

*Executive Order 12988 (Civil Justice Reform)*

This action would meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 12612 (Federalism)*

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, as discussed under "State permits," above, where the applicable law and the concerns previously expressed by State officials are set forth.

Federal hazardous material transportation law allows States, political subdivisions, and Indian tribes to continue their permit requirements after the implementation of a Federal safety permit program. To the extent that a State permit program is equivalent to the Federal requirements, no preemption issues would arise. To the extent that there are differences between Federal and non-Federal requirements, the preemption provisions in 49 U.S.C. 5125 will continue to apply to non-Federal permit requirements, just as those criteria have applied in the past.

For these reasons, FMCSA believes that nothing in this proposed rule, if adopted, will directly preempt any State law or regulation or have a substantial direct effect or sufficient federalism implications that would limit the policymaking discretion of the States. FMCSA invites States and other interested parties to comment on whether they believe any State permit requirement would be affected by the adoption of this proposed rule.

*Executive Order 13045 (Protection of Children)*

We have analyzed this action under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 1985). This proposed rule is not an economically significant rule because the FMCSA has determined that the proposed rule, if adopted, will not present an environmental risk to health or safety that may disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Executive Order 13166 (Limited English Proficiency)*

Executive Order 13166, "Improving Access to Services for Persons With Limited English Proficiency" (LEP), requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency.

Its purpose is to clarify for Federal-fund recipients the steps those recipients can take to avoid administering programs in a way that results in discrimination on the basis of national origin. Thus, we believe that this proposed action complies with the principles enunciated in the Executive Order.

**List of Subjects***49 CFR Part 385*

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements; Safety fitness procedures.

*49 CFR Part 390*

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 397*

Administrative practice and procedure, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, the Federal Motor Carrier Safety Administration proposes to amend 49 CFR chapter III as set forth below:

**PART 385—SAFETY FITNESS PROCEDURES [AMENDED]**

1. Revise the authority citation for part 385 to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(c), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

2. Amend § 385.1 by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

**§ 385.1 Purpose and scope.**

\* \* \* \* \*

(c) This part establishes the safety permit program for a motor carrier to transport the types and quantities of hazardous materials listed in § 385.403 of this part.

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3. Add a new subpart E to this part 385 to read as follows:

**Subpart E—Hazardous Materials Safety Permits**

Sec.

- 385.401 What are the definitions of terms used in this subpart?
- 385.403 Who must hold a safety permit?
- 385.405 How does a motor carrier apply for a safety permit?
- 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?
- 385.409 When may a temporary safety permit be issued to a motor carrier?
- 385.411 Must a motor carrier obtain a safety permit if it has a State permit?
- 385.413 What happens if a motor carrier receives a proposed safety rating that is less than satisfactory?
- 385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?
- 385.417 Is a motor carrier's safety permit number available to others?
- 385.419 How long is a safety permit effective?
- 385.421 Under what circumstances will a safety permit be subject to revocation or suspension by the FMCSA?
- 385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

**Subpart E—Hazardous Materials Safety Permits****§ 385.401 What are the definitions of terms used in this subpart?**

(a) The definitions in parts 390 and 385 of this subchapter apply to this subpart, except where otherwise specifically noted.

(b) As used in this part, *Hazardous material* has the same meaning as under § 171.8 of this title, a substance or material that the Secretary of Transportation has determined as capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials