

**On Adoption of the Rules for Introduction and Discontinuation
of Decreasing Coefficients for Tariffs on Regulated Rail Freight**

Order of the Chairman of the Agency of the Republic of Kazakhstan On Regulation of Natural
Monopolies, Protection of Competition and Support of Small Businesses
No.24-OD of 12 December 1999

Registered at the Ministry of Justice of the Republic of Kazakhstan
on 6 January 2000 as No.1024

Wishing to define the standard terms and conditions for the application of tariff discounts to the services of natural monopolies, and

Taking particular account the provisions of the Article 13(4) and Article 15(3) of the Law of the Republic of Kazakhstan “On Natural Monopolies”,

I hereby order that:

1. the following Rules for Introduction and Discontinuation of Decreasing Coefficients for Tariffs on Regulated Rail Freight be adopted;
2. this order be registered at the Ministry of Justice of the Republic of Kazakhstan by the Legal Unit (Ms. Mashinistova) according to the standard practice;
3. following registration by the Ministry of Justice of the Republic of Kazakhstan, this order be circulated by the Main Unit (Mr. Bokenchin) among the territorial bodies;
4. implementation of this order be supervised by the Deputy Chairman Mr. Sh. Kurmangaliev.

Chairman

**The Rules for Introduction and Discontinuation
of Decreasing Coefficients for Tariffs on Regulated Rail Freight**

1. General Provisions

1. These Rules were developed based on the Laws of the Republic of Kazakhstan “On Transportation in the Republic of Kazakhstan”, “On Natural Monopolies”, and “On Development of Competition and Restriction of Monopolies” in order to introduce the standard terms and procedures for introduction and discontinuation of decreasing coefficients for tariffs on rail freight services supplied by the regulated carriers.
2. These Rules define terms and conditions for introduction and discontinuation of decreasing coefficients for tariffs on rail freight services supplied by the regulated carriers.
3. Where an international agreement ratified by the Republic of Kazakhstan defines other rules than those covered by this Order the rules of the international agreement shall prevail.

4. For the purposes of these Rules:

“tariffs for regulated rail freight” mean freight transportation rates of the Carrier subject to approval by the public body authorized under the Law of the Republic of Kazakhstan to act as a national price (tariff) regulator;

“concerned public bodies” mean public bodies of the Republic of Kazakhstan, other than the Ministry of Transport and Communications, the Ministry of the State Revenues, and the Agency of the Republic of Kazakhstan for the Regulation of Natural Monopolies, Protection of Competition and Support of Small Businesses, interested, within the scope of their competence, in introduction or discontinuation of decreasing coefficients for the acting rates on rail transportation of products of specific economic sectors;

“repayment profile” means a schedule of repayment of receivables by the Client to the Carrier bearing signatures of the Client and of the chief executive of the Carrier.

All other terms and definitions found in these Rules are used in accordance with the acting legislation of the Republic of Kazakhstan.

2. Needed test criteria for introduction or discontinuation of decreasing coefficients

5. Decreasing coefficients are set for tariffs on transportation of products of a specific economic sector based on a projected economic efficiency of this measure for the State and economic practicability for the Carrier and the Client.
6. Practicability of applying decreasing coefficients to rail freight rates in a specific economic sector (hereafter – decreasing coefficients) is assessed based on the following criteria:
 - 1) security of tax payments to the budget;
 - 2) attraction of a new cargo flow, i.e. increase in the volume of freight traffic;
 - 3) involvement of unutilized or underutilized segments; and
 - 4) environmental hazards of by-products of industrial production.
7. Decreasing coefficients are applied where the Client has no accounts of receivables or where they are settled in accordance with the repayment profile, and where there is evidence that the volume of freight traffic increased (or remained at the same level) as compared to the previous period.

Conditions described in the first part of this Paragraph are viewed as part of contractual obligations between the Client and the Carrier. The breach of contractual obligations by the Client shall entail reassessment of the *de facto* level of freight traffic without applying decreasing coefficients for the corresponding period.

8. Decreasing coefficients are set for a limited period of time.

NOTE: Paragraph 8 is as amended by the Order of the Chairman of the Agency of the Republic of Kazakhstan On Regulation of Natural Monopolies, Protection of Competition, and Support of Small Businesses No. 249-1-OD of 13 December 2001.

9. Decreasing coefficients may be discontinued based on the following criteria: economic inefficiency of further use of decreasing coefficients for the State and (or) the Carrier, or inconsistency with any of the main criteria described in Paragraph 6 of these Rules.

3. Decreasing Coefficients: Implementation Procedures

10. To request the implementation of decreasing coefficients, the Client shall prepare a justification and submit its copies to the Carrier, concerned public bodies, the Ministry of Transport and Communications, the Ministry of the State Revenues, and the Agency of the Republic of Kazakhstan On Regulation of Natural Monopolies, Protection of Competition, and Support of Small Businesses (hereafter – the Anti-Monopoly Agency)

All of the public bodies and organizations listed above shall be responsible for non-disclosure of information protected by the national legislation.

11. The application package prepared by the Client shall contain documents listed in Annex 1 to these Rules.

Documents included in the application package should meet the following requirements:

- 1) every page of every document should bear the signature of the Client, financial documents should also bear the signature of the accountant-general of the Client;
 - 2) each document should reflect actual data for the elapsed period.
12. Failure to submit all or a part of the documents listed in these Rules will be used as a basis for rejection to process the application.

The Anti-Monopoly Agency, the Carrier, concerned public bodies, the Ministry of Transport and Communications and the Ministry of the State Revenues of the Republic of Kazakhstan shall notify the Client in writing of their decision to process or reject the application within a period of five days.

The Client shall notify about all such decisions within two days to the public bodies and organizations listed above and circulate necessary supporting documents.

If the Client fails to submit the required documents in timely manner demonstrating that the application was accepted for processing by the Carrier, the concerned public bodies, the Ministry of Transport and Communications, and the Ministry of State Revenues, the Anti-Monopoly Agency shall suspend processing of the application for up to seven days.

When the Client takes necessary remedial actions, processing shall resume and be performed within the time limits defined in Paragraph 14 of these Rules.

Where the Client fails to take remedial actions within seven days from the date of suspension, the Agency shall refuse the application.

13. Where necessary, the Anti-Monopoly Agency, the Carrier, the concerned public bodies, the Ministry of Transport and Communications, and the Ministry of the State Revenues of the Republic of Kazakhstan may request the Client to submit additional information.
14. Within fifteen days from the date of receipt of the Client's justification, the Carrier, the concerned public bodies, the Ministry of Transport and Communications, and the

Ministry of the State Revenues of the Republic of Kazakhstan shall submit their conclusions on economic practicability or impracticability of introducing decreasing coefficients to the Anti-Monopoly Agency and the Client.

All conclusions prepared by the concerned public bodies will have accompanying documents listed in Annex 2 to these Rules.

Every page of every document shall bear initials of the authorized official.

Where any of the public bodies or organizations fails to submit its conclusions within the set period of time, the Anti-Monopoly Agency shall suspend processing of the application pending receipt of the required conclusions, for up to five days.

Where any of the public bodies or organizations fails to submit its conclusions within five days following the date of suspension, the Anti-Monopoly Agency may refuse the application or take an independent decision.

15. The Anti-Monopoly Agency makes an assessment of the justification prepared by the Client and the conclusions of the Carrier, the concerned public bodies, the Ministry of Transport and Communications, and the Ministry of the State Revenues of the Republic of Kazakhstan within thirty days from the date of the Client's application package receipt.
16. Based on the results of the assessment, the Anti-Monopoly Agency makes a decision to grant or not to grant decreasing coefficients.

Decisions of the Anti-Monopoly Agency will be in the form of Orders of the Chairman of the Anti-Monopoly Agency.

The Order authorizing introduction of decreasing coefficients is circulated to the concerned public bodies, the Ministry of Transport and Communications, the Ministry of the State Revenues of the Republic of Kazakhstan, and the Carrier.

Where the Anti-Monopoly Agency decides not to grant decreasing coefficients, it circulates its argumentative conclusion to the Client, the Carrier, the Ministry of Transport and Communications, the Ministry of the State Revenues of the Republic of Kazakhstan, and the concerned public bodies.

17. Where the Carrier, the concerned public bodies, the Ministry of Transport and Communications or the Ministry of the State Revenues of the Republic of Kazakhstan draw conclusions against the introduction of decreasing coefficients, the final decision shall be made by the Anti-Monopoly Agency.
18. The Carrier shall inform its Clients of the introduction of decreasing coefficients no later than ten days prior to the date of entry into force of the Order of the Anti-Monopoly Agency.
19. The Carrier shall prepare quarterly reports for the Anti-Monopoly Agency, the Ministry of Transport and Communications, and the Ministry of the State Revenues of the Republic of Kazakhstan on the level of rail freight services provided under decreasing coefficients for the same period of time.

4. Procedures for Discontinuation and Renewal of Decreasing Coefficients

NOTE: The title is as amended by the Order of the Chairman of the Agency of the Republic of Kazakhstan On Regulation of Natural Monopolies, Protection of Competition, and Support of Small Businesses No. 249-1-OD of 13 December 2001.

20. Decreasing coefficients are applied only until the expiry of the set duration. No specific Order of the Chairman of the Anti-Monopoly Agency is required for their discontinuation.
21. The Anti-Monopoly Agency may take a unilateral decision to discontinue decreasing coefficients prior to the expiry of their duration under the conditions listed in Paragraph 9 of these Rules or, for ecologically hazardous by-products of the industrial production, to renew decreasing coefficients for up to three months. For the decision-making purposes, the Anti-Monopoly Agency may request conclusions from the Carrier, the concerned public bodies, the Ministry of Transport and Communications, and the Ministry of the State Revenues of the Republic of Kazakhstan.

NOTE: Paragraph 21 is as amended by the Order of the Chairman of the Agency of the Republic of Kazakhstan On Regulation of Natural Monopolies, Protection of Competition, and Support of Small Businesses No. 249-1-OD of 13 December 2001.

22. The Client, the Carrier, the concerned public bodies, the Ministry of Transport and Communications, and the Ministry of the State Revenues of the Republic of Kazakhstan may submit to the Anti-Monopoly Agency their proposals to discontinue acting decreasing coefficients along with the necessary supporting documents.
23. The Anti-Monopoly Agency shall process the documents within thirty days and, where in line with Paragraph 9 of these Rules, pass down a decision in the form of Order to discontinue decreasing coefficients, which has to be circulated among the Carrier, the Ministry of Transport and Communications, the Ministry of the State Revenues of the Republic of Kazakhstan, and the concerned public bodies.

The Carrier shall inform its Clients of the discontinuation or renewal of acting decreasing coefficients no later than ten days prior to the date of entry into force of the Order of the Anti-Monopoly Agency. Where the Anti-Monopoly Agency decides to refuse discontinuation of the acting decreasing coefficients, it prepares a reasonable conclusion for the initiating party.

NOTE: Paragraph 23 is as amended by the Order of the Chairman of the Agency of the Republic of Kazakhstan On Regulation of Natural Monopolies, Protection of Competition, and Support of Small Businesses No. 249-1-OD of 13 December 2001.

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Documents to be provided by the Client, requesting introduction of decreasing coefficients for rail freight rates in a specific economic sector:

- 1) application (free form);
- 2) full name of the Client (natural person or legal entity) and type of economic activity;
- 3) justification demonstrating the need to introduce decreasing coefficients for tariffs including projected increase (or maintenance) of the level of tax receipts to the budget as a result of applying decreasing coefficients;
- 4) statement of balance along with the analysis of financial and economic activities and explanatory note for the previous year (six months, three months);
- 5) product range (finished goods, raw materials) with detailed entries;
- 6) unit cost of finished goods broken down by items of expenditure;
- 7) structure of transportation costs for finished goods and raw materials together with their share in the overall costs and a separate entry for the railway tariff;
- 8) development of cost prices and clearance prices of finished goods and purchased raw materials;
- 9) costs incidental to the purchase of raw materials and affecting clearance prices of finished goods with a separate entry for the railway tariff;
- 10) level of liabilities before the Carrier (in the form of a reconciliation act as of the 1st date of the current month and repayment profile bearing signatures of the Client and the chief executive of the Carrier);
- 11) dynamics of finished goods traffic for the previous year broken down by months;
- 12) volume of finished goods and raw materials traffic for the current year broken down by months;
- 13) projected annual volume of finished goods and raw materials traffic broken down by months along with the indication of the routes and distance to the points of destination;
- 14) type and class of the rolling stock used for the transportation of raw materials and finished products;
- 15) a full name of the supplier of raw materials;
- 16) a full name of the buyer (recipient) of products.

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Documents to be submitted to the Anti-Monopoly Agency by the concerned public bodies:

- 1) justification demonstrating need to introduce decreasing coefficients for tariffs on rail transportation of products of a specific economic sector including projected increase (or maintenance) of the level of tax receipts to the budget as a result of applying decreasing coefficients;
- 2) list of major consignors and consignees involved in the transportation of the product in review, whose share in the overall product traffic exceeds 10 per cent;
- 3) unit cost of finished products broken down by items of expenditure for the major economic agents;
- 4) structure of transportation costs for finished goods and raw materials along with their share in the overall costs and a separate entry for the railway tariff for each major economic agent;
- 5) development of cost prices and clearance prices of finished goods and purchased raw materials for each major economic agent;
- 6) costs incidental to the purchase of raw materials by major economic agents and affecting clearance prices of finished goods
- 7) with a separate entry for the railway tariff;
- 8) dynamics of finished goods and raw materials traffic for the previous year broken down by months for each major economic agent;
- 9) volume of traffic of finished goods and raw materials for the current year broken down by months for each economic agent;
- 10) projected annual volume of traffic of finished goods and raw materials broken down by months along with the indication of the routes and distance to the points of destination, for each major economic agent;
- 11) type and class of the rolling stock used for the transportation of raw materials and finished products for major economic agents;
- 12) full names of the undertakings acting as suppliers of raw materials for major economic agents;
- 13) full names of the undertakings acting of buyers (recipients) of products of major economic agents.