**TITLE 595. DEPARTMENT OF PUBLIC SAFETY**

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

**595:35-1-3. General**

(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. ~~[~~*See* 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~~, 200 NE 38th Terrace, Oklahoma City, Oklahoma 73105, Phone: (405) 521-6060~~ through the contact information found on the Troop S website: https://www.ok.gov/ohpcmve/.

**595:35-1-4. Adoption by reference**

 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)]~~as specifically set forth below. ~~Information relative to this adoption is available through various sources, such as the~~These regulations may be found on the Federal Motor Carrier Safety Administration website, https://www.fmcsa.dot.gov/regulations ~~and the Labelmaster publication, "Federal Motor Carrier Safety Regulations."~~, and print copies of these regulations are commercially available. ~~Copies of this publication are available by contacting the Oklahoma Trucking Association at (405) 525-9488. Those regulations pertaining to motor carrier safety and hazardous materials transportation adopted by reference under this Section are:~~ Each of the following regulations, found in Title 49 of the Code of Federal Regulations, are adopted by reference and made enforceable pursuant to 47 O.S. § 230.4(2).

(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.]~~

(4) Part 172 Hazardous Materials Tables and Hazardous Material Communication Regulations and Emergency Response Information Requirements. ~~[49 CFR § 172.1 et seq.]~~

(5) Part 173 Shippers-General Requirements for Shipments and ~~Packagings~~ Packaging's. ~~[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~~ Packaging's. ~~[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.]~~

(12) Part 386 Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings. ~~[49 CFR § 386.1 et seq.]~~

(13) Part 380 Special Training Requirements.

~~(13)~~(14) Part 390 Federal Motor Carrier Safety Regulations: General. ~~[49 CFR § 390.1 et seq.]~~

~~(14)~~(15) Part 391 Qualifications of Drivers. ~~[49 CFR § 391.1 et seq.]~~

~~(15)~~(16) Part 392 Driving of Motor Vehicles. ~~[49 CFR § 392.1 et seq.]~~

~~(16)~~(17) Part 393 Parts and Accessories Necessary for Safe Operation. ~~[49 CFR § 393.1 et seq.]~~

~~(17)~~(18) Part 395 Hours of Service of Drivers. ~~[49 CFR § 395.1 et seq.]~~

~~(18)~~(19) Part 396 Inspection, Repair, and Maintenance. ~~[49 CFR § 396.1 et seq.]~~

~~(19)~~(20) Part 397 Transportation of Hazardous Materials; Driving and Parking Rules. ~~[49 CFR § 397.1 et seq.]~~

**595:35-1-8. Administrative penalty and notice of claim**

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. ~~[~~*See* 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 ~~claim~~Claim to the ~~respondent~~Respondent at the ~~respondent's~~Respondent’s last known address. The Notice of ~~claim~~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~~Respondent may be liable, and

(C) a description of the manner in which the ~~respondent~~Respondent makes payment of the penalty to the Department,

(3) Pursuant to 47 O.S. § 2-116, the giving of notice by mail is complete upon the expiration of ten (10) days after deposit of said notice in the United States mail in an envelope with first class postage prepaid, addressed to such person at the address as shown by the records of the Department. The administrative penalty shall be due and owing within twenty-five (25) days ~~after~~of the date the Notice of ~~claim~~Claim was ~~sent~~mailed, ~~unless the concerned party requests a hearing as provided in 595:35-1-9~~which shall include the ten (10) days specified by 47 O.S. § 2-116. The payment deadline shall be stayed if the Respondent timely requests a hearing as provided in 595:35-1-9.

**595:35-1-9. Hearings**

~~(a) In responding to the Notice of 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 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 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 Claim shall be reinstated.~~

~~(b) Any request for a hearing must be filed by the respondent with the Department of Public Safety, Troop S, 200 NE 38th Terrace, Oklahoma City, OK 73105 within twenty-five (25) days after the Notice of 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, Troop S MCSAP Hearing Officer, 200 NE 38th Terrace, Oklahoma City, OK 73105.~~

~~(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 proposed order based upon the law and the evidence presented. Each party shall be notified of the proposed order either personally or by mail.~~

~~(h) The proposed order shall become the final order twenty (20) days from the date of entry.~~

~~(i) By written stipulation the respondent my waive compliance with 75 O.S. §311, in accordance with 75 O.S.§311. If not waived the respondent may make written exceptions to the proposed order requesting the opportunity to present briefs and oral argument to the Commissioner. Such a request must:~~

~~(1) be in writing, and~~

~~(2) be received within twenty (20) days of the entry of the proposed order.~~

~~(j) 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 Claim in lieu of the decision and final order as described in (h) of this Section.~~

~~(k) 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 Claim and does not affect the same or other violations occurring at another time.~~

~~(l) A party aggrieved with the final order may file an appeal with the Commissioner requesting a rehearing, reopening, or reconsideration of the case in accordance with 75 O.S. §317. Such an appeal must:~~

~~(1) be in writing,~~

~~(2) be within ten (10) days of the entry of the final order, and~~

~~(3) state the grounds for the appeal and include all arguments and information pertinent to the grounds for appeal.~~

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

~~(n) 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 the case may be prosecuted by the Commissioner or the representative for enforcement through the Oklahoma County District Court.~~

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

~~(p) 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 appears on the Notice of 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.~~

~~(q) 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)]~~

(a) Any person assessed an administrative penalty pursuant to 47 O.S. §§ 230.6, 230.9, may:

(1) Remit payment in full of the assessed administrative penalty specified on the Notice of Claim, or

(2) Contact Troop S to inquire about the availability of a settlement, or

(3) Admit the finding of violation and request a hearing to challenge only the amount of the administrative penalty, or

(4) Request a hearing to challenge the finding of violation and the assessment of penalty.

(b) If the Respondent remits payment in full of the assessed administrative penalty specified on the Notice of Claim, such payment shall constitute full satisfaction of the administrative penalty, and the Department shall close the case with prejudice to the Respondent. The payment in full shall constitute a binding waiver and forfeiture of a right to hearing. If Respondent remits payment in full after having requested a hearing, the Department shall cancel any scheduled hearing and notify Respondent that the hearing has been canceled and the case has been closed.

(c) The Department has authority, in its sole discretion, to compromise, negotiate a settlement, or agree to a payment plan for any Notice of Claim.

(d)     Pursuant to 47 O.S. § 2-116, the giving of notice by mail is complete upon the expiration of ten (10) days after deposit of said notice in the United States mail in an envelope with first class postage prepaid, addressed to such person at the address as shown by the records of the Department. If a Respondent elects to request a hearing, the request for hearing must be addressed to the Troop S Administrative Hearing Officer, and must be received within twenty-five (25) days of the date the Notice of Claim was mailed, which shall include the ten (10) days specified by 47 O.S. § 2-116. A hearing request may be submitted online, by mail at the address reflected on the Troop S website, or via hand delivery at the address reflected on the Troop S website. *See* https://www.ok.gov/ohpcmve/.

(e)     The request for hearing must be submitted through the online form or in writing and must:

(1)    state

(A) the name, address, phone number and email address of the Respondent,

(B) if the Respondent will be represented by an attorney, the name, address, phone

number and email address of the attorney,

(C) the commercial vehicle examination report number, and

(D) the DOT Number;

(2) state whether the Respondent

(A) intends to challenge the finding of violation and the assessment of penalty, or

(B) admits the finding of violation and intends only to challenge the amount of the

administrative penalty assessed.

(f)    All hearings shall be conducted by a designated hearing officer (which may include the Commissioner) in compliance with 75 O.S. §§ 310, 315. 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.

(g)    If a hearing is timely requested, such hearing shall be scheduled, in the discretion of the hearing officer, either at the Department for in-person hearing or for telephonic hearing. 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 a notice of hearing confirming that the hearing has been scheduled.

(1) Within fifteen (15) days, which shall include the ten (10) days specified by 47 O.S. § 2-

116, 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 number(s) of any witness(es) 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 wishes to present exhibits or

documentary evidence during the hearing, the exhibits or evidence must be received by the

Department, at least ten (10) days prior to the hearing, and must be submitted in accordance

with the instructions provided by Troop S in the notice of hearing.

(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

paragraph (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 Respondent, such as an officer, fail to

provide a telephone number or to answer, or if the line is busy, after the procedure provided

in (3) of this subsection has been followed, the case will be set aside.

(h)    The hearing officer shall render a proposed order, in compliance with 75 O.S. § 311, based upon the law and the evidence presented. The proposed order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The proposed order shall be served on the parties either personally or by certified mail, return receipt requested.

(1) Within twenty (20) days of the date the proposed order was served on the parties,

which shall include the ten (10) days specified by 47 O.S. § 2-116, any party may object to

the proposed order by submitting written exceptions and briefs to the Commissioner. The

objecting party may also include a request to present oral argument to the Commissioner.

Any such objections shall be submitted through the address reflected on the Troop S website

and addressed to the Troop S Administrative Hearing Officer. The Commissioner will render

a decision on the proposed order in accordance with 75 O.S. §§ 311, 312.

(2) If no party objects, the proposed order shall become the final agency order twenty (20)

days after it was served on the parties.

(i) If the hearing was conducted by the Commissioner, the Commissioner shall issue a final agency order, which shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. *See* 75 O.S. § 312(A). Parties shall be notified of any final agency order either personally or by certified mail, return receipt requested, or as otherwise specified in 75 O.S. § 312(B).

(j)    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 the Notice of Claim was mailed.

(k)    If the Department 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 the Notice of Claim has been dismissed with prejudice. Such a dismissal affects only those violations listed in the Notice of Claim and does not affect the same or other violations occurring at another time.

(l)    A party aggrieved by the final agency order may file an application requesting a rehearing, reopening, or reconsideration of the case. Grounds for rehearing, reopening, or reconsideration shall be limited to those recognized by 75 O.S. § 317.

(1) Such an application must:

(A)    be in writing, submitted through the address reflected on the Troop S website, and

addressed to the Troop S Administrative Hearing Officer,

(B)    be received by the Department within twenty (20) days of the date the agency

order becomes final, which includes the ten (10) days specified by 47 O.S. § 2-116,

(C)    state all grounds for the application and include all arguments and information

pertinent to the grounds for application, and

(D) comply with the provisions of 75 O.S. § 317.

(2) The Commissioner will issue an order on the application. If the Commissioner grants

rehearing, reconsideration or review, the order of the agency shall set forth the grounds

which justify such action. If rehearing, reconsideration or review is granted, the matter may

be heard by the Commissioner, or the Commissioner may refer the matter to a hearing

officer. The hearing shall be confined to those grounds upon which the reconsideration,

reopening or rehearing was ordered.

(m)    A party aggrieved by the final agency order may also seek judicial review to the extent permitted by, and according to the provisions of, 75 O.S. § 318.

(n) Where timely written exceptions to the proposed order or request for a rehearing, reopening, or reconsideration of the case are received, the administrative penalty will be stayed until a final order has been entered.

(o)    The administrative penalty assessed shall be due immediately upon the agency order becoming final pursuant to subsections (h) or (i). If, within twenty-five (25) days of the date the Notice of Claim becomes due and owing, which includes the ten (10) days specified by 47 O.S. § 2-116, the concerned party does not comply with the terms of the order by paying any administrative penalty assessed, the Department may seek to recover the penalty through any mechanism authorized by 47 O.S. § 230.9(G).

(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. Monetary 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.

**595:35-1-10. Administrative penalty assessment guidelines**

(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. ~~[~~*See generally* 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 statue 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 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.~~OAC 595:35-1-4 contains a complete listing of all violations that may be enforced through an administrative penalty assessment issued pursuant to 47 O.S. §§ 230.6 and 230.9.

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

(1) Record keeping violations. ~~[~~*See* 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 Title 49 of the Code of Federal Regulations (CFR).

(A) The Act provides for a penalty not to exceed ~~one hundred dollars~~One Hundred Dollars ($100.00) for each record keeping offense, provided that the total of all administrative penalties assessed against any violator for all record keeping offenses related to any single violation shall not exceed Five Hundred Dollars ($500.00).

(B) The Act further provides that each day of a violation shall constitute a separate violation/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. ~~[~~*See* 49 CFR § 391.51~~]~~.

(ii) Record of duty status violations. ~~[~~*See* 49 CFR § 395.8~~]~~.

(iii) Failure to keep maintenance and inspection records. ~~[~~*See* 49 CFR § 396.3~~]~~.

(iv) Failure to prepare or retain driver's vehicle inspection reports. ~~[~~*See* 49 CFR § 396.11~~]~~.

(2) Serious pattern of safety violations. ~~[~~*See* 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, ~~[~~*see* 49 CFR § 392.6~~].~~,

(B) Light violations, ~~[~~*see* 49 CFR § 393.11~~].~~,

(C) Failure to cover a battery, ~~[~~*see* 49 CFR § 393.30~~].~~,

(D) Failure to protect or support electrical wiring, ~~[~~*see* 49 CFR § 393.28~~].~~,

(E) Making detachable wiring connections by twisting together wires, ~~[~~*see* 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, ~~[~~*see* 49 CFR § 393.60~~].~~,

(G) Failure to mark push out or escape windows, ~~[~~*see* 49 CFR § 393.63~~].~~,

(H) Sleeper berth violations, ~~[~~*see* 49 CFR § 393.76~~].~~,

(I) Heater violations, ~~[~~*see* 49 CFR § 393.77~~].~~,

(J) Failure to maintain a motor vehicle with:

(i) a defroster, ~~[~~*see* 49 CFR § 393.79~~].~~,

(ii) two rear vision mirrors, ~~[~~*see* 49 CFR § 393.80~~].~~,

(iii) an operative horn, ~~[~~*see* 49 CFR § 393.81~~].~~, or

(iv) an operable speedometer, ~~[~~*see* 49 CFR § 393.82~~].~~,

(K) Failure to mark bus emergency exits, ~~[~~*see* 49 CFR § 393.92~~].~~,

(L) Violations of the driver's requirements including:

(i) hours of service violations, ~~[~~*see* 49 CFR § 395.3~~].~~, or

(ii) failure to maintain a log book, ~~[~~*see* 49 CFR § 395.8~~].~~,

(M) Inspection violations as per 49 CFR § 396.3(A)(2), ~~§~~ 396.9.

(3) Substantial health or safety violations. ~~[~~*See* 47 O.S. § 230.9(B)(3)~~]~~. The Act provides for a penalty not to exceed One Thousand Dollars ($1,000.00) per ~~violation~~offense. This category includes any ~~violation which, if allowed to continue, would result in accidents, deaths, injuries, and public property damage~~act or acts which evidences that a substantial health or safety violation exists or has occurred which could reasonably lead to or has resulted in serious personal injury or death. ~~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 such that they have been found to be of sufficient magnitude that they require taking the driver, vehicle or container out of service. Examples ~~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, ~~[~~*see* 49 CFR § 391.11(b)(4) or (5)~~]~~, or a physically unqualified or disqualified driver, ~~[~~*see* 49 CFR § 391.11(b)(6) ~~and~~, (9)~~]~~.

(B) Brake violations:

(i) failure to maintain motor vehicle with adequate parking brake, ~~[~~*see* 49 CFR § 393.41~~]~~,

(ii) brake hose or tubing violation, ~~[~~*see* 49 CFR § 393.45; § 393.46~~]~~,

(iii) failure to maintain motor vehicle with operative brakes, ~~[~~*see* 49 CFR § 393.48],

(iv) failure to maintain motor vehicle with adequate brake linings, ~~[~~*see* 49 CFR § 393.47~~]~~, or

(v) failure to securely attach air or vacuum reservoir to motor vehicle, ~~[~~*see* 49 CFR § 393.50~~].~~,

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

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

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

(F) Tire violations, ~~[~~*see* 49 CFR § 393.75~~].~~,

(G) Exhaust system violations, ~~[~~*see* 49 CFR § 393.83~~].~~,

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

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

(J) Failure to obey any hazardous material regulation, ~~[~~*see* 49 CFR § 397.2~~].~~, or

(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. ~~[~~*See* 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. ~~[~~*See* 47 O.S. § 230.6~~]~~. The Act provides for a civil penalty assessed to an employee of not less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Five Thousand Dollars ($5,000.00). The Act also provides for a civil penalty assessed to an employer of not less than Two Thousand Seven Hundred and Fifty Dollars ($2,750.00) nor more than Twenty-Five Thousand Dollars ($25,000.00). 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. ~~[~~*See* 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. ~~[~~*See* 49 CFR § 395.13(c)].

(c) Factors. The Act requires that the Commissioner or the representative take into account the following factors, ~~[~~*see* 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 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~~may 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**

(a) Intrastate safety rating system.

(1) The ~~department~~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~~Department shall use the safety standards and rating criteria in 49 C.F.R.

Part 385 in issuing a safety rating.

(3) A motor carrier may request the ~~department~~Department to conduct an administrative

review if it believes the ~~department~~Department has committed an error in assigning its

proposed or final safety rating. 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~~ through the

contact information found on the Troop S website: https://www.ok.gov/ohpcmve/.

(4) A motor carrier that has taken action to correct deficiencies may request the

~~department~~Department to change its proposed or final safety rating at any time. 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~~ through the contact information found on the Troop S website:

https://www.ok.gov/ohpcmve/.

(5) Safety fitness information.

(A) Final ratings shall be made available to other state and federal agencies in writing,

telephonically, or by remote computer access.

(B) 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~~*~~.]~~,

51 O.S. § 24A.1 *et seq*. Any person requesting the rating shall provide the

~~department~~Department with the motor carrier's name, principal office address, and if

known, the ~~Oklahoma DOT number~~USDOT number.

 (C) Requests shall be addressed to: ~~OHP~~ Troop S, Compliance Review, ~~200 NE 38~~~~th~~

 ~~Terrace, Oklahoma City, OK 73105~~ through the contact information found on the Troop

 S website: https://www.ok.gov/ohpcmve/.

(b) Penalties.

(1) For violations by motor carriers in intrastate commerce resulting from an investigation,

the ~~department~~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~~Respondent shall be liable to the ~~department~~Department for any civil

penalty assessed by the Department in a Notice of Claim. Pursuant to 47 O.S. § 2-116, the

giving of notice by mail is complete upon the expiration of ten (10) days after deposit of said

notice in the United States mail in an envelope with first class postage prepaid, addressed to

such person at the address as shown by the records of the Department. Unless the Respondent

requests a hearing as provided in OAC 595:35-1-9, ~~The~~the administrative penalty shall be

due and owing twenty-five (25) days after the date the Notice of Claim was ~~sent~~mailed,

~~unless the concerned party requests a hearing as provided in 595:35-1-9~~which shall include

the ten (10) days specified by 47 O.S. § 2-116. The payment deadline shall be stayed if the

Respondent timely requests a hearing as provided in OAC 595:35-1-9.

(3) A ~~respondent~~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. A ~~respondent~~Respondent may ~~ask for review of the assessed penalty by the Department~~request a hearing of the penalty assessed in the Notice of Claim. The request for hearing shall be made in accordance with OAC 595:35-1-9.

**595:35-1-12. Department of Public Safety port of entry officers**

(a) ~~The legislature amended 47 O.S. § 14-116 in 2016 to provide funding for Department of Public Safety port of entry officers (DPS POE officers) and directing the Department to promulgate rules specifying the powers and duties of DPS POE officers. DPS POE officers~~ Department of Public Safety port of entry officers (DPS POE officers) are DPS commissioned inspectors or DPS civilian inspectors assigned to Troop S to work only at and around port of entry locations. *See generally* 47 O.S. § 14-116.

(b) In accordance with 47 O.S. §2-117 any officer designated and commissioned by the Commissioner is declared to be a peace officer of the State of Oklahoma and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of the state.

(c) The Commissioner shall designate and commission DPS POE officers. The Commissioner may also appoint civilian DPS POE officers. All DPS POE officers shall only be assigned to and supervised by Troop S.

(d) The Commissioner has the authority to authorize any officer, employee, or agent of the Department to conduct the activities necessary to administer the ~~Oklahoma Motor Carrier Safety and Hazardous Material transportation Act through~~Act. *See* 47 O.S. § 230.4.

(e) Commissioned DPS POE officers shall have the powers and authority now and hereafter vested by law in other peace officers, including the right and power of search and seizure, except the serving or execution of civil process, and the right and power to investigate and prevent crime and to enforce the criminal laws of this state. However, the duties of the DPS POE officers and civilian DPS POE officers shall be limited to:

(1) Enforce all or any portions of the federal motor carrier safety regulations and the hazardous materials regulations of the United States Department of Transportation, as now or hereafter amended, as adopted by reference;

(2) Conduct investigations; make reports; require the production of relevant documents, records and property; demonstration and training activities;

(3) Enter upon, inspect and examine at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to motor carrier safety or the transportation or shipment of hazardous materials in commerce, and to inspect and copy records and papers of carriers and other persons to carry out the purposes of the ~~Oklahoma Motor Carrier Safety and Hazardous Materials Transportation~~ Act;

(4) Stop and inspect any driver or commercial motor vehicle for any violation of the ~~Oklahoma Motor Carrier Safety and Hazardous Materials Transportation~~ Act or rules and regulations issued pursuant thereto;

(5) Declare and mark any transport vehicle or container as out of service if its condition, filling, equipment or protective devices would be hazardous to life or property during transportation, or if records thereof reflect such hazard, or if required records are incomplete;

(6) Prohibit any commercial driver from transporting hazardous materials if such driver is unqualified or disqualified under any federal or department regulation;

(7) Declare or mark any driver, vehicle or container out of service pursuant to the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria;

(8) Administer and enforce the provisions of the ~~Oklahoma Motor Carrier Safety and Hazardous Materials Transportation~~ Act and any rules and regulations issued pursuant thereto ~~and~~;

(9) ~~All~~Exercise all power and authority vested by law in other peace officers regarding law violations committed in the presence of the commissioned DPS POE officer at and around port of entry locations.

(f) All commissioned DPS POE officers shall be CLEET certified peace officers. To become qualified for designation as peace officers, DPS POE officers shall meet the training and screening requirements conducted by the Department and certified by the Council on Law Enforcement Education and Training within six (6) months of employment.

(g) Only CLEET certified peace officers shall carry a weapon.

(h) DPS POE officers are not and shall not be considered Oklahoma Highway Patrol Troopers.

(i) The powers and duties conferred upon said commissioned DPS POE officers shall in no way limit the powers and duties of sheriffs or other peace officers of the state, or any political subdivision thereof.

(j) No state official, other than members of the Department, shall have any power, right, or authority to command, order, or direct any DPS POE officer to perform any duty or service. DPS POE officers shall not be commanded, ordered, or directed to perform any duty or service outside the limitations of (e).