

## § 385.401

## 49 CFR Ch. III (10–1–11 Edition)

a safety audit to be performed may subject the new entrant to the penalty provisions of 49 U.S.C. 521(b)(2)(A), as adjusted for inflation by 49 CFR part 386, appendix B.

(b) If the new entrant does not agree to undergo a safety audit as specified in paragraph (a) of this section, its registration will be revoked and its interstate operations placed out of service effective on the 11th day from the service date of the notice issued under paragraph (a) of this section.

[67 FR 31983, May 13, 2002, as amended at 73 FR 76491, Dec. 16, 2008]

### Subpart E—Hazardous Materials Safety Permits

SOURCE: 69 FR 39367, June 30, 2004, unless otherwise noted.

#### § 385.401 What is the purpose and scope of this subpart?

(a) This subpart contains the requirements for obtaining and maintaining a safety permit to transport certain hazardous materials. No one may transport the materials listed in § 385.403 without a safety permit required by this subpart.

(b) This subpart includes:

(1) Definitions of terms used in this subpart;

(2) The list of hazardous materials that require a safety permit if transported in commerce;

(3) The requirements and procedures a carrier must follow in order to be issued a safety permit and maintain a safety permit;

(4) The procedures for a motor carrier to follow to initiate an administrative review of a denial, suspension, or revocation of a safety permit.

#### § 385.402 What definitions are used in this subpart?

(a) The definitions in parts 390 and 385 of this chapter 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 is capable of posing an unreason-

able risk to health, safety, and property when transported in commerce, and has designated as hazardous under Sec. 5103 of Federal hazardous materials transportation law (49 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 § 172.101 of this title), and 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