

have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

(1) Is not available;

(2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;

(3) Does not meet performance needs; or,

(4) Cannot be delivered in time to meet a critical need.

(d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>.

(e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 430.2B, Departmental Energy, Renewable Energy, and Transportation Management, Attachment 1, or its successor. This requirement should not be flowed down to subcontractors.

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.

(g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default [see FAR 52.249–6, Termination (Cost Reimbursement)].

(h) These provisions shall be flowed down only to first tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontracting opportunities for

energy efficient or environmentally sustainable products or services. The Subcontractor will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The Subcontractor will advise the Contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

(End of Clause)

*Alternate I for Construction Contracts and Subcontracts (OCT 2010)*—When contracting for construction, alteration, or renovation of DOE facilities, substitute the following paragraphs (d) through (i):

(d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>. When developing the Bill of Materials for approval of the Contracting Officer or Representative, the contractor shall specify energy efficient and environmentally sustainable materials to the extent possible within the constraints of the general design specifications. Compliance with the *Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings* (Guiding Principles) shall be achieved through certification to the Leadership in Energy and Environmental Design (LEED) Gold level under the LEED rating system most suited to the building type.

(e) [Reserved]

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor(s)

shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.

(g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of energy efficient and environmentally sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default, see 48 CFR 52.249–6, Termination (Cost Reimbursement).

(h) These provisions shall be flowed down only to first tier construction subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant opportunities for designating energy efficient or environmentally sustainable products or services in the materials selection process. The subcontractor will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The subcontractor will advise the contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

(End of Clause)

[FR Doc. 2010–23655 Filed 9–21–10; 8:45 am]

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## 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 enforcement policy amendment.

**SUMMARY:** Under 49 CFR 385.407 FMCSA may not issue a hazardous materials safety permit (HMSP) to a motor carrier having a crash rate, or driver, vehicle, or hazardous materials (HM) out-of-service (OOS) rate in the top 30 percent of the national average. This document revises the date used to calculate the threshold crash and OOS rates, from calendar year cycles to fiscal year cycles, from October 1 of a given year to September 30 of the following year. This will provide motor carriers and the industry a 3-month preview of the crash and OOS rates FMCSA uses to determine HMSP eligibility, before the motor carrier HMSP registration cycle begins on January 1.

**DATES:** *Effective Date:* This policy amendment is effective October 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Roxane Greene at [roxane.greene@dot.gov](mailto:roxane.greene@dot.gov) or (202) 366-0735; or Paul Bomgardner at [paul.bomgardner@dot.gov](mailto:paul.bomgardner@dot.gov) or (202) 493-0027. Both staff members may be reached at FMCSA, 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:** On November 7, 2007, FMCSA published a Notice of Enforcement Policy (72 FR 62795) explaining how the Agency calculates the top 30 percent of the national average for crash rates, and for driver, vehicle and hazardous materials OOS rates, and determines whether a given motor carrier falls within the top 30 percent of the national average in each of these categories.

49 CFR part 385, subpart E identifies which motor carriers must hold a HMSP, establishes the application process for a HMSP, and specifies the

conditions that must satisfy to qualify for this permit. Section 385.407 requires that a carrier 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). In addition, as specified under Section 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, as indicated in the FMCSA Motor Carrier Management Information System (MCMIS), or a driver, vehicle, HM, or total OOS rate in the top 30 percent of the national average as indicated in the MCMIS.

The HMSP requirement became effective for motor carriers after January 1, 2005, when the motor carrier was required to file a Motor Carrier Identification Report Form (MCS-150), as set forth in 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.

In early January 2005, FMCSA published on its public Web site the calculation for determining the national average crash rate and the driver, vehicle and HM OOS rates that established the threshold for the "top 30 percent of the national average". The Web site also explained how a carrier can calculate its own crash and OOS rates.

To calculate the threshold figure that determines the top (worst-performing) 30 percent of the national average,

FMCSA looked at the crash rates and driver, vehicle, and HM OOS percentage rates of all carriers (HM and non-HM) for the prior two calendar years. The Agency then determined the numerical threshold value relative to which 70 percent of all carriers have a driver, vehicle, or HM OOS percentage rate lower than that figure, and 30 percent of the carriers have a driver, vehicle, or HM OOS percentage rate that is higher. The FMCSA Web site provided notice to the regulated community on how FMCSA would establish the national averages and threshold figures for the top, or worst-performing, 30 percent of the motor carrier population. The Agency recalculates and publishes these threshold rates on its Web site every 2 years. Upon publication, the threshold rates remain effective for the 2-year registration period of the HMSP program. For example, in January 2009, using data for calendar years 2007 and 2008, FMCSA recalculated and published on its Web site the threshold crash rates and driver, vehicle, and HM OOS rates establishing the top 30 percent of the national average (see <http://www.safer.fmcsa.dot.gov/HazmatRatesPost.pdf>). These rates provide the standard for granting or denying HMSPs during the calendar year (CY) 2009 to 2011 registration cycle.

Table 1 below shows the calculated threshold rates establishing the top 30 percent of the national average for the registration years CY 2005 through 2010:

Table 1 below shows the calculated threshold rates establishing the top 30 percent of the national average for the registration years CY 2005 through 2010:

TABLE 1—CALCULATED THRESHOLD RATES FOR CY 2005 THROUGH 2010

Registration years (calendar years)	Crash rate	Driver OOS rate (percent)	Vehicle OOS rate (percent)	HM OOS rate
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

#### OEC Calculation of Crash Rate and OOS Rates on a Fiscal Year Basis

The threshold for crash rates, and driver, vehicle and HM OOS rates were, and will continue to be, recalculated every 2 years using the crash and OOS data from the previous 2 years. The FMCSA is only revising the date from which the data from the 2-year period will be calculated. The 2-year period

will now be measured by the federal fiscal year (October 1 to September 30), instead of calendar year (January 1 to December 31). This change will take effect prior to the next registration cycle for the HMSP program starting in 2011. To determine the rates for the next registration cycle, 2011 to 2012, FMCSA will use two years of crash and OOS data to calculate the threshold rates for the top 30 percent of the national

average using data from fiscal years 2009, (October 1, 2008, to September 30, 2009), and 2010, (October 1, 2009, to September 30, 2010). Accordingly, the threshold rates for registration year 2011 and 2012 will be calculated on October 1, 2010, and published on the FMCSA Web site shortly thereafter, and will be effective for the registration period commencing January 1, 2011. This change will provide motor carriers with

a 3-month preview of the crash and OOS rates that will be effective for the issuance of HMSPs during the following 2-year registration period.

**Carriers' Calculation of Their OOS Rates and Crash Rate**

When a motor carrier submits an HMSP application through the MCS-150B process, FMCSA examines one year (12 months) of the carrier's crash and OOS data. This policy is consistent with Agency's practice of reviewing one year of motor carrier records during the conduct of a compliance review. The period examined is the 12 months

immediately preceding the date that the application is received and processed. A motor carrier must, 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. To determine its OOS rate, the carrier would divide the number of OOS violations by the total number of inspections for each category. The resulting figure is the motor carrier's OOS rate for the category.

The FMCSA likewise examines one year of crash data to determine a

carrier's crash rate. A motor carrier will divide the number of crashes for the previous 12-month period by the total number of power units that it operated during that period. 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). The 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 Registration Cycles Under the HMSP Program**

TABLE 2—UPCOMING REGISTRATION CYCLES

Upcoming registration years (or cycles)	OOS rates calculated and publicized for industry preview	OOS rates implemented by FMCSA Office of Enforcement and Compliance
CY 2011 & 2012 .....	FY 2010 (Oct. 1, 2009) .....	January 1, 2011 to December 31, 2012.
CY 2013 & 2014 .....	FY 2012 (Oct. 1, 2011) .....	January 1, 2013 to December 31, 2014.
CY 2015 & 2016 .....	FY 2014 (Oct. 1, 2013) .....	January 1, 2015 to December 31, 2016.

The OOS rates based on a 2-fiscal year cycle will be effective for the 2-year registration cycle as the above table illustrates, beginning the following January, and will remain in effect for the entire 2 calendar years of the registration cycle. For example, the OOS rates calculated on October 1, 2010, will be published on the FMCSA Web site for preview, become effective for purposes of HMSP review on January 1, 2011, and will remain in effect through December 31, 2012. The OOS rates will then be re-calculated and published on October 1, 2012, for the following registration cycle, and enforced starting January 1, 2013.

Issued on: August 31, 2010.  
**Anne S. Ferro,**  
*Administrator.*  
[FR Doc. 2010-23440 Filed 9-21-10; 8:45 am]  
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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 32**

**Hunting and Fishing**

*CFR Correction*

In Title 50 of the Code of Federal Regulations, Parts 18 to 199, revised as of October 1, 2009, on page 385, in § 32.43, the entry for “Coldwater National Wildlife Refuge” is moved to precede the entry for “Dahomey National Wildlife Refuge” on page 383.  
[FR Doc. 2010-23769 Filed 9-21-10; 8:45 am]  
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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 32**

**Hunting and Fishing**

*CFR Correction*

In Title 50 of the Code of Federal Regulations, Parts 18 to 199, revised as of October 1, 2009, on page 406, in § 32.45, the second entry for “Northwest Montana Wetland Management District” is removed.  
[FR Doc. 2010-23771 Filed 9-21-10; 8:45 am]  
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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 32**

**Hunting and Fishing**

*CFR Correction*

In Title 50 of the Code of Federal Regulations, Parts 18 to 199, revised as of October 1, 2009, on page 326, in § 32.35, in the entry for “Marais des Cygnes National Wildlife Refuge”, the heading and introductory text for paragraph A. is reinstated to read as follows:

**§ 32.35 Kansas.**  
\* \* \* \* \*

**Marais des Cygnes National Wildlife Refuge**  
A. *Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, rail, snipe, woodcock, and mourning dove on designated

areas of the refuge in accordance with State regulations subject to the following conditions:  
\* \* \* \* \*  
[FR Doc. 2010-23774 Filed 9-21-10; 8:45 am]  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 600 and 635**

[Docket No. 100729315-0331-01]  
**RIN 0648-BA12**

**Atlantic Highly Migratory Species; Atlantic Billfish Management, White Marlin (*Kajikia albidus*), Roundscale Spearfish (*Tetrapturus georgii*)**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.  
**ACTION:** Interpretive rule and Final Action.

**SUMMARY:** This document combines two actions, an interpretive rule and a final action that both affect management of Atlantic billfishes. The interpretive rule adds the recently recognized species, roundscale spearfish (*Tetrapturus georgii*), to the definition of terms in the implementing regulations of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic HMS regulations. The final action will recognize the change of the genus of