



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

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 website. These new static rates will remain in effect until further notice.

DATES: *Effective Date:* This policy amendment becomes effective [Insert date of publication in the Federal Register].

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 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, S.E., 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 website 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 websites, www.fmcsa.dot.gov and 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.

Issued on: June 21, 2012

Anne S. Ferro
Administrator

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