

FAQs
Hazardous Materials Safety Permit (HMSP) Program
Improvement Implementation Policy

1. What is the focus of the Policy change?

The policy focuses specifically on the use of Safety Measurement System (SMS) data to continually monitor HMSP carrier performance and to determine when an HMSP carrier will be selected for intervention.

2. Why did the Policy change take place?

Section 33014 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) required the Secretary of DOT to conduct a study of the HMSP program and identify actions that could be implemented to improve the program. The Federal Motor Carrier Safety Administration (FMCSA) conducted that study and, in March 2014, reported back to Congress. The policy is based on the FMCSA implementing two of the recommendations contained in the report.

3. What two recommendations in the report to Congress are being implemented with this policy?

- a. Fully utilize the SMS as part of the HMSP monitoring and review process; and
- b. Institute an ongoing requirement to conduct comprehensive investigations on HMSP motor carriers with insufficient data to utilize SMS.

4. How are the recommendations being implemented?

FMCSA has separated the initial application requirements from those for maintenance and renewal of a HMSP. Therefore, the conditions set forth in section 385.407 apply only to initial applicants and Temporary HMSP holders.

Once the HMSP goes into a non-temporary status, it is then subject to the conditions for suspension and revocations in section 385.421. Specifically, for implementation of the recommendations mentioned in Question 3, section 385.421(a)(5) is used as the basis for determining whether a carrier is identified for enhanced oversight.

Basically, FMCSA has added 3 conditions to SMS in order to identify carriers for “enhanced oversight.” These conditions are:

- a. The Hazardous Materials (HM) Compliance BASIC is above threshold for 2 consecutive months;
- b. Two BASICs, other than the HM Compliance BASIC, are above threshold for 2 consecutive months; or
- c. There is insufficient data (no BASIC scores) for 48 consecutive months and the safety rating is ≥ 4 years old.

5. How will FMCSA use SMS data as part of the HMSP review process?

FMCSA will review the permit holder's SMS scores monthly to determine if the carrier has exceeded intervention thresholds for either the HM BASIC or any two BASICs besides the HM BASIC for the preceding two consecutive months. Scores are based on carrier performance for the preceding 24 months according to CSA procedures. If the carrier has exceeded the HM BASIC or any other two BASICs for each month over a consecutive two-month period, FMCSA will identify the carrier for investigation with HM emphasis.

6. What about carriers with insufficient SMS data?

For HMSP carriers with insufficient data to calculate a percentile in SMS - those who rarely undergo roadside inspections and have a safety rating over 4 years old - FMCSA will conduct comprehensive investigation to calculate a percentile in SMS during any month of the current 48-month period.

7. What if the carrier gets a satisfactory rating from the investigation, but continues to have high SMS scores?

If the safety fitness of a carrier subject to a comprehensive investigation based on SMS scoring is determined to be satisfactory, but the carrier's SMS scores continue to exceed intervention thresholds for either the HM BASIC or any two BASICs besides the HM BASIC for the preceding two consecutive months, the carrier may stay on the enhanced oversight list with a note in the company record stating the date and outcome of the comprehensive review, and a note that the carrier will not undergo another comprehensive review for a period of 24 months due to an enhanced oversight condition, but may be re-selected for other, serious conditions. Also, the carrier could be subject to a focused review if their scores do not fall below the intervention thresholds during that time frame.

8. Is the motor carrier's HMSP suspended or revoked immediately upon being identified for enhanced oversight?

No. If a carrier is identified for enhanced oversight, the Agency will monitor the carrier's safety and compliance behaviors, and conduct an investigation when warranted. If an investigation is conducted and the final safety rating is less than satisfactory, then the HMSP will be immediately suspended. During the time a carrier has a proposed rating of less than satisfactory, the carrier may file a petition for a change in the safety rating based on corrective action in accordance with 49 CFR 385.17, or a petition for administrative review based on 49 CFR 385.15.

9. What is the definition of "serious instances of non-compliance?"

The *Federal Register* notice (Vol. 80, No.118, p. 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.

10. Once identified for enhanced oversight, how long does FMCSA have to perform the comprehensive investigation?

The investigation must be performed within 6 months of the carrier being identified for enhanced oversight.

11. Must the carrier be reviewed, even if during the 6-month timeframe it does not meet the conditions for enhanced oversight?

No. If the carrier’s safety status improves while awaiting the comprehensive investigation, the Division Administrator may elect to remove the carrier from the “Investigate 1” list, as long as it is noted in the carrier assignment system why the carrier was removed.

12. How do motor carriers benefit from the policy change?

The driver, vehicle, and hazmat out of service (OOS) rates, as well as the crash rate calculations, will no longer apply to carriers who submit renewal HMSP applications. Carriers who would

have had OOS rates above the National averages would no longer have to “wait out” a period of time in order for OOS violations to drop off, or to get more good inspections in order to bring down a high OOS rate. Instead HMSP renewals and non-temporary HMSPs will now fall under Enhanced Oversight monitoring where a comprehensive investigation may be assigned.

The policy provides more flexibility to motor carriers attempting to correct identified deficiencies. Specifically, actions taken by FMCSA under this policy culminate in the issuance of a safety rating that will be used to decide whether the HMSP holder will be allowed to continue to operate under the permit. Upon the issuance of a recommended rating of less-than-satisfactory, carriers are able to invoke their right to administrative review, including requesting an upgrade of the rating and the submission of a corrective action plan in order to retain their HMSP.

13. How does the policy affect new HMSP applicants or holders of Temporary HMSPs?

It does not. New HMSP applicants and holders of Temporary HMSPs will continue to be subject to the standards as they appear in section 385.407, including the fixed out-of-service rates and the crash rate thresholds.

14. May HMSP carriers request a review of their crash data?

Yes. FMCSA will continue the policy allowing carriers to request a determination of crash non-preventability and the removal of such crash or crashes from consideration of the carrier’s crash rate calculation, if the carrier knows that its recorded crash rate will likely be greater than the national average.

15. How does the policy affect current HMSP holders who are submitting renewal applications?

Once an HMSP becomes non-temporary, section 385.407 no longer applies to the carrier’s ability to renew its HMSP. Therefore, as long as an HMSP holder submits its biennial update (MCS-150B) and is not in violation of any of the conditions for suspension or revocation in section 385.421, the HMSP remains valid.

16. What recourse does a carrier have if their HMSP is denied, suspended, or revoked based on the ongoing SMS analysis or other condition in section 385.421?

The administrative review process in section 385.423 still applies. However, if the denial, suspension, or revocation is based on a proposed safety rating or final safety rating that is less than satisfactory, the carrier may request administrative review if it believes FMCSA has committed an error, as stated in §385.15. Additionally, a motor carrier may request an administrative review based on the request for an upgrade of a proposed or final safety rating of conditional or unsatisfactory based on submission of corrective action as stated in §385.17.

For other conditions for suspension or revocation listed in section 385.421, HMSP carriers still have the right to administrative review under section 385.423.

17. How will future changes to the CSA Program impact the HMSP Program?

On June 29th, 2015, FMCSA published a *Federal Register* notice (Vol. 80, No.124, p. 37037), “**Proposal for Future Enhancements to the Safety Measurement System (SMS)**” for public comment. Any finalized changes to the SMS intervention thresholds will immediately apply to the HMSP program because the enhanced oversight determinations are based on carrier performance under various SMS intervention thresholds.