

transportation law (439 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

*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 which transports hazardous materials in commerce. This term includes an individual, including a self-employed individual, employed by a hazmat employer 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 safety of transporting 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% 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(a) of this subpart.

*Shipment* means the offering or loading of hazardous material 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 subchapter, 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:

- (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;

- (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; or

- (d) A shipment of liquefied natural gas in a packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

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

(a) *Application form(s)*. To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCS-150B, HM Permit Application. If the motor carrier does not have a current U.S. DOT identification number, it must also submit Form MCS-150, Motor Carrier Identification Report (see § 390.19 of this subchapter). A new entrant must also submit Form MCS-150A, Safety Certification for Application for U.S. DOT Number (see subpart D of this part).

(b) *Where to get forms and instructions*. The forms listed in paragraph (a) of this section and instructions for completing them, may be obtained on the Internet at <http://www.fmcsa.dot.gov> or by contacting FMCSA at Federal Motor Carrier Safety Administration, MC-RIS, Room 8214, 400 7th St. SW., Washington, DC 20590, Telephone: 1-800-802-5668.

(c) *Signature and certification*. An official of the motor carrier must sign each of these forms and certify that the information is correct.

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

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

(a) *Satisfactory safety rating*. The motor carrier must have a "satisfactory" safety rating assigned by either FMCSA, pursuant to the Safety Fitness Procedures of part 385 of this subchapter, 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 part 385 of this subchapter.

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

- (1) A security plan meeting the requirements of part 172, subpart I of this title. The security plan must address how the carrier will ensure the security of the written route plan required by this part;

- (2) A communications system installed on each motor vehicle used to transport a hazardous material listed in § 385.403(a) of this subpart that enables the vehicle operator to immediately contact the motor carrier during the course of transportation of the hazardous material, and each operator must be trained in the use of the communications system; and

- (3) Hazmat employees who have all successfully completed the security training required in § 172.704(a)(4) of this title.

(c) *Registration with RSPA*. The motor carrier must be registered with RSPA in accordance with subpart G of part 107 of this title.

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

(a) *Temporary safety permit*. If a motor carrier does not have a safety fitness rating, FMCSA may issue 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, the FMCSRs, or comparable State regulations, and the minimum financial responsibility requirements in part 387 of this subchapter or State regulations, whichever is applicable.

(b) FMCSA will not issue a temporary safety permit to a motor carrier that meets any of the following conditions. The motor carrier:

- (1) Does not certify that it has a satisfactory security program as required in § 385.407(b) of this subpart;
- (2) Has a crash rate in the top 30% of the national average as found in the FMCSA Motor Carrier Management Information System (MCMIS);
- (3) Has a driver, vehicle, hazardous material, or total out-of-service rate in the top 30% of the national average as found in the FMCSA MCMIS; or

- (4) Is on the FMCSA SafeStat List A, B, C, or D.

(c) A temporary safety permit shall be valid for 270 days after the date of issuance or until the motor carrier is assigned a safety rating, whichever occurs first.

- (1) A motor carrier that receives a satisfactory safety rating will be issued a safety permit.

- (2) A motor carrier that receives a less than satisfactory safety rating, is