




U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

Memorandum

ACTION: Enforcement of Federal Out-of-Service
during Roadside Inspections (**Amended**)

Date: **NOV 17 2009**

For 
From: Anna J. Amos, Director
Office of Safety Programs

Reply to
Attn. of: MC-ESS

To: Assistant Administrator and Chief Safety Officer
Associate Administrator for Field Operation
Field Administrators and Service Center Directors
Division Administrators and State Directors
Enforcement Team
National Training Center

PURPOSE

To provide amended guidance to Motor Carrier Safety Assistance Program (MCSAP) enforcement personnel regarding Federal Out-of-Service Orders (OOSO) that may be in effect against a motor carrier at the time of a commercial motor vehicle (CMV) inspection. The original guidance memo contained inaccurate information in the second row of the table on page two regarding the correct section to cite at the roadside for a Failure to Pay Fine OOSO.

This memorandum supersedes the previously issued memo dated May 9, 2009.

BACKGROUND

The Federal Motor Carrier Safety Administration (FMCSA) provides assistance to States under MCSAP. The goal of the MCSAP is to reduce CMV-involved crashes, fatalities, and injuries through consistent, uniform, and effective CMV safety programs.

The MCSAP promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations for both interstate and intrastate motor carriers and drivers.

ROADSIDE DATA AVAILABILITY

Enforcement personnel in the field, whether at fixed facilities or on patrol, have several means available to obtain operating authority and OOSO information during a CMV inspection. This information may be accessed in several ways depending upon the communications capability at the roadside of each jurisdiction. In order to obtain information regarding Federal OOSO, inspectors are encouraged to utilize the following tools in the order listed below, based upon the timeliness of the OOSO data provided by each:

- Query Central (real-time for OOSO status); **MOST TIMELY DATA**
- The International Justice and Public Safety Network, formerly known as the National Law Enforcement Telecommunications System, Carrier Query (updated Mondays through Thursdays and Saturdays);
- Safer Website (updated Mondays through Thursdays and Saturdays);
- Inspection Selection System (updated monthly). **LEAST TIMELY DATA**

OOS ORDER STATUS VERIFICATION

Verification of a United States Federal OOSO against a motor carrier is a two-step process. First, the OOSO must be discovered at the roadside through a query on the operating motor carrier's record. Second, once an OOSO is identified, enforcement personnel must verify the status of the OOSO using Query Central. **Exception: If Query Central cannot be used at the roadside, any OOSO identified must be verified by contacting the appropriate FMCSA Service Center before placing the vehicle OOS.** The Commercial Vehicle Safety Alliance (CVSA) has added a specific item covering Federal OOSO issued under the ten sections of the Federal regulations listed below. This change appears in the April 1, 2009, edition of the *North American Standard Out-of-Service Criteria*. NOTE: Incorrect information (i.e., reference to 386.84(a)(1) cite for Failure to Pay Fine OOSO-For-Hire Carrier) in the second row of the table (which has been removed below) will still appear in the most recent version of the CVSA OOS Criteria but should be disregarded by enforcement personnel.

<i>Description</i>	<i>Section</i>
<i>Failure to Pay Fine</i>	<i>386.83(a)(1)</i>
<i>UNSAT/UNFIT – Placarded HM & Passenger Carriers</i>	<i>385.13(a)(1)</i>
<i>UNSAT/UNFIT – Property Carriers</i>	<i>385.13(a)(2)</i>
<i>New Entrant – Failure of Safety Audit</i>	<i>385.325(c)</i>
<i>New Entrant – Refusal of Audit/No Contact</i>	<i>385.337(b)</i>
<i>Imminent Hazard</i>	<i>386.72(b)(2)</i>
<i>MX carrier (inadequate corrective action)</i>	<i>385.105(b)</i>
<i>MX carrier UNSAT/UNFIT</i>	<i>385.111(a)</i>
<i>MX carriers (suspended operating authority for UNSAT rating or failed Safety Audit)</i>	<i>385.111(c)(1)</i>
<i>MX carriers (revoked operating authority)</i>	<i>385.111(c)(2)</i>

The CVSA's change will provide enforcement personnel with the ability to place vehicles OOS that are discovered to be operating under the authority of a motor carrier that was issued an OOSO until specific requirements in the Federal order are satisfied.

If a valid OOSO is discovered and verified, enforcement personnel must place only the power unit OOS, and should indicate the appropriate FMCSR section that pertains to the OOSO on the inspection report (and citation if issued.) Enforcement personnel should follow their individual department policies and procedures per the laws of the State when placing a power unit OOS. The inspection report should include instructions to the carrier to contact FMCSA at the number in the OOSO document they received previously.

The enforcement official should also inform the driver that this OOSO is a carrier violation and will have no bearing on his/her driver record.

The use of Query Central is the preferred method for obtaining after hours operating authority and OOSO information. If an OOSO is discovered but cannot be verified (i.e., Service Center is closed) at the time of inspection, enforcement personnel should only decline to place a carrier OOS if absolutely necessary. If the carrier is not placed OOS, the enforcement official should make copies of pertinent paperwork (e.g., bills of lading, receipts, etc.), if possible, to demonstrate that the carrier was operating in interstate commerce at the time of the inspection. Evidence of violation of the OOSO may include the FMCSA document prohibiting interstate operations and a copy or facsimile of the inspection or crash report indicating interstate activity. Enforcement personnel should forward the information as soon as possible to the appropriate FMCSA Division Office for follow-up to determine the carrier's actual operating status at the time of the inspection. If the FMCSA Division Office determines that the carrier was operating while a valid OOSO was in effect, then an enforcement case may be initiated by the Division Office.

CORRECTIVE ACTIONS FOR OOSO

When an OOSO is discovered and verified at the roadside, the corrective actions by the carrier for violations are as follows:

Satisfy all requirements in the Federal OOSO (including reinstatement of suspended or revoked operating authority, if required);
 Arrange for an authorized carrier to deliver the cargo (OOS carrier's power unit may not be used); or
 Arrange for the vehicle to be towed back to the carrier's terminal.

The carrier remains OOS until the OOSO has been officially rescinded by the appropriate FMCSA Field Administrator.

NOTE: All Federal OOSO are issued and rescinded in the Motor Carrier Management Information System by FMCSA Enforcement Team personnel as delegated by the FMCSA Field Administrators. State enforcement personnel will not be directly notified by FMCSA when the motor carrier's OOSO has been satisfied. In order to verify that the OOSO has been rescinded, the enforcement official must check the carrier's record through Query Central or contact the Enforcement Program Coordinator in the appropriate FMCSA Service Center.

If you have any questions or need additional information, please contact Jack Kostelnik at 202-366-5721 or e-mail jack.kostelnik@dot.gov.