

## § 385.409

(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]

## § 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

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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).

(2) A motor carrier that receives a less than Satisfactory safety rating is ineligible for a safety permit and will be subject to revocation of its temporary safety permit.

(d) If a motor carrier has not received a safety rating within the 180-day time period, FMCSA will extend the effective date of the temporary safety permit for an additional 60 days, provided the motor carrier demonstrates that it is continuing to operate in full compliance with the FMCSRs and HMRs.

## § 385.411 Must a motor carrier obtain a safety permit if it has a State permit?

Yes. However, if FMCSA is able to verify that a motor carrier has a safety permit issued by a State under a program that FMCSA has determined to be equivalent to the provisions of this subpart, FMCSA will immediately issue a safety permit to the motor carrier upon receipt of an application in accordance with §385.405, without further inspection or investigation.

## § 385.413 What happens if a motor carrier receives a proposed safety rating that is less than Satisfactory?

(a) If a motor carrier does not already have a safety permit, it will not be issued a safety permit (including a temporary safety permit) unless and until a Satisfactory safety rating is issued to the motor carrier.

(b) If a motor carrier holds a safety permit (including a temporary safety permit), the safety permit will be subject to revocation or suspension (see §385.421).

## § 385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?

(a) *Information that must be carried in the vehicle.* During transportation, the following must be maintained in each

commercial motor vehicle that transports a hazardous material listed in § 385.403 and must be made available to an authorized official of a Federal, State, or local government agency upon request.

(1) A copy of the safety permit or another document showing the permit number, provided that document clearly indicates the number is the FMCSA Safety Permit number;

(2) A written route plan that meets the requirements of § 397.101 of this chapter for highway route-controlled Class 7 (radioactive) materials or § 397.67 of this chapter for Division 1.1, 1.2, and 1.3 (explosive) materials; and

(3) The telephone number, including area code or country code, of an employee of the motor carrier or representative of the motor carrier who is familiar with the routing of the permitted material. The motor carrier employee or representative must be able to verify that the shipment is within the general area for the expected route for the permitted material. The telephone number, when called, must be answered directly by the motor carrier or its representative at all times while the permitted material is in transportation including storage incidental to transportation. Answering machines are not sufficient to meet this requirement.

(b)(1) *Inspection of vehicle transporting Class 7 (radioactive) materials.* Before a motor carrier may transport a highway route controlled quantity of a Class 7 (radioactive) material, the motor carrier must have a pre-trip inspection performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of the "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403," January 1, 2004, which is incorporated by reference. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Information

and copies may be obtained from the Commercial Vehicle Safety Alliance, 1101 17th Street, NW, Suite 803, Washington, DC 20036. Phone number (202) 775-1623.

(2) All materials incorporated by reference are available for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(c) *Additional requirements.* A motor carrier transporting hazardous materials requiring a permit under this part must also meet the following requirements:

(1) The operator of a motor vehicle used to transport a hazardous material listed in § 385.403 must follow the communications plan required in § 385.407(b)(2) to make contact with the carrier at the beginning and end of each duty tour, and at the pickup and delivery of each permitted load. Contact may be by telephone, radio or via an electronic tracking or monitoring system. The motor carrier or driver must maintain a record of communications for 6 months after the initial acceptance of a shipment of hazardous material for which a safety permit is required. The record of communications must contain the name of the driver, identification of the vehicle, permitted material(s) being transported, and the date, location, and time of each contact required under this section.

(2) The motor carrier should contact the Transportation Security Administration's Transportation Security Coordination Center (703-563-3236 or 703-563-3237) at any time the motor carrier suspects its shipment of a hazardous material listed in § 385.403 is lost, stolen or otherwise unaccounted for.

[69 FR 39367, June 30, 2004, as amended at 72 FR 55701, Oct. 1, 2007]