

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060-1170.

*OMB Approval Date:* May 16, 2012.

*OMB Expiration Date:* May 31, 2015.

*Title:* Section 90.209(b)(7)—

Bandwidth limitations.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 27 respondents; 25 responses.

*Estimated Time per Response:* 0.5 up to 8.4 hours.

*Frequency of Response:* On occasion, third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 22 hours.

*Total Annual Cost:* \$52,500.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* None.

*Needs and Uses:* This information will be used to help ensure that 800 MHz public safety licensees are not impacted by EA-based 800 MHz SMR licensees exceeding the channel spacing and bandwidth requirement in part 90 of the Commission's rules as modified under FCC 12-55. Pursuant to this notice, 800 MHz public safety licensees within the notice area will be able to monitor their networks for any increase in harmful interference in and around the time that an EA-based 800 MHz SMR licensee begins operations that exceed the existing channel spacing and bandwidth limitation in part 90.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2012-15627 Filed 6-26-12; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 369

[Docket No. FMCSA-2012-0020]

RIN-2126-AB48

### Rescission of Quarterly Financial Reporting Requirements

**AGENCY:** Federal Motor Carrier Safety Administration, DOT.

**ACTION:** Direct final rule.

**SUMMARY:** By direct final rule, the Federal Motor Carrier Safety Administration (FMCSA) eliminates the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP-1). This paperwork burden can be removed without an adverse impact on safety or the Agency's ability to maintain effective commercial regulations over the for-hire trucking and passenger-carrying industries.

**DATES:** This rule is effective August 27, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via <http://www.regulations.gov> on or before July 27, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by July 27, 2012, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

**ADDRESSES:** You may submit comments identified by docket number FMCSA-2012-0020 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, email or call Ms. Vivian Oliver, Office of Research and Information Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590; Telephone 202-366-2974; email [Vivian.Oliver@dot.gov](mailto:Vivian.Oliver@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation and Comments

If you would like to participate in this rulemaking, you may submit comments and related materials. All comments

received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA-2012-0020), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b) and explained below.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Rule" and insert "FMCSA-2012-0020" in the "Keyword" box. Click "Search," then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

##### B. Viewing Comments and Documents

To view comments, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "FMCSA-2012-0020" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

##### C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on

behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

## II. Regulatory Information

FMCSA publishes this direct final rule under 49 CFR 389.11 and 389.39, because the Agency has determined that the rule makes non-controversial, minor amendments to 49 CFR part 369 that will reduce reporting requirements for certain for-hire motor carriers. FMCSA does not expect any adverse comments. If no adverse comments or notices of intent to submit an adverse comment are received by July 27, 2012, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if we receive any adverse comments or notices of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If we decide to proceed with a rulemaking following receipt of any adverse comments, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered “adverse” if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

## III. Background

### *Annual Financial Reporting Requirements*

Section 14123 of title 49, United States Code, requires the filing of annual financial reports by certain for-hire motor carriers of property and household goods (Form M).

The annual reporting program was implemented on Dec. 24, 1938 (3 FR 3158) (the first annual report for 1938 was due by Mar. 31, 1939) and subsequently was transferred from the Interstate Commerce Commission (ICC) to the U.S. Department of Transportation’s (DOT) Bureau of Transportation Statistics (BTS) on January 1, 1996. The Secretary of DOT delegated to BTS the responsibility for the program on December 17, 1996 (61 FR 68162–02). Responsibility for collection of Form M (for-hire property

carriers, including household goods carriers) and Form MP–1 (for-hire passenger carriers), including quarterly reporting requirements for such forms (Form QFR), was transferred from the BTS to the FMCSA on August 17, 2004 (69 FR 51009), and the regulations were redesignated as 49 CFR part 369 on August 10, 2006 (71 FR 45740). FMCSA has continued to collect carriers’ annual reports and to furnish copies of the reports requested under the Freedom of Information Act.

### *Quarterly Financial Reporting*

Subsection 14123(a)(2) of title 49, United States Code, allows the Agency to require quarterly financial reports from for-hire property and passenger carriers, but it does not mandate that the Agency require these reports to be submitted. These requirements are included in 49 CFR Part 369 and apply to Class I (average annual gross transportation operating revenues of \$10 million or more) and Class II (average annual gross transportation operating revenues of \$3 million dollars or more, but less than \$10 million) for-hire motor carriers of property. The requirements also apply to Class I (average annual gross transportation operating revenues of \$5 million or more) for-hire motor carriers of passengers.

### *E.O. 13563 Improving Regulation and Regulatory Review*

On January 18, 2011, the President issued Executive Order 13563, “Improving Regulation and Regulatory Review” (76 FR 3821, January 21, 2011), which required agencies, among other things, to prepare plans for reviewing existing rules. On February 16, 2011, DOT published a notice requesting comments on its regulatory review plan (76 FR 8940). A public meeting on this issue was held on March 14, 2011. DOT placed all of the comments it received in docket DOT–OST–2011–0025, along with a transcript of the March 14 meeting. DOT received 102 comments, many offering multiple suggestions. One person argued that the financial reporting requirements transferred from the ICC to FMCSA provide no discernible benefits to the government or industry.

FMCSA rescinds the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1). This burden can be removed without an adverse impact on safety or the Agency’s ability to maintain effective commercial regulations over the for-hire trucking and passenger-carrying industries. FMCSA does not currently

use the quarterly reports because the reports cover a small subset of the motor carriers of property and motor carriers of passengers that are subject to the Agency’s safety oversight and the financial reporting data is not necessary to monitor carriers’ safety performance. The information collected does not currently support any Agency regulatory function, nor does it have practical utility for the Agency or for those carriers who must comply with the reporting requirement.

This direct final rulemaking is non-controversial because it “Make[s] minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminat[es] a type of data collection no longer necessary” 49 CFR 389.39(a)(5). Elimination of the outdated and unnecessary quarterly reporting requirement falls squarely within the intended purpose of a direct final rule. FMCSA, therefore, finds there is good cause to dispense with the normal notice and comment procedures since reducing the reporting requirement is not likely to be controversial. Consequently, receipt of public comments prior to finalizing this action is unnecessary. 49 CFR 389.11.

## IV. Discussion of the Rule

For the reasons discussed in the Background section, above, FMCSA amends 49 CFR part 369 by eliminating the quarterly reporting requirement under 49 CFR 369.1 and 369.4. In addition, FMCSA makes other conforming technical amendments to 49 CFR 369.8, 369.9, and 369.11.

In the course of redesignating 49 CFR part 1420 as 49 CFR part 369 in 2006 (August 10, 2006, 71 FR 45740), the authority citation for part 369 was inadvertently corrupted by adding references to (1) 5 U.S.C. 553 and 559 of the Administrative Procedure Act relating to rulemaking and administrative law judges, and (2) 16 U.S.C. 1456, a provision of the Coastal Zone Management Act (CZMA) of 1972. These statutes provide no authority for part 369 and the references have therefore been removed.

## V. Regulatory Analyses

When developing this direct final rule, FMCSA considered numerous statutes and executive orders related to rulemaking. The Agency’s analyses are summarized below.

### *A. Regulatory Planning and Review*

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) as supplemented by E.O. 13563 (76 FR

3821, January 18, 2011), FMCSA must determine whether a regulatory action is “significant” and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the E.O.

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. This rule will not have a significant economic impact. In fact, elimination of the reporting requirement will, if anything, have a beneficial economic impact on industry.

### B. Small Entities

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, Title II, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued an NPRM prior to this action.

### C. Paperwork Reduction Act

This rule eliminates two quarterly reporting requirements that are currently reported to OMB under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). Form QFR Quarterly for property carriers, authorized by OMB under information collection 2126–0033, is two pages long and takes approximately 27 minutes for each of the approximately 111 carriers to complete. This report is filed 4 times per year, so the total burden hour impact per filer per year is  $4 \times 27/60 = 1.8$  hours. Multiplying this figure by the 111 carriers that file quarterly reports

yields a total burden estimate of 200 hours.

FMCSA assumes that completion and submission of Form QFR is performed by an accountant designated by the business entity. The median salary of an accountant in the truck transportation industry is \$25.90 per hour (BLS, May 2010).<sup>1</sup> Two adjustments are made to this hourly compensation estimate. First, employee benefits are estimated at 50.0 percent of the employee wage.<sup>2</sup> Second, employee wage and benefits are increased by 27 percent to include relevant firm overhead.<sup>3</sup> Applying the estimated 50.0 percent factor for employee benefits and 27 percent for overhead results in \$49.34 in hourly compensation for the accountant ( $\$25.90 \times (1 + 0.50) \times (1 + 0.27) = \$49.34$ ). The total annual salary cost burden associated with the filings is \$9,868 ( $\$49.34 \times 200$  hours = \$9,868.00).

The Class I passenger carrier financial quarterly survey (MP–1 Quarterly), which is two pages long and takes about 18 minutes to complete for the estimated 2 participating carriers is authorized by OMB under information collection 2126–0031. Since this report is also filed 4 times per year, the total burden hours associated with the requirement are  $4 \times 18/60 \times 2 = 2.4$  hours.

FMCSA believes the completion and submission of Form MP–1 is typically performed by a business and financial operations expert designated by the business entity because of the level of detail in the financial reports. The median salary of a business and financial operations expert in the interurban and rural bus transportation industry is \$26.41 per hour (BLS, May 2010).<sup>4</sup> Two adjustments are made to

<sup>1</sup> Bureau of Labor Statistics, “Occupational Employment Survey”. May 2010. [http://www.bls.gov/oes/current/naics3\\_484000.htm](http://www.bls.gov/oes/current/naics3_484000.htm) (accessed December 15, 2011). North American Industry Classification System (NAICS) 484000, Truck Transportation, Standard Occupational Classification (SOC) 13–2011, Accountants and Auditors.

<sup>2</sup> FMCSA estimates this 50% employee benefit rate by using the private industry average wage (\$16.03 per hour) and benefit information (\$8.01 per hour) for production, transportation, and moving material workers. Benefits thus amount to 50.0 percent of wages ( $0.500 = \$8.01/\$16.03$ ). From “Employer Costs for Employee Compensation—September 2010”. Accessed on 23–August–2011 at <http://www.bls.gov/news.release/pdf/ecec.pdf>.

<sup>3</sup> Berwick, Farooq. “Truck Costing Model for Transportation Managers”. Upper Great Plains Transportation Institute, North Dakota State University (2003) accessed on 23–August–2011 at <http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf>.

<sup>4</sup> Bureau of Labor Statistics, “Occupational Employment Survey”. May 2010. [http://www.bls.gov/oes/current/naics4\\_485200.htm](http://www.bls.gov/oes/current/naics4_485200.htm) (accessed December 15, 2011). North American Industry Classification System (NAICS) 485200,

this hourly estimate. First, employee benefits are estimated at 50.0 percent of the employee wage.<sup>5</sup> Second, employee wage and benefits are increased by 27 percent to include relevant firm overhead.<sup>6</sup> Applying the estimated 50.0 percent factor for employee benefits and 27 percent for overhead results in \$50.31 in hourly compensation for the business and financial operations expert ( $\$26.41 \times (1 + 0.50) \times (1 + 0.27) = \$50.31$ ). The total annual salary cost burden associated with the filings is \$121 ( $\$50.31 \times 2.4$  hours = \$120.74, rounded to the nearest dollar).

Collectively, eliminating these reporting requirements reduces the burden to industry by 202.4 hours and \$9,989.

The PRA requires that each agency “shall certify \* \* \* that each collection of information \* \* \* is necessary for the proper performance of the functions of the agency, including that the information has practical utility.” 44 U.S.C. 3506(c)(3)(A); 5 CFR 1320.5(d)(1)(iii). FMCSA can no longer certify that the quarterly requirements are “necessary for the proper performance of the functions of the agency.” Therefore, FMCSA is discontinuing the quarterly reporting requirements.

### D. Federalism

A rule has federalism implications under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this rule under that Order and have determined that it does not have federalism implications.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

Interurban and Rural Bus Transportation, Standard Occupational Classification (SOC) 13–2000, Business and Financial Operations Occupations.

<sup>5</sup> FMCSA estimates this 50% employee benefit rate by using the private industry average wage (\$16.03 per hour) and benefit information (\$8.01 per hour) for production, transportation, and moving material workers. Benefits thus amount to 50.0 percent of wages ( $0.500 = \$8.01/\$16.03$ ). From “Employer Costs for Employee Compensation—September 2010”. Accessed on 23–August–2011 at <http://www.bls.gov/news.release/pdf/ecec.pdf>.

<sup>6</sup> Berwick, Farooq. “Truck Costing Model for Transportation Managers”. Upper Great Plains Transportation Institute, North Dakota State University (2003) accessed on 23–August–2011 at <http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf>.

State, local, or tribal government, in the aggregate, or by the private sector of \$143.1 million (which is the value of \$100,000,000 in 2010 after adjusting for inflation) or more in any 1 year. This rule would not result in such an expenditure.

**F. Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**G. Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**H. Protection of Children**

FMCSA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

**I. Energy Effects**

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and will not have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**J. Environment**

The Agency analyzed this direct final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this action is categorically excluded under two categorical exclusions (CEs) in the Order from further environmental documentation. These are found in Appendix 2, paragraph 4, which covers data and information gathering, and Appendix 2, paragraph 6(y)(2) concerning reports provided by motor carriers. This direct final rulemaking

makes minor changes to rules regarding “a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary,” as authorized by 49 CFR 389.39(a)(5). The action involves no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA’s general conformity requirement since it does not result in any potential increase in emissions that are above the general conformity rule’s *de minimis* emission threshold levels (40 CFR 93.153(c)(2)). This action merely eliminates a reporting requirement.

The Categorical Exclusion Determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

**List of Subjects in 49 CFR Part 369**

Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR part 369 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

**PART 369—[AMENDED]**

- 1. The authority citation for part 369 is revised to read as follows.

**Authority:** 49 U.S.C. 14123; 49 CFR 1.73.

- 2. Amend § 369.1, by removing paragraph (b) and redesignating paragraph (c) as paragraph (b) and revising it to read as follows.

**§ 369.1 Annual reports of motor carriers of property, motor carriers of household goods, and dual property carriers.**

\* \* \* \* \*

(b) *Where to file report.* Carriers must file the annual reports with the Federal Motor Carrier Safety Administration at the address in § 369.6. You can obtain blank copies of the report forms from the Federal Motor Carrier Safety Administration Web site [http://www.fmcsa.dot.gov/forms/reporting/mcs\\_info.htm#fos](http://www.fmcsa.dot.gov/forms/reporting/mcs_info.htm#fos).

- 3. Revise § 369.4 to read as follows.

**§ 369.4 Annual reports of Class I carriers of passengers.**

(a) All Class I motor carriers of passengers shall complete and file

Motor Carrier Annual Report Form MP–1 for Motor Carriers of Passengers (Form MP–1).

(b) *Accounting period.* (1) Motor Carrier Annual Report Form MP–1 shall be used to file annual selected motor carrier data.

(2) The annual accounting period shall be based either:

(i) On the 31st day of December in each year, or

(ii) An accounting year of thirteen 4-week periods ending at the close of the last 7 days of each calendar year.

(3) A carrier electing to adopt an accounting year of thirteen 4-week periods shall file with the FMCSA a statement showing the day on which its accounting year will close. A subsequent change in the accounting period may not be made except by authority of the FMCSA.

(c) The annual report shall be filed on or before March 31 of the year following the year to which it relates. The annual report shall be filed in duplicate with the Federal Motor Carrier Safety Administration at the address in § 369.6. Copies of Form MP–1 may be obtained from the FMCSA.

- 4. Amend § 369.8 by revising paragraph (d) and removing the table following it, to read as follows.

**§ 369.8 Requests for exemptions from filing.**

\* \* \* \* \*

(d) *When requests are due.* The timing of a request for an exemption from filing is the same as the timing for a request for an exemption from public release contained in § 369.9(d). For Annual Form M, both the report and the request are due by March 31.

\* \* \* \* \*

- 5. Amend § 369.9 by removing paragraph (d)(4) and revising paragraph (e)(4) and removing the table following it, to read as follows.

**§ 369.9 Requests for exemptions from public release.**

\* \* \* \* \*

(e) \* \* \*

(4) FMCSA will grant or deny each request no later than 90 days after the request’s due date as defined in paragraph (d) of this section. The decision by FMCSA shall be administratively final. For Annual Form M, both the report and the request are due by March 31, and the decision is due by June 30.

\* \* \* \* \*

**§ 369.11 [Removed]**

- 6. Remove § 369.11.

Issued on: June 22, 2012.

Anne S. Ferro,  
Administrator.

[FR Doc. 2012-15744 Filed 6-26-12; 8:45 am]

BILLING CODE 4910-EX-P

## 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-