a civil penalty of not less than \$100 and not more than \$1,000 for negligent violations of such motor carrier statutes, regulations or Commission orders, and not more than \$5,000 for intentional violations of such motor carrier statutes, regulations or Commission orders.

4. Pursuant to K.S.A. 66-1,142c, the Commission has the authority to compromise the amount of any civil penalty.

5. Pursuant to K.S.A. 2011 Supp. 77-438, the Commission may issue a guidance document without following the procedures for the adoption of administrative rules and regulations. Such a guidance document may contain binding instructions to state agency staff members; however, a guidance document issued pursuant to K.S.A. 2011 Supp. 77-438 lacks the force of law.

III. STAFF'S STATEMENT OF FACTS

6. It is the goal of the Transportation Division and of the Commission to improve the safety of motor carriers in Kansas, to the benefit of the motor carrier and the motoring public. Civil penalties assessed for the violation of motor carrier statutes, regulations or Commission orders are focused on improving the safety of motor carrier operations.

7. The Transportation Division has compiled a schedule of fines, relevant to violations of Kansas Motor Carrier Safety Statutes and Regulations, which are incremental in a way designed to have a fair and appropriate financial impact on the motor carrier industry. In compiling the schedule of fines, the Transportation Division has considered the appropriateness of the penalty to the size of the business and the gravity of the violation. The schedule of fines is titled "Uniform Penalty Assessment Table," (Penalty Assessment Table), and a copy is attached hereto and incorporated by reference.

8. The Penalty Assessment Table takes into consideration Commission practices with respect to assessing penalties for violations of Kansas Motor Carrier Safety Statutes and Regulations, the safety impact of each violation, size of the motor carrier's business/operations and, where relevant, number of drivers in violation and/or number of violations discovered.

9. On May 7, 2012, Staff prepared a Report and Recommendation, recommending Commission approval of the Transportation Division's use of the Penalty Assessment Table. The Report and Recommendation is attached and hereby incorporated by reference.

10. The Penalty Assessment Table is intended for the Transportation Division's use in the administration of the laws with which is charged, to facilitate and promote consistency and uniformity in the penalty assessment recommendations made and submitted to the Commission, and provide assurance to motor carriers and the public of the foregoing.

11. Nothing in the Penalty Assessment Table is intended to control the conduct of the public; it shall function as a reference and guidance tool for the Transportation Division. Penalty assessments made and recommended by the Transportation Division are not binding on the Commission, and the Commission retains and shall have full authority and discretion regarding any penalty assessment in any final order made and issued.

III. STAFF'S RECOMMENDATIONS

12. Based upon the available facts, Staff recommends the Commission designate the attached Penalty Assessment Table as a guidance document and approve the Penalty Assessment Table for use by Staff in recommending penalties for violations of Kansas Motor Carrier Safety Statutes and Regulations.

13. Additionally, Staff recommends the Penalty Assessment Table be posted to the Commission website in furtherance of agency transparency.

14. Finally, Staff recommends that the Penalty Assessment Table be reviewed once annually taking into consideration potential changes to motor carrier regulations and the motor carrier industry, on or before July 1 of each year.

V. CONCLUSIONS OF LAW

15. The Commission finds it has the authority to designate guidance documents pursuant to K.S.A. 2011 Supp. 77-438.

16. The Commission finds it has jurisdiction over the assessment of civil penalties for the violation of any statute, regulation or Commission order relevant to motor carrier laws.

17. The Commission finds that it retains the authority to exercise discretion in compromising civil penalties pursuant to K.S.A. 66-1,142c.

18. The Commission finds the Penalty Assessment Table to be reasonable and appropriately tailored to accomplish the Commission's goal of improving the safety of motor carriers in Kansas while having a fair impact on the motor carrier industry.

THE COMMISSION THEREFORE ORDERS THAT:

A. The Transportation Division's Uniform Penalty Assessment Table is hereby designated as a guidance document and approved for use by Staff. Staff shall use the Penalty Assessment Table in recommending penalties for violations of Kansas Motor Carrier Safety Statutes and Regulations.

B. The Transportation Division's Uniform Penalty Assessment Table shall be posted to the Commission Website.

C. The Transportation Division's Uniform Penalty Assessment Table shall be reviewed annually taking into consideration potential changes to motor carrier regulations and the motor carrier industry, no later than July 1 of each year.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn; Loyd, Com.; Wright, Com.

Dated: JUN 14 2012



Patrice Petersen-Klein
Executive Director

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KCC Transportation Division Uniform Penalty Assessment Table

Reg/Statute	Civil Penalty for 1 - 5 vehicles	Civil Penalty for 6 - 20 vehicles	Civil Penalty for 21 - 100 vehicles	Civil Penalty for 101 - 1000 vehicles	Civil Penalty for more than 1000 vehicles	Enhanced or repeat civil penalty violations double	Repeat enhanced civil penalty violations double or maximum
Part 367 "Standard For Registration With States" Violations							
Part 367.20 UCR Registration	\$300.00	\$500.00	\$700.00	\$900.00	\$1,000.00		

Attest: _____

Patrice Petersen-Klein
Executive Director

06/14/2012

KCC Transportation Division Uniform Penalty Assessment Table

Reg/Statute	Civil Penalty 1 Driver	Civil Penalty 2 - 5 Driver's	Civil Penalty 6 or more Driver's	Enhanced civil penalty for 1 Driver	Enhanced civil penalty for 2 - 5 Driver's	Enhanced civil penalty for 6 or more Driver's	Repeat enhanced civil penalty violations are maximum fines
Part 382 "Controlled Substances And Alcohol Use And Testing" Violations							
Part 382.115 Implement Testing Programs	\$500.00	\$750.00	\$1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	
Part 382.215 Controlled Substance Positive Test	—	—	—	\$2,000.00	\$3,500.00	\$5,000.00	
Part 382.301 Pre- Employment Test	\$500.00	\$750.00	\$1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	
Part 382.303 Post Accident Testing	\$500.00	\$750.00	\$1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	
Part 382.305 Random Testing	\$500.00	\$750.00	\$1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	
Part 382.401 Retention of Records	\$200.00	\$300.00	\$500.00				
Part 382.601 Drug/Alcohol Policy	\$100.00	\$300.00	\$500.00				
Part 382.603 Supervisor Training	—	\$100.00	—	—	\$200.00	—	

Attest:


Patrice Petersen-Klein
Executive Director

06/14/2012

KCC Transportation Division Uniform Penalty Assessment Table

Reg/Statute	Civil Penalty for first time violation	Enhanced civil penalty for repeat violation	Repeat enhanced civil penalty violations double
Part 385 "Safety Fitness Procedures" Violations			
Part 385.403 HM Safety Permit	\$500.00	\$1,000.00	

Attest:



Patrice Petersen-Klein
Executive Director

06/14/2012

KCC Transportation Division Uniform Penalty Assessment Table

Reg/Statute	Civil Penalty 1 - 15 violations	Civil Penalty 16 - 30 violations	Civil Penalty 31 or more violations	Enhanced civil penalty for 1 - 15 violations	Enhanced civil penalty for 16 - 30 violations	Enhanced civil penalty for 31 or more violations	Repeat enhanced civil penalty violations double or maximum
Part 390 "General Motor Carrier Safety Regulation" Violations							
Part 390.13 Aiding & Abetting	—	—	—	\$2,000.00	\$2,500.00	\$3,000.00	
Part 390.23 Relief From Regulation Emergency	\$500.00	\$750.00	\$1,000.00	\$2,000.00	\$2,500.00	\$3,000.00	
Part 390.31 Copies of Records or Documents	\$200.00	\$300.00	\$500.00	\$400.00	\$600.00	\$1,000.00	
Part 390.33 Using a CMV For Purposes Other Than Defined	\$500.00	\$750.00	\$1,000.00	\$2,000.00	\$2,500.00	\$3,000.00	
Part 390.35 Fraudulent Certificates, Reports & Records	—	—	—	\$2,000.00	\$2,500.00	\$3,000.00	

Attest:


 Patrice Petersen-Klein
 Executive Director

06/14/2012

KCC Transportation Division

Uniform Penalty Assessment Table

Reg/Statute	Civil Penalty 1 violation	Civil Penalty 2 - 10 violations	Civil Penalty 11 or more violations	Enhanced civil penalty for 1 violation	Enhanced civil penalty for 2 - 10 violations	Enhanced civil penalty for 11 or more violations	Repeat enhanced civil penalty violations double or maximum
Part 391 "Qualification Of Drivers" Violations							
Part 391.11 Qualification of Drivers	\$250.00	\$500.00	\$1,000.00	\$500.00	\$1,000.00	\$2,000.00	
Part 391.15 Disqualified Drivers	\$250.00			\$1,000.00			
Part 391.25 MVR's	\$100.00	\$300.00	\$500.00	\$200.00	\$600.00	\$1,000.00	
Part 391.41 Physical qualifications	\$250.00	\$750.00	\$1,000.00	\$500.00	\$1,500.00	\$2,000.00	



Attest: _____

Patrice Petersen-Klein
Executive Director

06/14/2012

KCC Transportation Division Uniform Penalty Assessment Table

Reg/Statute	Civil Penalty 1 - 5 violations	Civil Penalty 6 - 15 violations	Civil Penalty 16 or more violations	Enhanced civil penalty for 1 - 5 violations	Enhanced civil penalty for 6 - 15 violations	Enhanced civil penalty for 16 or more violations	Repeat enhanced civil penalty violations double or maximum
Part 392 "Driving Of Commercial Motor Vehicle" Violations							
Part 392.2 K.S.A 8-1901 Size & Weight	\$500.00	\$750.00	\$1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	
Part 392.2 K.S.A 8-2,125 CDL	\$500.00	—	—	\$1,000.00	—	—	
Part 392.2 K.S.A 66-1,111 Public Motor Carrier K.S.A. 66-1330 Wrecker Authority K.S.A. 66-1,112g Private Authority	\$500.00	—	—	\$1,000.00	—	—	

Attest: 

 Patrice Petersen-Klein
 Executive Director

06/14/2012

KCC Transportation Division Uniform Penalty Assessment Table

Reg/Statute	Civil Penalty 1 - 15 violations	Civil Penalty 16 - 30 violations	Civil Penalty 31 or more violations	Enhanced civil penalty for 1 - 15 violations	Enhanced civil penalty for 16 - 30 violations	Enhanced civil penalty for 31 or more violations	Repeat enhanced civil penalty violations maximum fine
Part 395 "Hours Of Service Of Drivers" Violations							
Part 395.3 Maximum Driving Time (Property)	\$500.00	\$750.00	1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	
Part 395.5 Maximum Driving Time (Passenger)	\$500.00	\$750.00	1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	
Part 395.8 Record of Duty Status	\$500.00	\$750.00	1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	
Part 395.8(e) False Reports	—	—	—	\$2,000.00	\$2,500.00	\$3,000.00	
Part 395.13 Drivers Declared OOS	\$500.00	\$750.00	1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	

Attest: 

Patrice Petersen-Klein
Executive Director

06/14/2012

KCC Transportation Division Uniform Penalty Assessment Table

Reg/Statute	Civil Penalty 1 - 15 violations	Civil Penalty 16 - 30 violations	Civil Penalty 31 or more violations	Enhanced civil penalty for 1 - 15 violations	Enhanced civil penalty for 16 - 30 violations	Enhanced civil penalty for 31 or more violations	Repeat enhanced civil penalty violations double or maximum
Part 396 "Inspection Repair And Maintenance" Violations							
Part 396.3 Inspection Repair & Maintenance	\$500.00	\$750.00	1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	
Part 396.7 Unsafe Operations Forbidden	\$500.00	\$750.00	1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	
Part 396.9 Motor Vehicles Declared OOS	—	—	—	\$3,000.00			
Part 396.11 Driver Vehicle Inspection Report	\$200.00	\$300.00	\$500.00	\$400.00	\$600.00	\$1,000.00	
Part 396.17 Periodic Inspection	\$500.00	\$750.00	1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	

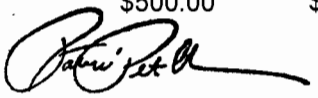
Attest: 

 Patrice Petersen-Klein
 Executive Director

06/14/2012

KCC Transportation Division Uniform Penalty Assessment Table

Reg/Statute	Civil Penalty 1 - 5 violations	Civil Penalty 6 - 30 violations	Civil Penalty 31 or more violations	Enhanced civil penalty for 1 - 5 violations	Enhanced civil penalty for 6 - 30 violations	Enhanced civil penalty for 31 or more violations	Repeat enhanced civil penalty violations double or maximum
K.A.R. 82-4-20 "Transportation Of Hazardous Materials By Motor Vehicle" Violations							
Part 107.601 HM Registration	\$500.00	—	—	\$2,000.00	—	—	
Part 172.200 Shipping Papers	\$200.00	\$300.00	\$500.00	\$400.00	\$600.00	\$1,000.00	
Part 172.500 Placarding	\$200.00	\$300.00	\$500.00	\$400.00	\$600.00	\$1,000.00	
Part 172.600 Emergency Response Information	\$300.00	—	—	\$600.00	—	—	
Part 172.700 HM Training	\$500.00	\$750.00	1,000.00	\$2,000.00	\$2,500.00	\$3,000.00	
Part 172.800 Security Plans	\$500.00	—	—	\$1,000.00	—	—	
Part 180.401 Qualification & Maintenance of Cargo Tanks	\$500.00	\$750.00	\$1,000.00	\$1,000.00	\$1,500.00	\$2,000.00	



Attest: _____
Patrice Petersen-Klein
Executive Director

06/14/2012

Mark Sievers, Chairman
Ward Loyd, Commissioner
Thomas E. Wright, Commissioner

Sam Brownback, Governor

**REPORT AND RECOMMENDATION
TRANSPORTATION DIVISION**

STATE CORPORATION
COMMISSION

MAY 07 2012

PATRICE PETERSEN-KLEIN
EXECUTIVE DIRECTOR

TO: Chairman Mark Sievers
Commissioner Ward Loyd
Commissioner Thomas E. Wright

FROM: Mike Hoeme, Director of Transportation

DATE: May 7, 2012

DATE SUBMITTED TO EXECUTIVE DIRECTOR: May 7, 2012

DATE SUBMITTED TO LEGAL: μ 5-8-12

DATE SUBMITTED TO COMMISSIONERS: 6-8-12

SUBJECT: Adoption of the Transportation Division Fine Schedule.

EXECUTIVE SUMMARY:

The Transportation Division has compiled a schedule of fines, pursuant to K.S.A. 2011 Supp. 66-1,142b, relevant to violations of Kansas Motor Carrier Safety Statutes and Regulations. These fines are tailored to reflect the severity of the safety concerns of each violation and are crafted to address the size of the company to reduce the burden on small business in Kansas. The Division seeks formal approval of the fine schedule by the Commission, and intends to present this Report and Recommendation at open meeting on May 23, 2012.

BACKGROUND:

K.S.A. 2011 Supp. 66-1,142b gives the Commission the authority to assess civil penalties for the violation of any statute, regulation or commission order relevant to motor carrier laws. Subsection (a) states any person violating such motor carrier statutes, regulations or commission

orders shall be subject to a civil penalty of not less than \$100 and not more than \$1,000 for negligent violations and not more than \$5,000 for intentional violations.

To date, the practices and procedures of recommending fines for motor carrier violations has remained consistent, however no formal fine schedule has been established and adopted by the Commission.

ANALYSIS:

The fine schedule is broken down by K.A.R. section and corresponding C.F.R. Part. The attached penalty matrix sets forth fine amounts taking into consideration factors such as company size/number of drivers and number of violations. The fines are incremental in a way designed to have a fair and appropriate impact on the motor carrier industry.

- UCR fees, as set forth in 49 C.F.R. 367.30, are required to be paid by interstate motor carriers pursuant to K.A.R. 82-4-30a. This penalty has been scaled in such a way that the fine increases as the number of vehicles in violation increases.
- 49 C.F.R. Part 382, as adopted by K.A.R. 82-4-3c, deals with controlled substances and alcohol use and testing. Because the threat of drug/alcohol abuse is a severe safety concern, many of these fines begin at \$500. All of the fines in this category are broken out by the numbers of drivers within the company. This structure reduces the severity of a single violation by owner/operators.
- 49 C.F.R. Part 385, as adopted by K.A.R. 82-4-3d, deals with safety and fitness procedures. The only violation in this category relates to Haz-Mat Safety Permits. This is an area directly related to the safety of motor carriers as well as the motoring public, therefore the fine is a flat, per-carrier violation and it is consistent across all motor carriers, regardless of size.
- 49 C.F.R. Part 390, as adopted by K.A.R. 82-4-3f, deals with general motor carrier safety regulations, and again these violations directly impact the safety of the motor carrier and motoring public. Fines for violations of this part are broken out by number of violations.

- 49 C.F.R. Part 391, as adopted by K.A.R. 82-4-3g, deals with driver qualifications. This area is still critical to safe motor carrier operations, however the impact on safety is somewhat less direct therefore these fine begin at a lower amount than the general motor carrier safety regulations, and are adjusted upward as the number of drivers in violation increases.
- 49 C.F.R. Part 392, as adopted by K.A.R. 82-4-3h, deals with driving a commercial motor vehicle and fines for violations of this part are broken out by number of violations. Violations of this part directly affect highway wear and tear, and fine amounts reflect this consideration.
- 49 C.F.R. Part 395, as adopted by K.A.R. 82-4-3a, deals with hours of service and fines for violations of this part are broken out by number of violations. Violations of this part directly affect the safety of the motoring public, and fine amounts reflect this consideration.
- 49 C.F.R. Part 396, as adopted by K.A.R. 82-4-3j, deals with inspection, repair and maintenance of vehicles. Violations of this part directly affect the safety of the motoring public, and fine amounts reflect this consideration. Violations of this part are broken out by number of violations.
- 49 C.F.R. Parts 100 through 185, as adopted by K.A.R. 82-4-20, deal with transportation of hazardous material, and fines for violations of these parts and regulation are broken out by number of violations. Violations of this part are a serious concern for the safety of the motoring public, and fine amounts reflect this consideration.

RECOMMENDATION:

The Transportation Division recommends the attached fine schedule be adopted, and posted to the Commission website. The schedule shall be reviewed once annually on or before July 1 of each year. The Compliance Division will calendar this review in its database.

cc: Patrice Petersen-Klein, Executive Director
Jackie Montfoor-Paige, Director of Administration and Finance
Craig Paschang, Compliance Counsel