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Administrator.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 385

#### Change to FMCSA Policy on Calculating and Publicizing the Driver, Vehicle, and Hazardous Materials Out- of-Service Rates and Crash Rates

**AGENCY:** Federal Motor Carrier Safety  
Administration (FMCSA), DOT.

**ACTION:** Notice of amendment to  
enforcement policy.

**SUMMARY:** As stated in 49 CFR 385.407,  
in order for FMCSA to issue a hazardous  
materials safety permit (HMSP), a motor  
carrier must not have a crash rate, or  
driver, vehicle, or hazardous materials  
(HM) Out-of-Service (OOS) rate in the  
top 30 percentile of the national  
average.

The current method for determining  
the qualifying crash and OOS rates  
under this rule, in effect since the  
inception of the HMSP program, utilizes  
two years of inspection data from  
FMCSA's Motor Carrier Management  
Information System (MCMIS) to  
calculate the OOS rates representing the  
top or worst-performing 30 percent of  
the national average. FMCSA has been  
recalculating the threshold crash and  
OOS rates every two years, using  
MCMIS data from the preceding two  
years.

This notice of amendment explains  
the new methodology the Agency will  
begin to use to calculate the threshold  
crash rate and driver, vehicle, and HM  
OOS rates that qualify or disqualify a  
carrier for HMSP issuance. The revised  
methodology uses eight years of data  
from MCMIS (data from 2003 to 2010)  
to determine the national average for  
eligible crash and OOS thresholds that  
qualify for an HMSP. These rates will  
remain static rather than change every  
two years. The Agency decided that  
crash and OOS rates, which remain  
static over a longer period of time, will  
improve safety by providing a clearly  
identifiable standard for industry  
compliance and minimize the burden  
on motor carriers and the HM industry  
by allowing more appropriate measures  
that ensure eligibility for the HMSP. The  
calculations of crash and OOS rates in  
this notice of amendment will be

implemented immediately and posted to  
FMCSA's Web site. These new static  
rates will remain in effect until further  
notice.

**DATES: Effective Date:** This policy  
amendment becomes effective June 27,  
2012.

**FOR FURTHER INFORMATION CONTACT:** Ms.  
Roxane Greene, at  
*Roxane.Greene@dot.gov* or phone (202)  
366-0735; or John Hardridge, at  
*John.Hardridge@dot.gov* or (202)  
366-0811. Both staff members may be  
reached at Federal Motor Carrier Safety  
Administration, Office of Enforcement  
and Program Delivery, 1200 New Jersey  
Avenue SE., Washington, DC 20590.  
Office hours are from 8:30 a.m. to  
5 p.m., EST, Monday through Friday,  
except Federal holidays.

**SUPPLEMENTARY INFORMATION:** The  
HMSP requirement became effective for  
motor carriers as of January 1, 2005.  
Additionally, 49 CFR part 385, subpart  
E identifies which motor carriers must  
hold a HMSP, and establishes the  
application process for a HMSP. It also  
specifies the need for a carrier's crash  
rate and driver, vehicle, and HM OOS  
rates to be below the 70th percentile and  
describes other conditions that must be  
satisfied to qualify for this permit. As  
specified in § 385.407(a)(2), FMCSA will  
not issue a HMSP to a motor carrier  
having a crash rate in the top 30 percent  
of the national average, or a driver,  
vehicle, HM, or total OOS rate in the top  
30 percent of the national average, as  
indicated in MCMIS. The methodologies  
for calculating these rates are posted on  
the FMCSA Web site  
*www.fmcsa.dot.gov*. More conditions  
are set forth in § 385.407 that require a  
carrier to have a Satisfactory safety  
rating, certify that it has a satisfactory  
security program, and be properly  
registered with the Pipeline and  
Hazardous Materials Safety  
Administration (PHMSA). The carrier  
also is required to submit proof of  
minimum levels of financial  
responsibility as stated in § 387.9.

Pursuant to 49 CFR 390.19, a motor  
carrier is required to file its MCS-150  
form with FMCSA every two years. The  
application for the HMSP was  
incorporated into the MCS-150 as an  
expanded version of the form entitled  
"MCS-150B or Combined Motor Carrier  
Identification Report and HM Permit  
Application." Thus, the HMSP must be  
renewed every two years. Revision to  
the calculations of the crash and OOS  
rates will not change this requirement.

On November 7, 2007, FMCSA  
published a Notice of Enforcement  
Policy (72 FR 62795) explaining the  
methodology used by the Agency to

calculate those averages. The rates had  
been calculated using roadside  
inspection data in MCMIS for both HM  
and non-HM inspections for driver and  
vehicle OOS rates. For the HM OOS  
rate, only inspections that indicated that  
HM was present were used. The  
applicant motor carriers needed to have  
a least three roadside inspections  
indicated in MCMIS for each of the 2-  
year rate calculation timeframes. For  
instance, when calculating the 2005-  
2006 registration cycle rates, in order to  
be included in the calculation, a motor  
carrier would had to have at least three  
roadside inspections during the 2003-  
2004 time period.

During the course of the program, the  
calculated 70th percentile OOS  
thresholds have fluctuated causing  
uncertainty in the industry. It has  
become increasingly more difficult for a  
motor carrier to attain or retain a HMSP  
because it must maintain OOS rates  
below 7.14% for drivers, 33.33% for  
vehicles, and 3.45% for HM. These rates  
compare with the national averages for  
all motor carriers at 5.51%, 20.72%, and  
4.50% respectively.

A historical picture of the OOS and  
crash rates, data from the entire eight-  
year period since the inception of the  
program, was used in the calculations  
(2003-2010) for the fixed rates. This  
provides a balanced perspective of  
motor carrier performance over a longer  
period of time and virtually eliminates  
the short term fluctuations that some  
motor carriers experience. It is also  
reflective of all of the time periods used  
to calculate rates for the present and  
three former registration periods. The  
threshold rate calculation included only  
carriers that had at least 12 inspections  
over the 8 years previously described,  
making this analysis comparable to the  
3-inspections-per-cycle method used in  
previous calculations. The main  
difference in the fixed-rate calculations  
when compared to previous 2-year  
calculations is that, due to the number  
of inspections required during the  
extended timeframe (12), the number of  
inspections with an HM OOS rate of  
0.00% decreased. This resulted in  
raising the overall HM OOS average for  
the population of motor carriers used in  
the calculation, and while higher, it is  
a more appropriate indicator of  
placarded motor carriers' roadside  
inspection HM OOS performance.

In order to calculate the fixed crash  
rate, a MCMIS snapshot was taken on  
February 24, 2012. The 8-year period  
was divided into four 2-year periods  
reflecting fiscal years (FY) 2003-2004,  
FY 2005-2006, FY 2007-2008, and FY  
2009-2010. Qualifying motor carriers  
had at least 2 crashes in at least one 2-

year period. Then the number of power units for each qualifying 2-year period was captured based on snapshots taken immediately after the end of each FY. The crash rate for each 2-year period motor carrier was then determined in each time period by taking the number of crashes indicated and dividing by the number of power units times two. Finally, all carrier/time period combinations were ranked based on crash rate, with a resulting crash rate threshold at the 70th percentile of 0.13636.

Since this evaluation criterion is a departure from the methods used in the previous years of the HMSP program, the OOS rates and 70th percentile thresholds have shifted, and in some instances increased when compared to previous years. The driver and HM OOS rates are higher because the calculations included carriers that have 12 inspections over 8 years as opposed to only 3 inspections over 2 years. There

are more companies with non-zero OOS rates, and thus the 70th percentile is higher than what was previously seen with using only 3 inspections over a 2-year timeframe. FMCSA sees this as a necessary adjustment to the methodology based on experience over the life of the program, that more accurately reflects motor carrier inspection activity and performance with no diminution of safety.

Utilizing the methodologies described above, the top (worst-performing) 30th percentile of the National averages were determined by establishing a cut-off at the numerical threshold value located at the 70th percentile in each category using eight years of data. All carriers with a driver, vehicle, or HM OOS rate less than the cut-off are considered to be below the National Average for each category, and, therefore, eligible for participation in the program. Carriers with a driver, vehicle, or HM OOS rate that is equal to or greater than the cut-

off in each category are in the 30th percentile, or the worst-performing category, and will be denied an HMSP.

FMCSA Web sites, [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov) and [www.safersys.org/HazMatRates.aspx](http://www.safersys.org/HazMatRates.aspx) will continue to provide notice to the regulated community on how FMCSA calculates the National averages and threshold figures for the top-performing motor carrier population. The new threshold rates will remain effective for all future registration periods until such time as FMCSA can incorporate eligibility standards into the Safety Measurement System. These rates will provide the standard for granting or denying HMSPs beginning immediately, and will remain in effect until further notice.

**Rates**

Table 1 below shows the calculated National average cut-off threshold rates established for past Registration Cycles and the Fixed Rates:

TABLE OF CALCULATED THRESHOLD RATES FOR PREVIOUS REGISTRATION CYCLES AND FIXED RATES

| Registration cycles | Crash rate | Driver OOS rate (percent) | Vehicle OOS rate (percent) | HM OOS rate (percent) |
|---------------------|------------|---------------------------|----------------------------|-----------------------|
| 2005 & 2006 .....   | 0.125      | 8.92                      | 33.3                       | 5.88                  |
| 2007 & 2008 .....   | 0.125      | 9.52                      | 33.3                       | 6.06                  |
| 2009 & 2010 .....   | 0.125      | 9.09                      | 33.3                       | 4.76                  |
| 2011 & 2012 .....   | 0.114      | 7.14                      | 33.3                       | 3.45                  |
| Fixed Rates .....   | 0.136      | 9.68                      | 33.3                       | 6.82                  |

**Notes:**

1. Rates for registration cycles 2005–2006, 2007–2008, and 2009–2010 were calculated on Calendar Year MCMIS data. For instance, the 2005–2006 rates were based on CY 2003–2004 data and issued on December 31, 2004, for implementation on January 1, 2005.
2. Rates for registration cycle 2011–2012 were calculated using MCMIS Fiscal Year 2009–2010 data and issued on September 30, 2010, 90 days prior to implementation on January 1, 2011.

**Carriers’ Calculation of Their OOS Rates and Crash Rate**

When a motor carrier submits an HMSP application through the MCS–150B process, FMCSA examines the current one year (12 months) of the carrier’s crash and OOS data. This policy is consistent with the Agency’s practice of reviewing one year of motor carrier’s records during the conduct of a compliance review. The period examined is the 12 months immediately preceding the date that the application is processed in MCMIS. A motor carrier should therefore, calculate its vehicle, driver, and HM OOS rates in each of the three categories by examining the number of inspections and OOS violations during the preceding 12-month period before applying. To determine its OOS rate, the carrier would divide the number of OOS inspections by the total number of inspections for each category. The resulting figure is the motor carrier’s OOS rate for that category. For driver

and vehicle OOS calculations, the carrier should use all inspections, both HM and non-HM. For the HM OOS calculation, the carrier should use only HM inspections. The FMCSA does not consider a single OOS violation in any one category to be statistically valid. Thus, OOS rates will be calculated only for carriers with more than one OOS violation in the previous 12-month period.

FMCSA likewise examines one year of crash data to determine a carrier’s crash rate. A motor carrier should divide the number of crashes for the previous 12-month period by the total number of power units that it operated during that period, prior to applying. For example, if a motor carrier had 2 crashes and 10 power units, the crash rate would be 0.20 based upon a calculation of (2/10 = 0.20), and would thus be ineligible for obtaining an HMSP because the carrier’s crash rate is above the established 70th percentile of 0.136. FMCSA does not consider a single crash to be statistically valid. Thus, crash rates will be

calculated only for carriers with more than one crash in the previous 12-month period.

**Upcoming HMSP Program Registration Cycles**

While the rates will remain fixed, motor carriers will still be required to update their MCS–150B every two years. The OOS rates in this document are effective for the remainder of the current registration cycle (January 1, 2011 through December 31, 2012) and all 2-year registration cycles starting with the cycle that begins on January 1, 2013. This method for determining crash and driver, vehicle, and HM OOS rates will remain in effect until such time as FMCSA can incorporate eligibility standards into the Safety Measurement System or otherwise updated through the publication of a notice.

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