

STATE OF KANSAS
STATE CORPORATION COMMISSION

Notice of Public Hearing on Proposed Administrative Regulation

February 12, 2015

The State Corporation Commission (Commission) will conduct a public hearing at 10:30 a.m. on Thursday, April 23, 2015, in the First Floor Hearing Room at the office of the State Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas, to consider the adoption of proposed rules and regulations of the State Corporation Commission of the State of Kansas on a permanent basis.

This notice exceeds the 60-day notice requirement of the pending public hearing and shall constitute the beginning of the public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to Robert Vincent, Litigation Counsel, State Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas 66604, or by email to: r.vincent@kcc.ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five (5) minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five (5) working days in advance of the hearing by contacting Danelle Harsin at (785) 271-3161 or the Kansas Relay Center at 1-800-766-3777. The main entrance located on the southwest side of the building is handicapped accessible. Handicapped parking is located on the southwest side of the State Corporation Commission's parking lot.

A summary of the proposed regulations and the economic impact for each are as follows: (Note: Statements indicating that a regulation is "not anticipated to have any economic impact" are intended to indicate that no economic impact on the State Corporation Commission, other state agencies, state employees, or the general public has been identified.)

K.A.R. 82-4-3f. General motor carrier safety regulations.

This existing regulation adopts relevant portions of the Federal Motor Carrier Safety Administration ("FMCSA") regulations (49 C.F.R. Part 390) which establish the minimum safety requirements to be followed by motor carriers and their employees, the safety standards for commercial motor vehicles and intermodal equipment. The proposed amendments to this regulation include edits to reflect minor grammar and form corrections and recent updates to FMCSA regulations including regulations related to medical examiner certification.

The Transportation Division of the Commission anticipates a slight economic impact on motor carriers resulting from pass-through costs from medical examiners. The proposed regulation contains a requirement that medical examiners who perform medical certifications for

motor carriers be listed on the National Registry of Certified Medical Examiners. This requirement is being adopted in order to remain compliant with Kansas' MCSAP obligations. Data obtained from the FMCSA's analysis indicated medical examiners would incur approximately \$550 of costs to become certified and listed on the National Registry of Certified Medical Examiners. FMCSA data indicated that if a medical examiner charged at the low end for an average examination (\$70), their costs would be recovered after approximately eight examinations. FMCSA analysis indicated that some medical examiners would have access to little or no-cost training necessary to obtain the required certification and listing. However, because some medical examiners will be required to pay for the necessary certification to be listed on the National Registry of Certified Medical Examiners, it is foreseeable that these costs will be passed on to motor carriers and/or their drivers. The Transportation Division of the Commission is unable to determine how these costs may be passed-through, if at all.

K.A.R. 82-4-3g. Qualifications of drivers.

This existing regulation adopts relevant portions of the Federal Motor Carrier Safety Administration ("FMCSA") regulations (49 C.F.R. Part 391) which establish the minimum duties of motor carriers with respect to the qualifications of their commercial motor vehicle drivers. This regulation also establishes the minimum qualifications for those drivers who own and operate commercial motor vehicles. The proposed amendments to this regulation include edits to reflect minor grammar and form corrections and recent updates to FMCSA regulations including regulations related to medical examiner certification.

The Transportation Division of the Commission anticipates a slight economic impact on motor carriers resulting from pass-through costs from medical examiners. The proposed regulation contains a requirement that medical examiners who perform medical certifications for motor carriers be listed on the National Registry of Certified Medical Examiners. This requirement is being adopted in order to remain compliant with Kansas' MCSAP obligations. Data obtained from the FMCSA's analysis indicated medical examiners would incur approximately \$550 of costs to become certified and listed on the National Registry of Certified Medical Examiners. FMCSA data indicated that if a medical examiner charged at the low end for an average examination (\$70), their costs would be recovered after approximately eight examinations. FMCSA analysis indicated that some medical examiners would have access to little or no-cost training necessary to obtain the required certification and listing. However, because some medical examiners will be required to pay for the necessary certification to be listed on the National Registry of Certified Medical Examiners, it is foreseeable that these costs will be passed on to motor carriers and/or their drivers. The Transportation Division of the Commission is unable to determine how these costs may be passed-through, if at all.

82-4-3f. General motor carrier safety regulations. (a) With the following exceptions, 49 C.F.R. Part 390, as in effect on ~~December 27, 2011~~ October 1, 2013, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 390.3:

(A) The following revisions shall be made to paragraph (a):

(i) The phrase “subchapter B of this chapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(ii) The phrase “or intrastate” shall be added after the word “interstate.”

(B) Paragraph (b) shall be deleted and replaced with the following: “The Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq., is applicable to every person who operates a commercial motor vehicle, as defined in K.A.R. 82-4-1, in interstate or intrastate commerce and to all employers of such persons.”

(C) The following revisions shall be made to paragraph (c):

(i) The phrase “Part 387, Minimum Levels of Financial Responsibility for Motor Carriers” shall be deleted and replaced with “49 C.F.R. Part 387 as adopted by K.A.R. 82-4-3n.”

(ii) The phrase “§ 387.3 or § 387.27” shall be deleted and replaced with “49 C.F.R. 387.3 or 387.27 as adopted by K.A.R. 82-4-3n.”

(D) In paragraph (d), the phrase “subchapter B of this chapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(E) In paragraph (e)(1), the phrase “all regulations contained in this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(F) In paragraph (e)(2), the phrase “all applicable regulations contained in this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(G) In paragraph (e)(3), both instances of the phrase “this subchapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(H) In paragraph (f), the phrase “this subchapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(I) In paragraph (f)(1), the phrase “§ 390.5, except for the provisions of §§ 391.15(f), 392.80, and 392.82 of this chapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f, except for the provisions of 49 C.F.R. 391.15(f) as adopted by K.A.R. 82-4-3g and 49 C.F.R. 392.80 and 392.82 as adopted by K.A.R. 82-4-3h.”

(J) In paragraph (f)(6), the phrase “§§ 390.15, 390.19, 390.21(a) and (b)(2), 391.15(e) and (f), 392.80 and 392.82 of this chapter” shall be deleted and replaced with “49 C.F.R. 390.15, 390.19, 390.21(a) and (b)(2), as adopted by K.A.R. 82-4-3f, 49 C.F.R. 391.15(e) and (f) as adopted by K.A.R. 82-4-3g, and 49 C.F.R. 392.80 and 392.82 as adopted by K.A.R. 82-4-3h.”

(K) In paragraph (f)(7), the phrase “§ 390.5” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(L) In paragraph (g), the phrase “of Subchapter B of this chapter” shall be deleted.

(M) Paragraph (g)(1) shall be deleted and replaced with the following: “(1) 49 C.F.R. Part 385, subparts A and E, as adopted by K.A.R. 82-4-3d, for carriers subject to the

requirements of 49 C.F.R. 385.403, as adopted by K.A.R. 82-4-3d.”

(N) Paragraph (g)(2) shall be deleted.

(O) Paragraph (g)(3) shall be deleted and replaced with “49 C.F.R. Part 387, as adopted by K.A.R. 82-4-3n, to the extent provided in 49 C.F.R. 387.3 as adopted by K.A.R. 82-4-3n.”

(P) Paragraph (g)(4) shall be deleted.

(Q) The following revisions shall be made to paragraph (h):

(i) The phrase “of subchapter B of this chapter” shall be deleted.

(ii) Paragraph (1) shall be deleted and replaced with “Subpart F of 49 C.F.R. Part 385 as adopted by K.A.R. 82-4-3d.”

(iii) Paragraph (2) shall be deleted: and replaced with “49 C.F.R. Part 386, Subpart F as adopted by K.A.R 82-4-3o.”

(iv) Paragraph (3) shall be deleted and replaced with “49 C.F.R. Part 390 as adopted by K.A.R. 82-4-3f, except 49 C.F.R. 390.15(b) as adopted by K.A.R. 82-4-3f concerning accident registers.”

(v) Paragraph (4) shall be deleted and replaced with “49 C.F.R. Part 393 as adopted by K.A.R. 82-4-3i.”

(vi) Paragraph (5) shall be deleted and replaced with “49 C.F.R. Part 396 as adopted by K.A.R. 82-4-3j.”

(2) The following revisions shall be made to 49 C.F.R. 390.5:

(A) In the first paragraph, the phrase “this subchapter” shall be deleted and replaced

with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(B) The following definitions shall be deleted:

- (i) Conviction;
- (ii) driveaway-towaway operation;
- (iii) exempt motor carrier;
- (iv) hazardous waste;
- (v) operator;
- (vi) other terms;
- (vii) ~~school bus~~;
- ~~(viii) school bus operation~~;
- ~~(ix) secretary~~;
- ~~(x) (viii) state~~; and
- ~~(xi) (ix) United States~~.

(C) In the definition of “commercial motor vehicle,” the phrase “or intrastate” shall be inserted following the term “interstate.”

(D) In the definition of “covered farm vehicle,” each instance of the phrase “§ 390.39” shall be deleted and replaced with “49 C.F.R. 390.39 as adopted by K.A.R. 82-4-3f.”

(E) In the definition of “driving a commercial motor vehicle while under the influence of alcohol,” the phrase “Table 1 to §383.51 or §392.5(a)(2) of this subchapter,” shall be deleted and replaced with “K.S.A. 8-2,125 et seq. or 49 C.F.R. 392.5(a)(2) as adopted by K.A.R. 82-4-3h.”

~~(E)~~ (F) In the definition of “exempt intracity zone,” the following text shall be deleted: “of a municipality or the commercial zone of that municipality described in appendix F to subchapter B of this chapter. The term ‘exempt intracity zone’ does not include any municipality or commercial zone in the State of Hawaii.” The deleted text shall be replaced by the following: “described in section 8 of ~~appendix F to Title 49, Chapter III, Subchapter B~~ 49 C.F.R. Chapter III, Subchapter B, Appendix F, as ~~in effect on October 1, 2011, and hereby adopted by reference.~~ adopted by K.A.R. 82-4-3f.” The phrase “§ 391.62” shall be deleted and replaced with “49 C.F.R. 391.62 as adopted by K.A.R. 82-4-3g.”

~~(F)~~ (G) In the definition of “farm vehicle driver,” the phrase “§177.823 of this subtitle” shall be deleted and replaced with “49 C.F.R. 177.823 as adopted by K.A.R. 82-4-20.”

~~(G)~~ (H) The definition of “for hire motor carrier” shall be deleted and replaced by the following: “For purposes of this regulation, ‘for-hire motor carrier’ shall have the same meaning as ‘public motor carrier of household goods,’ ‘public motor carrier of passengers,’ or ‘public motor carrier of property,’ as defined in K.S.A. 66-1,108 and amendments thereto.”

~~(H)~~ (I) The definition of “gross combination weight rating (GCWR)” shall be deleted and replaced by the following: “‘Gross combination vehicle weight rating (GCWR)’ shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto.”

~~(I)~~ (J) The definition of “gross vehicle weight rating (GVWR)” shall be deleted and replaced by the following: “‘Gross vehicle weight rating (GVWR)’ shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto.”

~~(J)~~ (K) In the definition of “Hazardous material,” the phrase “United States” shall be inserted immediately before the phrase “Secretary of Transportation.”

~~(K)~~ (L) The following changes shall be made in the definition of “hazardous substance”:

(i) Both instances of the phrase “§ 172.101” shall be deleted and replaced by “49 C.F.R. 172.101.”

(ii) The first instance of the phrase “of this title” shall be deleted and replaced by “as adopted by K.A.R. 82-4-20.”

(iii) The phrase “§ 171.8 of this title” shall be deleted and replaced by “49 C.F.R. 171.8, as adopted by K.A.R. 82-4-20.”

~~(L)~~ (M) The definition of “highway” shall be deleted and replaced by the following: “‘Highway’ shall have the same meaning as ‘public highway,’ as defined by K.S.A. 66-1,108 and amendments thereto.”

(N) The definition of “medical examiner” shall be deleted and replaced by the following: “‘Medical examiner’ means an individual certified by FMCSA and listed on the national registry of certified medical examiners in accordance with 49 C.F.R. Part 390, Subpart D.”

~~(M)~~ (O) In the definition of “medical variance,” the phrase “part 381, subpart C, of this chapter or §391.64 of this chapter” shall be deleted and replaced with “K.A.R. 82-4-6d or 49 C.F.R. 391.64 as adopted by K.A.R. 82-4-3g.” The phrase “§ 391.49” shall be deleted and replaced with “49 C.F.R. 391.49 as adopted by K.A.R. 82-4-3g.”

~~(N)~~ (P) The definition of “motor carrier” shall be deleted and replaced by the following: “‘Motor carrier’ shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto.”

~~(Q)~~ (Q) The definition of “motor vehicle” shall be deleted and replaced by the following:
“‘Motor vehicle’ shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto.”

~~(P)~~ (R) The definition of “out of service order” shall be deleted.

~~(Q)~~ (S) The definition of “person” shall be deleted and replaced by the following:
“‘Person’ shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto.”

~~(R)~~ (T) The following revisions shall be made to the definition of “principal place of business”:

(i) The phrase “parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a, K.A.R. 82-4-3c, K.A.R. 82-4-3f, K.A.R. 82-4-3g, K.A.R. 82-4-3j, K.A.R. 82-4-3k, and K.A.R. 82-4-3n.”

(ii) The first instance of the term “Federal” shall be deleted.

(iii) The phrase “of the Federal Motor Carrier Safety Administration” shall be deleted.

~~(S)~~ (U) The following sentence shall be inserted before the definition of “radar detector”:
“‘Private motor carrier of passengers’ shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto.”

~~(T)~~ (V) The definition of “Special agent” shall be deleted and replaced by the following:
“Special agent or authorized representative means an authorized representative of the commission, and members of the highway patrol or any other law enforcement officer in the state who is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

~~(U)~~ (W) In the definition of “use a hand-held mobile telephone,” the phrase “as adopted by K.A.R. 82-4-3i” shall be inserted after the phrase “49 C.F.R. 393.93.”

(3) 49 C.F.R. 390.7 and 49 C.F.R. 390.9 shall be deleted.

(4) In 49 C.F.R. 390.11, the phrase “part 325 of subchapter A or in this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(5) In 49 C.F.R. 390.13, the phrase “violate the rules of this chapter” shall be deleted and replaced by “operate in Kansas in a manner which violates any order, decision, or regulation of the commission.”

(6) The following revisions shall be made to 49 C.F.R. 390.15:

(A) In paragraph (a)(1), the phrase “of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative or authorized third party representative” shall be deleted.

(B) In paragraph (b)(1), the phrase “§ 390.5 of this chapter” shall be deleted and replaced by “49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f.”

(7) The following revisions shall be made to 49 C.F.R. 390.19:

(A) In paragraph (a)(1), the phrase “interstate commerce” shall be deleted and replaced by “Kansas.”

(B) In paragraph (a)(2), the phrase “as adopted by K.A.R. 82-4-3d,” shall be inserted following “49 C.F.R. part 385, subpart E.” The phrase “of this chapter” shall be deleted.

(C) Paragraph (b) shall be deleted and replaced by the following: “The Form MCS-

150 shall contain the following information:

- “(1) The USDOT number assigned to the carrier;
- “(2) the legal name of the motor carrier;
- “(3) the trade or ‘doing business as’ name of the motor carrier, if applicable;
- “(4) the street address of the motor carrier, including city, state, and zip code;
- “(5) the mailing address of the motor carrier, including city, state, and zip code;
- “(6) the motor carrier’s principal telephone number and facsimile number;
- “(7) whether the motor carrier conducts intrastate only carriage of hazardous materials or intrastate carriage of non-hazardous materials;
- “(8) the motor carrier’s mileage, rounded to the nearest 10,000, for the last calendar year;
- “(9) the type of operations the motor carrier conducts;
- “(10) the classification of cargo that the motor carrier transports;
- “(11) the hazardous materials transported by the motor carrier;
- “(12) the type of equipment owned or leased or both for transporting property or passengers;
- “(13) the number of drivers that operate within a 100-mile radius of the carrier’s principal place of business;
- “(14) the number of drivers that operate outside a 100-mile radius of the carrier’s principal place of business;
- “(15) the number of drivers with commercial drivers’ licenses;

“(16) the total number of drivers; and

“(17) for Kansas-based, intrastate carriers, a signed and dated statement with the signatory’s printed name and title, certifying that the signatory is familiar with the commission’s safety regulations and that the information contained in the report is accurate.”

(D) In paragraph (d), the term “agency’s” shall be deleted and replaced by “FMCSA’s.” The following sentence shall be inserted after the last sentence in paragraph (d): “Kansas-based motor carriers may file the completed Form MCS-150 online at fmcsa.dot.gov or with the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604.”

(E) In paragraph (g), ~~the words~~ “the penalties prescribed in 49 U.S.C. 521(b)(2)(B)” shall be deleted and replaced by “civil penalties as provided in K.S.A. 66-1,142b.”

(F) Paragraph (h) shall be deleted.

~~(G) Paragraph (i) shall be deleted and replaced by the following: “Kansas-based motor carriers that register vehicles with the Commission and the Kansas Trucking Connection (www.truckingks.org) are exempt from the requirements of this section, provided the carriers file all required information with the Commission and update the MCS-150 information annually.”~~

(8) The following revisions shall be made to 49 C.F.R. 390.21:

(A) In paragraph (a), ~~the words~~ each instance of “subject to subchapter B of this chapter ~~must~~” shall be deleted, and replaced by “required to be marked pursuant to K.A.R. 82-4-8h shall.”

(B) In paragraph (b)(1), the phrase “§ 390.19” shall be deleted and replaced with “49

C.F.R. 390.19 as adopted by K.A.R. 82-4-3f.”

(C) Paragraph (e)(2)(iii)(C) shall be deleted and replaced by the following: “A statement that the lessor cooperates with all relevant special agents and authorized representatives to provide the identity of customers who operate the rental commercial motor vehicles; and.”

(D) The last sentence of paragraph (e)(2)(iv) shall be deleted.

(E) In paragraph (g)(1), the phrase “§390.5” shall be deleted and replaced by “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(F) In paragraph (g)(2), the phrase “subchapter B of this chapter” shall be deleted and replaced with “49 C.F.R. Chapter III, Subchapter B as adopted by K.A.R. 82-4-3a through K.A.R. 82-4-3o.”

(9) The following changes shall be made to 49 C.F.R. 390.23:

(A) In paragraphs (a), ~~(a)(1)(B)~~ (a)(1)(i)(B), and ~~(a)(2)(B)~~ (a)(2)(i)(B), the phrase “Parts 390 through 399 of this chapter” shall be deleted and replaced by “K.A.R. 82-4-3a, and K.A.R. 82-4-3f through K.A.R. 82-4-3o.”

(B) In paragraph (a)(1)(ii), the phrase “§ 390.25” shall be deleted and replaced by “49 C.F.R. 390.25 as adopted by K.A.R. 82-4-3f.”

(C) In paragraph (b), both instances of the phrase “parts 390 through 399 of this chapter” shall be deleted and replaced by “K.A.R. 82-4-3a, and K.A.R. 82-4-3f through K.A.R. 82-4-3o.”

~~(D)~~ (D) In paragraph (c), the phrase “§§ 395.3(a) and (c) and 395.5(a) of this chapter”

shall be deleted and replaced by “49 C.F.R. 395.3(a) and (c) and 49 C.F.R. 395.5(a), all as adopted by K.A.R. ~~82-4-3e~~ 82-4-3a.”

(10) 49 C.F.R. 390.27 shall be deleted.

(11) The following revisions shall be made to 49 C.F.R. 390.29:

(A) In paragraph (a), the phrase “this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(B) The following revisions shall be made to paragraph (b):

(i) The phrase “of the Federal Motor Carrier Safety Administration” shall be deleted.

(ii) The word “Federal” appearing in the last sentence shall be deleted.

(12) In 49 C.F.R. 390.33, the phrase “this subchapter and part 325 of subchapter A” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(13) The following revisions shall be made to 49 C.F.R. 390.35:

(A) In paragraph (a), the phrase “by part 325 of subchapter A or this subchapter” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(B) In paragraphs (b) and (c), the phrase “this subchapter or part 325 of subchapter A” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(14) 49 C.F.R. 390.37 shall be deleted.

(15) The following revisions shall be made to 49 C.F.R. 390.39:

(A) In paragraph (a), the phrase “§ 390.5” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(B) In paragraph (a)(1), the phrase “49 CFR Part 383 or controlled substances and

alcohol use and testing in 49 CFR Part 382” shall be deleted and replaced with “the Kansas uniform commercial drivers' license act, found at K.S.A. 8-2,125 et seq. or controlled substances and alcohol testing in 49 C.F.R. Part 382 as adopted by K.A.R. 82-4-3c.”

(C) In paragraph (a)(2), the phrase “49 CFR Part 391, Subpart E, Physical Qualifications and Examinations” shall be deleted and replaced with “49 C.F.R. Part 391, Subpart E as adopted by K.A.R. 82-4-3g.”

(D) In paragraph (a)(3), the phrase “49 CFR Part 395, Hours of Service of Drivers” shall be deleted and replaced with “49 C.F.R. Part 395 as adopted by K.A.R. 82-4-3a.”

(E) In paragraph (a)(4), the phrase “49 CFR Part 396, Inspection, Repair, and Maintenance” shall be deleted and replaced with “49 C.F.R. Part 396 as adopted by K.A.R. 82-4-3j.”

(F) Paragraph (b) shall be deleted.

(G) Paragraph (c) shall be deleted.

(16) The following revisions shall be made to 49 C.F.R. 390.40:

(A) In paragraph (a), the phrase “§ 390.19” shall be deleted and replaced with “49 C.F.R. 390.19 as adopted by K.A.R. 82-4-3f.”

(B) In paragraph (b), the phrase “§ 390.21” shall be deleted and replaced with “49 C.F.R. 390.21 as adopted by K.A.R. 82-4-3f.”

(C) In paragraph (c), the phrase “§ 396.3(a)(1)” shall be deleted and replaced with “49 C.F.R. 396.3(a)(1) as adopted by K.A.R. 82-4-3j.”

(D) In paragraph (e), the phrase “§ 396.11 of this chapter” shall be deleted and

replaced with “49 C.F.R. 396.11 as adopted by K.A.R. 82-4-3j.”

(E) In paragraph (f), the phrase “§ ~~396.12~~ 396.3(b)(3) of this chapter” shall be deleted and replaced with “49 C.F.R. ~~396.12~~ 396.3(b)(3) as adopted by K.A.R. 82-4-3j.”

(F) In paragraph (g), the phrase “§ 396.17 of this chapter” shall be deleted and replaced with “49 C.F.R. 396.17 as adopted by K.A.R. 82-4-3j.”

(G) In paragraph (j), the phrase “as defined in § 386.72(b)(1) of this chapter” shall be deleted and replaced with “as defined in K.A.R. 82-4-3o.”

~~(16)~~ (17) The following revisions shall be made to 49 C.F.R. 390.42:

(A) In paragraph (a), the phrase “listed in §392.7(b) of this subchapter” shall be deleted and replaced by “specified in K.A.R. 82-4-3h.”

(B) In paragraph (b), the phrase “in ~~§396.11(a)(2)~~ § 396.11(b)(2) of this chapter” shall be deleted and replaced by “required by K.A.R. 82-4-3j.”

~~(17)~~ (18) The following revisions shall be made to 49 C.F.R. 390.44:

(A) The following revisions shall be made to paragraph (a):

(i) The phrase “listed in §392.7(b) of this chapter” shall be deleted and replaced by “specified in K.A.R. 82-4-3h.”

(ii) The phrase “pursuant to §392.7(b)” shall be deleted and replaced by “K.A.R. 82-4-3h.”

(B) The following revisions shall be made to paragraph (b):

(i) The phrase “listed in §392.7(b) of this chapter” shall be deleted and replaced by “adopted and specified in K.A.R. 82-4-3h.”

(ii) The phrase “with §392.7(b)” shall be deleted and replaced by “with K.A.R. 82-4-3h.”

(C) The following revisions shall be made to paragraph (c):

(i) The term “FMCSA” shall be deleted and replaced by “the commission.”

(ii) The phrase “49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office” shall be deleted and replaced by “K.A.R. 82-4-3a through K.A.R. 82-4-3o and K.A.R. 82-4-20 by filing a written complaint with the commission by: fax –785-271-3124; email: trucking_complaint_questions@kcc.ks.gov; or by mail addressed to: 1500 SW Arrowhead Rd, Topeka, KS 66604-3124. The commission may also be contacted by phone number: 785.271.3145, select option one.”

~~(18)~~ (19) 49 C.F.R. 390.46 shall be deleted.

(20) 49 C.F.R. Part 390, Subpart D shall be deleted.

(21) 49 C.F.R. Part 390, Subpart E shall be deleted.

(b) Section 8 of 49 C.F.R. Chapter III, Subchapter B, Appendix F, as in effect on October 1, 2013, is hereby adopted by reference.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. ~~2012~~ 2014 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. ~~2012~~ 2014 Supp. 66-1,129; effective, T-82-12-

29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Oct. 8, 2010;
amended Nov. 14, 2011; amended Sept. 20, 2013; amended P-_____.)

82-4-3g. Qualifications of drivers. (a) With the following exceptions, 49 C.F.R. Part 391, as in effect on ~~January 30, 2012~~ October 1, 2013, is hereby adopted by reference:

(1) In 49 C.F.R. 391.1, the phrase “this part” shall be deleted and replaced with “49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”

(2) The following revisions shall be made to 49 C.F.R. 391.2:

(A) In paragraph (a), the phrase “§ 391.15(e)” shall be deleted and replaced with “49 C.F.R. 391.15(e) as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (b), the phrase “§ 391.15(e) and ~~(g)(f)~~” shall be deleted and replaced with “49 C.F.R. 391.15(e) and ~~(g)(f)~~ as adopted by K.A.R. 82-4-3g.”

(C) The following revisions shall be made to paragraph (c):

(i) The phrase “§ 391.15(e) and ~~(g)(f)~~” shall be deleted and replaced with “49 C.F.R. 391.15(e) and ~~(g)(f)~~ as adopted by K.A.R. 82-4-3g.”

(ii) The phrase “§ 390.5 of this chapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(iii) The phrase “§ 391.67” shall be deleted and replaced with “49 C.F.R. 391.67 as adopted by K.A.R. 82-4-3g.”

(D) The following revisions shall be made to paragraph (d):

(i) The phrase “part 391, Subpart E” shall be deleted and replaced with “49 C.F.R. Part 391, Subpart E as adopted by K.A.R. 82-4-3g.”

(ii) The phrase “49 CFR 390.5” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(3) The following revisions shall be made to 49 C.F.R. 391.11:

(A) In paragraph (a), the phrase “§ 391.63” shall be deleted and replaced with “49 C.F.R. 391.63 as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (b), the phrase “subpart G of this part” shall be deleted and replaced with “Subpart G of 49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”

(C) 49 C.F.R. 391.11(b)(1) shall apply only to commercial motor vehicle operations in interstate commerce.

(D) In paragraph (b)(4), the phrase “subpart E—Physical Qualifications and Examinations of this part” shall be deleted and replaced with “Subpart E of 49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”

(E) In paragraph (b)(6), the phrase “§ 391.27” shall be deleted and replaced with “49 C.F.R. 391.27 as adopted by K.A.R. 82-4-3g.”

(F) In paragraph (b)(7), the phrase “§ 391.15” shall be deleted and replaced with “49 C.F.R. 395.15 as adopted by K.A.R. 82-4-3g.”

(G) In paragraph (b)(8), the phrase “§ 391.31” shall be deleted and replaced with “49 C.F.R. 391.31 as adopted by K.A.R. 83-4-3g,” and the phrase “§ 391.33” shall be deleted and replaced with 49 C.F.R. 391.33 as adopted by K.A.R. 82-4-3g.”

(4) In 49 C.F.R. 391.13, the phrase “§§ 392.9(a) and 393.9 of this subchapter” shall be deleted and replaced by “49 C.F.R. 392.9(a), as adopted by K.A.R. 82-4-3h, and 49 C.F.R. 393.9, as adopted by K.A.R. 82-4-3i.”

(5) The following revisions shall be made to 49 C.F.R. 391.15:

(A) In paragraphs (c)(1)(i) and (c)(2)(iii), ~~the phrase~~ each instance of “§ 395.2 of this subchapter” and “§ 395.2 of this part” shall be deleted and replaced by “49 C.F.R. 395.2(a), as adopted by K.A.R. 82-4-3a.”

(B) In paragraph (c)(2)(i)(C), the phrase “§ 391.15(c)(2)(i)(A) or (B), or § 392.5(a)(2)” shall be deleted and replaced by “49 C.F.R. 391.15(c)(2)(i)(A) or (B) as adopted by K.A.R. 82-4-3g or 49 C.F.R. 392.5(a)(2), as adopted by K.A.R. 82-4-3h.”

(C) In paragraphs (c)(2)(ii) and (iii), the phrase “as adopted by K.A.R. 82-4-3h (a)(2)(A)” shall be added after the phrase “21 C.F.R. 1308.11 Schedule I.”

(D) In paragraphs (e)(1), (e)(2)(i), and (e)(2)(ii), the phrase “§ 392.80(a)” shall be deleted and replaced with “49 C.F.R. 392.80(a) as adopted by K.A.R. 82-4-3h.”

(E) In paragraphs (f)(1), (f)(2)(i), and (f)(2)(ii), the phrase “§ 392.82(a)” shall be deleted and replaced with “49 C.F.R. 392.82(a) as adopted by K.A.R. 82-4-3h.”

(6) The following revisions shall be made to 49 C.F.R. 391.21:

(A) In paragraph (b)(10)(iv)(B), the term “DOT” shall be deleted and replaced by “commission,” and the phrase “as adopted by K.A.R. 82-4-3b” shall be inserted after the phrase “49 C.F.R. Part 40.”

(B) In paragraph (b)(11), the phrase “as defined by Part 383 of this subchapter” shall be deleted.

(C) In paragraph (d), the phrase “§ 391.23” shall be deleted and replaced with “49 C.F.R. 391.23 as adopted by K.A.R. 82-4-3g,” and the phrase “§ 391.23(i)” shall be deleted and replaced with “49 C.F.R. 391.23(i) as adopted by K.A.R. 82-4-3g.”

(7) The following changes shall be made to 49 C.F.R. 391.23:

(A) In paragraph (a), the phrase “subpart G of this part” shall be deleted and replaced with “Subpart G of 49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (a)(2), (h)(i)(1) and (h)(iii)(2), the term “U.S.” shall be inserted before the phrase “Department of Transportation.” The phrase “or commission” shall be inserted after the phrase “Department of Transportation.”

(C) In paragraph (b), the phrase “§ 391.51” shall be deleted and replaced with “49 C.F.R. 391.51 as adopted by K.A.R. 82-4-3g.”

(D) In paragraph (c)(2), the phrase “§ 391.53” shall be deleted and replaced with “49 C.F.R. ~~393.51~~ 391.53 as adopted by K.A.R. 82-4-3g.”

(E) Paragraph (c)(3) shall be deleted and replaced by the following: “Prospective employers shall submit a report noting any failure of a previous employer to respond to an inquiry into a driver’s safety performance history to the commission.

“(A) Reports shall be addressed to the Director, Transportation Division, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS 66604.

“(B) Reports shall be submitted to the commission within 90 days after the inquiry was submitted to the previous employer.

“(C) Reports must be signed by the prospective employer submitting the report and must include the following information:

“(i) The name, address, and telephone number of the person who files the report;

“(ii) The name and address of the previous employer who has failed to respond to the

inquiry into a driver's safety performance history;

“(iii) A concise but complete statement of the facts, including the date the inquiry was sent to the previous employer, the method by which the inquiry was sent, and the dates of any follow-up communications with the previous employer.”

(F) In paragraphs (c)(4), (e), and (g)(1), the term “U.S.” shall be inserted before the term “DOT” and the phrase “or commission” shall be inserted after the term “DOT.”

(G) In paragraph (d)(2), the phrase “§ 390.15(b)(1) of this chapter” shall be deleted and replaced by “49 C.F.R. 390.15(b)(1), as adopted by K.A.R. 82-4-3f.”

(H) In paragraph (d)(2)(i), the phrase “§ 390.5 of this chapter” shall be deleted and replaced by “49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f.”

(I) In paragraph (d)(2)(ii), the phrase “§ 390.15(b)(2)” shall be deleted and replaced by “49 C.F.R. 390.15(b)(2), as adopted by K.A.R. 82-4-3f.”

(J) In paragraph (e), the phrase “, as adopted by K.A.R. 82-4-3b” shall be added at the end of the last sentence.

(K) In paragraph (e)(1), the phrase “part 382 of this subchapter” shall be deleted and replaced by “49 C.F.R. part 382, as adopted by K.A.R. 82-4-3c.” The phrase “, as adopted by K.A.R. 82-4-3b” shall be inserted at the end of the last sentence.

(L) In paragraph (e)(2), the phrase “§ 382.605 of this chapter” shall be deleted and replaced by “49 C.F.R. 382.605, as adopted by K.A.R. 82-4-3c.” The phrase “part 40, subpart O” shall be deleted and replaced by “40.281 through 49 C.F.R. 40.313, as adopted by K.A.R. 82-4-3b.”

(M) In paragraph (e)(3), the phrase “§ 382.605” shall be deleted and replaced with “49 C.F.R. 382.605, as adopted by K.A.R. 82-4-3c.” The phrase “part 40, subpart O” shall be deleted and replaced by “49 C.F.R. 40.281 through 40.313, as adopted by K.A.R. 82-4-3b.”

(N) In paragraph (f), the term “§ 40.321(b)” shall be deleted and replaced by “49 C.F.R. 40.321(b), as adopted by K.A.R. 82-4-3b.”

(O) In paragraph (j)(6), the following changes shall be made:

(i) In the first sentence, the comma following the phrase “safety performance information” shall be deleted, and the following text shall be inserted at the end of the first sentence: “if the previous employer is an interstate motor carrier, the driver may submit a complaint.”

(ii) The term “§ 386.12” shall be deleted and replaced with “K.A.R. 82-4-3g(a)(7)(E).”

(iii) The following sentence shall be inserted at the end of the paragraph: “If the motor carrier is a Kansas-based interstate motor carrier, or an intrastate motor carrier, the driver may submit such report in writing to Director, Transportation Division, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS 66604.”

(P) In paragraph (m)(1), the phrase “§ 391.43” shall be deleted and replaced with “49 C.F.R. 391.43 as adopted by K.A.R. 82-4-3g.”

(Q) In paragraph (m)(2), the phrase “part 383 of this chapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(R) In paragraph (m)(2)(i)(A), the phrase “in accordance with §§ 383.71(a)(1)(ii) and 383.71(g) of this chapter” shall be deleted.

(S) In paragraph (m)(2)(i)~~(B)~~(C), the phrase “in accordance with § 383.73(a)(5) of this chapter” shall be deleted.

(8) The following revisions shall be made to 49 C.F.R. 391.25:

(A) In paragraphs (a) and (b), the phrase “subpart G of this part” shall be deleted and replaced with “49 C.F.R. Part 391, Subpart G as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (b), the phrase “§ 391.15” shall be deleted and replaced with “49 C.F.R. 391.15 as adopted by K.A.R. 82-4-3g.”

~~(B)~~ (C) In paragraph (b)(1), the phrase “Federal Motor Carrier Safety Regulations in this subchapter or hazardous materials regulations (49 CFR chapter 1, subchapter C)” shall be deleted and replaced by “commission motor carrier safety regulations as adopted by K.A.R. 82-4-20.” or any Federal Motor Carrier Safety Regulations or Hazardous Materials Regulations, as adopted by article 4 of the commission’s regulations, occurring in interstate commerce.”

(9) The following revisions shall be made to 49 C.F.R. 391.27:

(A) In paragraph (a), the words “this part” shall be deleted and replaced with “49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (c), the words “be prescribed by the motor carrier. The following form may be used to comply with this section” shall be deleted and replaced by “read substantially as follows.”

(C) Paragraph (e) shall be deleted.

(10) The following revisions shall be made to 49 C.F.R. 391.31:

(A) In paragraph ~~(e)~~(a), the phrase “of 49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g” shall be added after the phrase “subpart G.”

(B) In 49 C.F.R. 391.31(c)(1), the phrase “§ 392.7 of this subchapter” shall be deleted and replaced with “49 C.F.R. 392.7 as adopted by K.A.R. 82-4-3h.”

(11) The following revisions shall be made to 49 C.F.R. 391.33:

(A) In paragraph (a), the phrase “§ 391.31” shall be deleted and replaced with “49 C.F.R. 391.31 as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (a)(1), the phrase “§ 383.5 of this subchapter” shall be deleted and replaced by “K.S.A. 8-234b and amendments thereto.”

(C) In paragraph (a)(2), the phrase “§ 391.31” shall be deleted and replaced with “49 C.F.R. 391.31 as adopted by K.A.R. 82-4-3g.”

(12) The following revisions shall be made to 49 C.F.R. 391.41:

(A) The following revisions shall be made to paragraph (a)(2)(i):

(i) The phrase “part 383 of this chapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(ii) The phrase “in accordance with § 383.71(h) of this chapter” shall be deleted.

(iii) The phrase “§ 391.43(h)” shall be deleted and replaced with “49 C.F.R. 391.43(h) as adopted by K.A.R. 82-4-3g.”

(B) In paragraph ~~(a)(2)(iii)~~ (a)(2)(ii), the phrase “by § 383.71(h)” shall be deleted. The phrase “medical variance” shall be deleted and replaced with “medical waiver,” and the

phrase “FMCSA” shall be deleted and replaced with “the commission.”

(C) In paragraphs (a)(3)(i) and (ii), the phrase “§ 391.43” shall be deleted and replaced with “49 C.F.R. 391.43 as adopted by K.A.R. 82-4-3g.”

(D) In paragraphs (b)(1) and (b)(2)(ii), the phrase “§ 391.49” shall be deleted and replaced with “49 C.F.R. 391.49 as adopted by K.A.R. 82-4-3g.”

(E) In paragraph (b)(11), the clause “when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5 1951” shall be deleted.

(F) In paragraph (b)(12)(i), the phrase “as adopted by K.A.R. 82-4-3h” shall be added after the phrase “21 C.F.R. 1308.11 Schedule I.”

(G) In paragraph (b)(12)(ii), the phrase “licensed medical practitioner, as defined in § 382.107” shall be deleted and replaced with “licensed medical examiner, as defined in K.A.R. 82-4-1.”

(13) The following changes shall be made to 49 C.F.R. 391.43:

(A) ~~In paragraph (a), the phrase “licensed medical examiner as defined in § 390.5 of this subchapter” shall be deleted and replaced by “licensed medical examiner, as defined by K.A.R. 82-4-1.”~~ The following revisions shall be made to paragraph (a):

(i) The phrase “§ 391.42” shall be deleted and replaced with “49 C.F.R. 391.42 as adopted by K.A.R. 82-4-3g.”

(ii) The phrase “subpart D of part 390 of this chapter” shall be deleted and replaced with “subpart D of 49 C.F.R. Part 390 as adopted by K.A.R. 82-4-3f.”

(B) In paragraph (b), the phrase “§ 391.41(b)” shall be deleted and replaced with “49

C.F.R. 391.41(b) as adopted by K.A.R. 82-4-3g.”

(C) In paragraph (d), the phrase “§ 391.62” shall be deleted and replaced with “49 C.F.R. 391.62 as adopted by K.A.R. 82-4-3g.”

(D) In paragraph (e), the phrase “§ 391.64” shall be deleted and replaced with “49 C.F.R. 391.64 as adopted by K.A.R. 82-4-3g.”

(E) The last sentence of paragraph (f) shall be deleted.

(F) In the portion titled “Extremities” in paragraph (f), the words “Field Service Center of the FMCSA, for the State in which the driver has legal residence” shall be deleted and replaced by “commission.”

(G) In paragraph (g)~~(1)~~(2), the phrase “§ 391.41(b)” shall be deleted and replaced with “49 C.F.R. 391.41(b) as adopted by K.A.R. 82-4-3g.”

~~(H) The last sentence of paragraph (h) shall be deleted.~~

~~⊕~~ The editorial note found after paragraph (h) shall be deleted.

(14) The following revisions shall be made to 49 C.F.R. 391.45:

(A) In the first paragraph, the phrase “§ 391.67” shall be deleted and replaced with “49 C.F.R. 391.67 as adopted by K.A.R. 82-4-3g.” The phrase “§ 391.43” shall be deleted and replaced with “49 C.F.R. 391.43 as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (b)(2), the phrase “§ 391.62” shall be deleted and replaced with “49 C.F.R. 391.62 as adopted by K.A.R. 82-4-3g.” The phrase “§ 391.64” shall be deleted and replaced with “49 C.F.R. 391.64 as adopted by K.A.R. 82-4-3g.”

(15) The following revisions shall be made to 49 C.F.R. 391.47:

(A) Paragraph (b)(8) shall be deleted.

(B) In paragraph (b)(9), the words “or intrastate” shall be inserted following the word “interstate.”

(C) In paragraphs (c) and (d), the phrase “Director, Office of ~~the Bus and Truck Standards and Operations (MC PSDPSD)~~ Carrier, Driver and Vehicle Safety Standards (MC-PS)” shall be deleted and replaced by the phrase “director of the commission’s transportation division.”

(D) The last two sentences of paragraph (e) shall be deleted and replaced by the following sentence: “Petitions shall be filed in accordance with K.A.R. 82-1-235 and K.S.A. 77-601 et seq.”

(E) In paragraph (f), the first two occurrences of the phrase “Director, Office of ~~the Bus and Truck Standards and Operations (MC PSDPSD)~~ Carrier, Driver and Vehicle Safety Standards (MC-PS)” shall be deleted and replaced by the phrase “director of the commission’s transportation division.” The clause “or until the Director, Office of ~~the Bus and Truck Standards and Operations (MC PSDPSD)~~ Carrier, Driver and Vehicle Safety Standards (MC-PS) orders otherwise” shall be deleted: and replaced with “or orders otherwise.”

(16) The following revisions shall be made to 49 C.F.R. 391.49:

(A) In paragraph (a), the phrase “§ 391.41(b)(1) or (b)(2)” shall be deleted and replaced with “49 C.F.R. 391.41(b)(1) or (b)(2) as adopted by K.A.R. 82-4-3g.”

(B) The phrase “Division Administrator, FMCSA” in paragraph (a) and the phrase “State Director, FMCSA” in paragraphs (g), (h), (j)(1), and (k) shall be deleted and replaced by

“director of the commission’s transportation division.”

(C) The remainder of paragraph (b)(2) after “The application must be addressed to” shall be deleted and replaced by “: Director of the Transportation Division, Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604.”

(D) In paragraph (b)(3), ~~the words~~ “field service center, FMCSA, for the state in which the driver has legal residence” shall be deleted and replaced by “director of the commission’s transportation division at the address provided in paragraph (b)(2).”

(E) Paragraph (c)(2)(i) shall be deleted.

(F) The following revisions shall be made to paragraph (d):

(i) In paragraph (d)(1), the phrase “§ 391.43” shall be deleted and replaced with “49 C.F.R. 391.43 as adopted by K.A.R. 82-4-3g.”

(ii) In paragraph (d)(2), the phrase “§ 391.43(h)” shall be deleted and replaced with “49 C.F.R. 391.43(h) as adopted by K.A.R. 82-4-3g.”

(iii) In paragraph (d)(3)(i), the phrase “§ 391.41(b)(1)” shall be deleted and replaced with “49 C.F.R. 391.41(b)(1) as adopted by K.A.R. 82-4-3g.”

(iv) In paragraph (d)(3)(ii), the phrase “§ 391.41(b)(2)” shall be deleted and replaced with “49 C.F.R. 391.41(b)(2) as adopted by K.A.R. 82-4-3g.”

(v) In paragraph (d)(5)(i), the phrase “§ 391.31(b)” shall be deleted and replaced with “49 C.F.R. 391.31(b) as adopted by K.A.R. 82-4-3g.”

(vi) In paragraph (d)(6)(i), the phrase “§ 391.21” shall be deleted and replaced with “49 C.F.R. 391.21 as adopted by K.A.R. 82-4-3g.”

(G) The phrase “Medical Program Specialist, FMCSA service center” in paragraph (e)(1), the words “Medical Program Specialist, FMCSA for the State in which the carrier’s principal place of business is located” in paragraph (e)(1)(i), and the words “Medical Program Specialist, FMCSA service center, for the State in which the driver has legal residence” in paragraph (e)(1)(ii) shall be deleted and replaced by “director of the transportation division of the commission.”

(H) In paragraph (i), the words between “submitted to the” and “The SPE certificate renewal application” shall be deleted and replaced by “director of the transportation division of the commission.”

(I) In paragraph (i)(8), the phrase “§391.41(b)(1)” shall be deleted and replaced with “49 C.F.R. 391.41(b)(1) as adopted by K.A.R. 82-4-3g” and the phrase “§391.41(b)(2)” shall be deleted and replaced with “49 C.F.R. 391.41(b)(2) as adopted by K.A.R. 82-4-3g.”

(J) In paragraph (j)(1), the first two sentences shall be deleted.

(K) The following revisions shall be made to paragraph (j)(2):

(i) The words “State Director, FMCSA, for the State where the driver applicant has legal residence” shall be deleted and replaced by “director of the transportation division of the commission.”

(ii) The phrase “subchapter B of the Federal Motor Carrier Safety Regulations (FMCSRs)” shall be deleted and replaced by the phrase “as adopted by K.A.R. 82-4-3g.”

(iii) The term “FMCSRs” shall be deleted and replaced by “commission’s regulations regarding motor carrier safety.”

(17) The following revisions shall be made to 49 C.F.R. 391.51:

(A) In paragraph (b)(1), the phrase “§ 391.21” shall be deleted and replaced with “49 C.F.R. 391.21 as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (b)(2), the phrase “§ 391.23(a)(1)” shall be deleted and replaced with “49 C.F.R. 391.23(a)(1) as adopted by K.A.R. 82-4-3g.”

(C) In paragraph (b)(3), the phrase “§ 391.31(e)” shall be deleted and replaced with “49 C.F.R. 391.31(e) as adopted by K.A.R. 82-4-3g.” The phrase “§ 391.33” shall be deleted and replaced with “49 C.F.R. 391.33 as adopted by K.A.R. 82-4-3g.”

(D) In paragraph (b)(4), the phrase “§ 391.25(a)” shall be deleted and replaced with “49 C.F.R. 391.25(a) as adopted by K.A.R. 82-4-3g.”

(E) In paragraph (b)(5), the phrase “§ 391.25(c)(2)” shall be deleted and replaced with “49 C.F.R. 391.25(c)(2) as adopted by K.A.R. 82-4-3g.”

(F) In paragraph (b)(6), the phrase “§ 391.27” shall be deleted and replaced with “49 C.F.R. 391.27 as adopted by K.A.R. 82-4-3g.”

(G) In paragraph (b)(7)(i), the phrase “§ 391.43(g)” shall be deleted and replaced with “49 C.F.R. 391.43(g) as adopted by K.A.R. 82-4-3g.”

(H) In paragraph (b)(7)(ii), the phrase “defined at § 384.105 of this chapter” shall be deleted.

(I) In paragraph (b)(7)(iii), the phrase “§ 391.51(b)(8)” shall be deleted and replaced with “49 C.F.R. 391.51(b)(8) as adopted by K.A.R. 82-4-3g.”

(J) The following revisions shall be made to paragraph (b)(8):

(i) The phrase “Field Administrator, Division Administrator, or State Director” shall be deleted and replaced by “the director of the transportation division of the commission.”

(ii) The phrase “§ 391.49” shall be deleted and replaced with “49 C.F.R. 391.49 as adopted by K.A.R. 82-4-3g.”

(iii) ~~The phrase “part 391 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”~~ The phrase “or under K.A.R. 82-4-6d” shall be added at the end of the paragraph.

(K) In paragraph (d)(1), the phrase “§ 391.25(a)” shall be deleted and replaced with “49 C.F.R. 391.25(a) as adopted by K.A.R. 82-4-3g.”

(L) In paragraph (d)(2), the phrase “§ 391.25(c)(2)” shall be deleted and replaced with “49 C.F.R. 391.25(c)(2) as adopted by K.A.R. 82-4-3g.”

(M) In paragraph (d)(3), the phrase “§ 391.27” shall be deleted and replaced with “49 C.F.R. 391.27 as adopted by K.A.R. 82-4-3g.”

(N) In paragraph (d)(4), the phrase “§ 391.43(g)” shall be deleted and replaced with “49 C.F.R. 391.43(g) as adopted by K.A.R. 82-4-3g.” The phrase “§ 391.51(b)(7)(ii)” shall be deleted and replaced with “49 C.F.R. 391.51(b)(7)(ii) as adopted by K.A.R. 82-4-3g.”

(O) Paragraph (d)(5) shall be deleted and replaced with the following: “Any medical waiver issued by the commission, including a Skill Performance Evaluation Certificate issued in accordance with 49 C.F.R. 391.49 as adopted by K.A.R. 82-4-3g, or the Medical Exemption letter issued by a Federal medical program in accordance with 49 C.F.R. Part 381.”

(P) In paragraph (d)(6), the phrase “§ 391.23(m)” shall be deleted and replaced with

“49 C.F.R. 391.23(m) as adopted by K.A.R. 82-4-3g.”

(18) The following revisions shall be made to 49 C.F.R. 391.53:

(A) In paragraph (a), the phrase “§ 391.23” shall be deleted and replaced with “49 C.F.R. 391.23 as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (b)(1), the phrase “§ 391.23(d)” shall be deleted and replaced with “49 C.F.R. 391.23(d) as adopted by K.A.R. 82-4-3g.”

(C) In paragraph (b)(2), the phrase “§ 391.23” shall be deleted and replaced with “49 C.F.R. 391.23 as adopted by K.A.R. 82-4-3g.”

(19) In 49 C.F.R. 391.55, the text “as in effect on October 1, ~~2011~~ 2013, which are hereby adopted by reference” shall be inserted at the end of paragraph (b)(1).

(20) The following revisions shall be made to 49 C.F.R. 391.61:

(A) The phrase “§ 391.21” shall be deleted and replaced with “49 C.F.R. 391.21 as adopted by K.A.R. 82-4-3g.”

(B) The phrase “§ 391.23” shall be deleted and replaced with “49 C.F.R. 391.23 as adopted by K.A.R. 82-4-3g.”

(C) The phrase “§ 391.33” shall be deleted and replaced with “49 C.F.R. 391.33 as adopted by K.A.R. 82-4-3g.”

(D) The phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(21) The following revisions shall be made to 49 C.F.R. 391.62:

(A) In the first paragraph, the phrase “§§ 391.11(b)(1) and 391.41(b)(1) through

(b)(11)” shall be deleted and replaced with “49 C.F.R. 391.11(b)(1) and 391.41(b)(1) through (b)(11) as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (c), the phrase “, as adopted by K.A.R. 82-4-3f” shall be added after the phrase “49 C.F.R. 390.5.”

(C) In paragraph (d), the phrase “under regulations issued by the Secretary under 49 U.S.C. chapter 51” shall be deleted and replaced by “under the regulations adopted by K.A.R. 82-4-20.”

(D) In paragraph (e)(1), the phrase “Federal Motor Carrier Safety Regulations contained in this subchapter” shall be deleted and replaced by “commission’s motor carrier regulations found in Article 4.”

(22) The following revisions shall be made to 49 C.F.R. 391.63:

(A) In paragraph (a), the phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(B) In paragraph (a)(1), the phrase “§ 391.21” shall be deleted and replaced with “49 C.F.R. 391.21 as adopted by K.A.R. 82-4-3g.”

(C) In paragraph (a)(2), the phrase “§ 391.23” shall be deleted and replaced with “49 C.F.R. 391.23 as adopted by K.A.R. 82-4-3g.”

(D) In paragraph (a)(3), the phrase “§ 391.25(a)” shall be deleted and replaced with “49 C.F.R. 391.25(a) as adopted by K.A.R. 82-4-3g.”

(E) In paragraph (a)(4), the phrase “§ 391.25(b)” shall be deleted and replaced with “49 C.F.R. 391.25(b) as adopted by K.A.R. 82-4-3g.”

(F) In paragraph (a)(5), the phrase “§ 391.27” shall be deleted and replaced with “49 C.F.R. 391.27 as adopted by K.A.R. 82-4-3g.”

(23) 49 C.F.R. 391.64 shall be revised as follows:

(A) In paragraph (a), the phrase “§ 391.41(b)(3)” shall be deleted and replaced with “49 C.F.R. 391.41(b)(3) as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (a)(1)(i), the phrase “§ 391.41” shall be deleted and replaced with “49 C.F.R. 391.41 as adopted by K.A.R. 82-4-3g.”

(C) In paragraph (a)(2)(iii), the phrase “an authorized agent of the FMCSA” shall be deleted and replaced by “the director of the transportation division of the commission.”

(D) In paragraphs (a)(2)(v) and (b)(3), the phrase “duly authorized federal, state or local enforcement official” shall be deleted and replaced by the phrase “any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(E) In paragraph (b), the phrase “§ 391.41(b)(10)” shall be deleted and replaced with “49 C.F.R. 391.41(b)(10) as adopted by K.A.R. 82-4-3g.”

(F) In paragraph (b)(1)(i), the phrase “§ 391.41” shall be deleted and replaced with “49 C.F.R. 391.41 as adopted by K.A.R. 82-4-3g.”

(24) The form set out in 49 C.F.R. 391.65 shall be revised as follows:

(A) The phrase “as adopted by K.A.R. 82-4-3f” shall be added after the phrase “§ 390.5.”

(B) The phrase “Federal Motor Carrier Safety Regulations” shall be deleted and replaced by the phrase “as adopted by K.A.R. 82-4-3g.”

(25) ~~49 C.F.R. 391.67 shall be deleted.~~ The following revisions shall be made to 49 C.F.R. 391.67:

(A) The phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(B) Paragraph (a) shall be deleted and replaced with the following: “49 C.F.R. 391.11(b)(1), (b)(6) and (b)(8) as adopted by K.A.R. 82-4-3g.”

(C) Paragraph (b) shall be deleted and replaced with the following: “Subpart C of 49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”

(D) Paragraph (c) shall be deleted and replaced with the following: “Subpart D of 49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”

(E) Paragraph (d) shall be deleted and replaced with the following: “Subpart F of 49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”

(26) The following revisions shall be made to 49 C.F.R. 391.68:

(A) In paragraph (a), the phrase “Section 391.11(b)(1), (b)(6) and (b)(8)” shall be deleted and replaced with “49 C.F.R. 391.11(b)(1), (b)(6) and (b)(8) as adopted by K.A.R. 82-4-3g.”

(B) In paragraph (b), the phrase “Subpart C” shall be deleted and replaced with “49 C.F.R. 391.21 through 391.27 as adopted by K.A.R. 82-4-3g.”

(C) In paragraph (c), the phrase “§§ 391.41 and 391.45” shall be deleted and replaced

with “49 C.F.R. 391.41 and 391.45 as adopted by K.A.R. 82-4-3g.”

(D) In paragraph (d), the phrase “Subpart F” shall be deleted and replaced with “49 C.F.R. 391.51 through 391.55 as adopted by K.A.R. 82-4-3g.”

(27) The following revisions shall be made to 49 C.F.R. 391.69:

(A) The phrase “§ 391.21” shall be deleted and replaced with “49 C.F.R. 391.21 as adopted by K.A.R. 82-4-3g.”

(B) The phrase “§ 391.23” shall be deleted and replaced with “49 C.F.R. 391.23 as adopted by K.A.R. 82-4-3g.”

(C) The phrase “§ 391.31” shall be deleted and replaced with “49 C.F.R. 391.31 as adopted by K.A.R. 82-4-3g.”

(D) The phrase “§ 390.5 of this subchapter” shall be deleted and replaced by “49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f.”

~~(E) The term “(business)” shall be deleted.~~

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission’s regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. ~~2012~~ 2014 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. ~~2012~~ 2014 Supp. 66-1,129, ~~as amended by L. 2013, ch. 14, sec. 3~~; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Nov. 14, 2011; amended Sept. 20, 2013; amended P-_____.)

**KANSAS CORPORATION COMMISSION
ECONOMIC IMPACT STATEMENT
K.A.R. 82-4-3f**

I. Summary of Proposed Regulation, Including Its Purpose.

This existing regulation adopts relevant portions of the Federal Motor Carrier Safety Administration (“FMCSA”) regulations (49 C.F.R. Part 390) which establish the minimum safety requirements to be followed by motor carriers and their employees, the safety standards for commercial motor vehicles and intermodal equipment. The proposed amendments to this regulation include edits to reflect minor grammar and form corrections and recent updates to FMCSA regulations.

II. Reason or Reasons the Proposed Regulation is Required, Including Whether or not the Regulation is Mandated by Federal Law.

This regulation adopts a federal regulation that is required for the state to participate in and continue to receive Motor Carrier Safety Assistance Program (“MCSAP”) funds. This regulation sets out the safety rules each motor carrier and its drivers must follow during the operation of commercial motor vehicles for the purpose of transporting property, passengers and/or intermodal equipment. This rule also specifies that medical examiners who conduct examinations for commercial motor vehicle drivers must be listed on the National Registry of Certified Medical Examiners. The adoption of this regulation is mandated by 49 C.F.R. Part 350. The proposed regulation and its amendments do not exceed the requirements to obtain MCSAP funding.

III. Environmental Benefit Statement.

The Transportation Division of the Commission does not anticipate a direct environmental benefit on the industry, agency, other governmental agencies, or the general public.

IV. Anticipated Economic Impact.

The Transportation Division of the Commission anticipates a slight economic impact on motor carriers resulting from pass-through costs from medical examiners. The proposed regulation contains a requirement that medical examiners who perform medical certifications for motor carriers be listed on the National Registry of Certified Medical Examiners. This requirement is being adopted in order to continue to receive various grants, further detailed below. Data obtained from the FMCSA’s analysis indicated medical examiners would incur approximately \$550 of costs to become certified and listed on the National Registry of Certified Medical Examiners.¹ FMCSA data indicated that if a medical examiner charged at the low end for an average examination (\$70), their costs would be recovered after approximately eight examinations.² FMCSA analysis indicated that some medical examiners would have access to little or no-cost training necessary to obtain the required certification and listing. However,

¹ 77 FR 24104, 24116 (2012).

² *Id.*

because some medical examiners will be required to pay for the necessary certification to be listed on the National Registry of Certified Medical Examiners, it is foreseeable that these costs will be passed on to motor carriers and/or their drivers. The Transportation Division of the Commission is unable to determine how these costs may be passed-through, if at all.

The Transportation Division of the Commission does not believe these costs will deprive Kansas motor carriers or their drivers from registered and certified medical examiners. Medical examiners who perform examinations on motor carriers and their drivers operating in interstate commerce have been required to register on the National Registry of Certified Medical Examiners since May 21, 2014. Transportation Division experience suggests that medical examiners who perform *intrastate* examinations also perform *interstate* examinations. Meaning, there should be minimal to no disruption in access to medical examiners if this regulation is adopted. Currently, more than 677 individuals in Kansas have registered on the National Registry of Certified Medical Examiners.³

If this proposed regulation is not adopted, the Commission will become non-compliant with its requirement to maintain substantial compliance with the Federal Motor Carrier Safety Regulations pursuant to 49 C.F.R. Part 350. This non-compliance would carry the following monetary consequences on both existing and future funding:

- All MCSAP Basic and Incentive funding would be suspended. No additional grant funds could be applied for; and
- Multiple state agencies (KDOR, KCC, KDOT, KHP) currently hold the following grants: MCSAP, CVISN, HP, PRISM, SaDIP and New Entrant. In addition to future applications being denied, any remaining money in these account balances would not be able to be vouchered against.

Additional federal funding currently received in the approximate amount of \$328 million annually would be penalized by a 4% reduction the first year (approximately \$13 million), 8% the second year (approximately \$26 million), increasing an additional 8% per year until no further funds could be apportioned.

V. Description of Less Costly Methods Considered Addressing this Issue.

No less costly method presently exists. A separate Kansas-operated medical examiner registry could be developed to maintain compliance with federal regulations. However, any costs that are required to develop such a system would almost certainly exceed the costs of requiring medical examiners to register on the federal National Registry of Certified Medical Examiners. Current MCSAP funds that Kansas has received may not be used to develop a Kansas-operated medical examiner registry.

VI. Report on Public Hearing and Comments on Proposed Administrative Regulations.

This section will be updated after the regulations have been presented to the Joint Committee on Administrative Rules and Regulations, and at the scheduled public hearing.

³ As of 1/28/2015.

**KANSAS CORPORATION COMMISSION
ECONOMIC IMPACT STATEMENT
K.A.R. 82-4-3g**

I. Summary of Proposed Regulation, Including Its Purpose.

This existing regulation adopts relevant portions of the Federal Motor Carrier Safety Administration (“FMCSA”) regulations (49 C.F.R. Part 391) which establish the minimum duties of motor carriers with respect to the qualifications of their commercial motor vehicle drivers. This regulation also establishes the minimum qualifications for those drivers who own and operate commercial motor vehicles. The proposed amendments to this regulation include edits to reflect minor grammar and form corrections and recent updates to FMCSA regulations.

II. Reason or Reasons the Proposed Regulation is Required, Including Whether or not the Regulation is Mandated by Federal Law.

This regulation adopts a federal regulation that is required for the state to participate in and continue to receive Motor Carrier Safety Assistance Program (“MCSAP”) funds. In addition to minor grammatical and form updates, the proposed amendments to this regulation clarify who may conduct a medical examination of a commercial motor vehicle driver if the driver is required to undergo an examination. Kansas may either elect to create its own registry, or utilize a registry created by the federal government. This proposed regulation elects to rely on the already established and operating federal registry. The proposed amendments to this existing regulation are necessary to ensure compatibility with the Federal regulations as required in 49 C.F.R. Part 350.

III. Environmental Benefit Statement.

The Transportation Division of the Commission does not anticipate a direct environmental benefit on the industry, agency, other governmental agencies, or the general public.

IV. Anticipated Economic Impact.

The Transportation Division of the Commission anticipates a slight economic impact on motor carriers resulting from pass-through costs from medical examiners. The proposed regulation contains a requirement that medical examiners who perform medical certifications for motor carriers be listed on the National Registry of Certified Medical Examiners. This requirement is being adopted in order to continue to receive various grants, further detailed below. Data obtained from the FMCSA’s analysis indicated medical examiners would incur approximately \$550 of costs to become certified and listed on the National Registry of Certified Medical Examiners.⁴ FMCSA data indicated that if a medical examiner charged at the low end for an average examination (\$70), their costs would be recovered after approximately eight examinations.⁵ FMCSA analysis indicated that some medical examiners would have access to little or no-cost training necessary to obtain the required certification and listing. However,

⁴ 77 FR 24104, 24116 (2012).

⁵ *Id.*

because some medical examiners will be required to pay for the necessary certification to be listed on the National Registry of Certified Medical Examiners, it is foreseeable that these costs will be passed on to motor carriers and/or their drivers. The Transportation Division of the Commission is unable to determine how these costs may be passed-through, if at all.

The Transportation Division of the Commission does not believe these costs will deprive Kansas motor carriers or their drivers from registered and certified medical examiners. Medical examiners who perform examinations on motor carriers and their drivers operating in interstate commerce have been required to register on the National Registry of Certified Medical Examiners since May 21, 2014. Transportation Division experience suggests that medical examiners who perform *intrastate* examinations also perform *interstate* examinations. Meaning, there should be minimal to no disruption in access to medical examiners if this regulation is adopted. Currently, more than 677 individuals in Kansas have registered on the National Registry of Certified Medical Examiners.⁶

If this proposed regulation is not adopted, the Commission will become non-compliant with its requirement to maintain substantial compliance with the Federal Motor Carrier Safety Regulations pursuant to 49 C.F.R. Part 350. This non-compliance would carry the following monetary consequences on both existing and future funding:

- All MCSAP Basic and Incentive funding would be suspended. No additional grant funds could be applied for; and
- Multiple state agencies (KDOR, KCC, KDOT, KHP) currently hold the following grants: MCSAP, CVISN, HP, PRISM, SaDIP and New Entrant. In addition to future applications being denied, any remaining money in these account balances would not be able to be vouchered against.

Additional federal funding currently received in the approximate amount of \$328 million annually would be penalized by a 4% reduction the first year (approximately \$13 million), 8% the second year (approximately \$26 million), increasing an additional 8% per year until no further funds could be apportioned.

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VI. Report on Public Hearing and Comments on Proposed Administrative Regulations.

This section will be updated after the regulations have been presented to the Joint Committee on Administrative Rules and Regulations, and at the scheduled public hearing.

⁶ As of 1/28/2015.