

§ 385.403

materials that meet the defining criteria for hazard classes and divisions in part 173 of this title.

Hazmat employee has the same meaning as under §171.8 of this title: A person who is employed by a hazmat employer as defined under §171.8 of this title, and who in the course of employment directly affects hazardous materials transportation safety. This term includes an owner-operator of a motor vehicle that transports hazardous materials in commerce. This term includes an individual who, during the course of employment:

- (1) Loads, unloads, or handles hazardous materials;
- (2) Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packaging as qualified for use in the transportation of hazardous materials;
- (3) Prepares hazardous materials for transportation;
- (4) Is responsible for the safe transportation of hazardous materials; or
- (5) Operates a vehicle used to transport hazardous materials.

Liquefied natural gas (LNG) means a Division 2.1 liquefied natural gas material that is transported in a liquid state with a methane content of 85 percent or more.

Safety permit means a document issued by FMCSA that contains a permit number and confers authority to transport in commerce the hazardous materials listed in § 385.403.

Shipment means the offering or loading of hazardous materials at one loading facility using one transport vehicle, or the transport of that transport vehicle.

§ 385.403 Who must hold a safety permit?

After the date following January 1, 2005, that a motor carrier is required to file a Motor Carrier Identification Report Form (MCS-150) according to the schedule set forth in §390.19(a) of this chapter, the motor carrier may not transport in interstate or intrastate commerce any of the following hazardous materials, in the quantity indicated for each, unless the motor carrier holds a safety permit:

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(a) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in §173.403 of this title;

(b) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material or an amount of a Division 1.5 (explosive) material requiring placarding under part 172 of this title;

(c) More than one liter (1.08 quarts) per package of a “material poisonous by inhalation,” as defined in §171.8 of this title, that meets the criteria for “hazard zone A,” as specified in §173.116(a) or §173.133(a) of this title;

(d) A “material poisonous by inhalation,” in a “bulk packaging,” both as defined in §171.8 of this title, that meets the criteria for “hazard zone B,” as specified in §173.116(a) or §173.133(a);

(e) A “material poisonous by inhalation,” as defined in §171.8 of this title, that meets the criteria for “hazard zone C,” or “hazard zone D,” as specified in §173.116(a) of this title, in a packaging having a capacity equal to or greater than 13,248 L (3,500 gallons); or

(f) A shipment of compressed or refrigerated liquefied methane or liquefied natural gas, or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

[69 FR 39367, June 30, 2004, as amended at 77 FR 59826, Oct. 1, 2012]

§ 385.405 How does a motor carrier apply for a safety permit?

(a) *Application form(s)*. (1) To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCS-150B, Combined Motor Carrier Identification Report and HM Permit Application.

(2) The Form MCS-150B will also satisfy the requirements for obtaining and renewing a USDOT Number; there is no need to complete Form MCS-150, Motor Carrier Identification Report.

(b) *Where to get forms and instructions*. The forms listed in paragraph (a) of this section, and instructions for completing the forms, may be obtained on the Internet at <http://www.fmcsa.dot.gov>, or by contacting

FMCSA at Federal Motor Carrier Safety Administration, Office of Information Technology (MC-RI), 1200 New Jersey Ave., SE., Washington, DC 20590-0001, Telephone: 1-800-832-5660.

(c) *Registration with the Pipeline and Hazardous Materials Safety Administration (PHMSA)*. The motor carrier must be registered with PHMSA in accordance with part 107, subpart G of this title.

(d) *Updating information on Form MCS-150B*. A motor carrier holding a safety permit must report to FMCSA any change in the information on its Form MCS-150B within 30 days of the change. The motor carrier must use Form MCS-150B to report the new information (contact information in paragraph (b) of this section).

[69 FR 39367, June 30, 2004, as amended at 72 FR 55701, Oct. 1, 2007; 73 FR 76491, Dec. 16, 2008; 77 FR 59826, Oct. 1, 2012]

§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) *Motor carrier safety performance*.

(1) The motor carrier must have a "Satisfactory" safety rating assigned by either FMCSA, pursuant to the Safety Fitness Procedures of this part, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of this part; and

(2) FMCSA will not issue a safety permit to a motor carrier that:

(i) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(ii) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA Motor Carrier Management Information System (MCMIS); or

(iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

(b) *Satisfactory security program*. The motor carrier must certify that it has a satisfactory security program, including:

(1) A security plan meeting the requirements of part 172, subpart I of this title, and addressing how the carrier

will ensure the security of the written route plan required by this part;

(2) A communications plan that allows for contact between the commercial motor vehicle operator and the motor carrier to meet the periodic contact requirements in § 385.415(c)(1); and

(3) Successful completion by all hazmat employees of the security training required in § 172.704(a)(4) and (a)(5) of this title.

(c) *Registration with the Research and Special Programs Administration (RSPA)*. The motor carrier must be registered with RSPA in accordance with part 107, subpart G of this title.

[69 FR 39367, June 30, 2004, as amended at 75 FR 17241, Apr. 5, 2010; 77 FR 28450, May 14, 2012]

§ 385.409 When may a temporary safety permit be issued to a motor carrier?

(a) *Temporary safety permit*. If a motor carrier does not meet the criteria in § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCS-150B that it is operating in full compliance with the HMRs; with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this chapter or in State regulations, whichever is applicable.

(b) FMCSA will not issue a temporary safety permit to a motor carrier that:

(1) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(2) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA's MCMIS; or

(3) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

(c) A temporary safety permit shall be valid for 180 days after the date of issuance or until the motor carrier is assigned a new safety rating, whichever occurs first.

(1) A motor carrier that receives a Satisfactory safety rating will be issued a safety permit (see § 385.421).