FAQ 21: For purposes of suspension or revocation of a carrier’s HMSP under 385.421(a)(5), what is the definition of “serious instances of non-compliance?”

Answer: The *Federal Register* notice (80 FR 35253) issued on June 19th, 2015, states that a proposed suspension or revocation of a carrier’s HMSP under 385.421(a)(5) may be based on “serious instances of non-compliance.”

The FMCSA has authority to address patterns of safety violations by motor carriers that (1) indicate an imminent hazard, or (2) show that the carrier is not willing or able to comply with the regulations. The term “serious instances of non-compliance” means that an enforcement action has been initiated against the carrier demonstrating that:

* An imminent hazard exists based upon evidence that the motor carrier has demonstrated a disregard for, or refusal to comply with, safety regulations which, if not discontinued immediately, will likely result in serious injury or death;
* An imminent hazard exists within the definition of imminent hazard under the HM regulations in Part 109; and/or
* The carrier’s performance demonstrates that it is not willing or able to operate safely.

When agency action results in proposed or immediate suspension or revocation of the carrier’s ability to operate, the Agency will provide separate notice concerning the impact of this action on the carrier’s HMSP, with an opportunity to respond with an explanation or corrective action plan prior to their HMSP being suspended or revoked.

The inclusion of the term “serious instances of non-compliance” in the HMSP Federal Register notice is meant to provide notice to HMSP holders that implementation of the new process for continuously monitoring HMSPs under SMS does not limit FMCSA’s ability to take appropriate actions against a motor carrier based on the Agency’s current authority to address imminent hazards and carriers that fail to demonstrate that they are fit and willing to comply with the regulations and operate safely. The focus on “enhanced oversight” in the Federal Register Notice does not limit or restrict the agency’s ability to utilize all of its present authority to address serious and continuing violations of the Federal Motor Carrier Safety Regulations and/or the Federal Hazardous Materials Regulations.