

Advisory: Guidance on the Application of 49 CFR Section 385.403; Who Must Hold a Safety Permit?

The Federal Motor Carrier Safety Administration (FMCSA) is issuing this advisory to motor carriers and shippers of hazardous materials requiring a Hazardous Materials Safety Permit (HMSP) pursuant to 49 CFR § 385.403. This advisory is intended to clarify when FMCSA will issue a HMSP and the process when a motor carrier has been issued a HMSP and no longer transports materials requiring a HMSP. This advisory also serves as a reminder to motor carriers as to the proper procedures for applying for and renewing a HMSP.

Background:

Title 49 of the Code of Federal Regulations, section 385.403, provides that a 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 49 CFR § 173.403;
- (b) More than 25 kg (55 pounds) net weight of a Division 1.1, 1.2, or 1.3 (explosive) material or articles or an amount of a Division 1.5 (explosive) material requiring placarding under 49 CFR part 172;
- (c) More than one liter (1.08 quarts) per package of a “material poisonous by inhalation,” as defined in 49 CFR § 171.8, that meets the criteria for “hazard zone A,” as specified in 49 CFR § 173.116(a) or § 173.133(a);
- (d) A “material poisonous by inhalation,” in a “bulk packaging,” both as defined in 49 CFR § 171.8, that meets the criteria for “hazard zone B,” as specified in 49 CFR § 173.116(a) or § 173.133(a);
- (e) A “material poisonous by inhalation,” as defined in 49 CFR § 171.8, that meets the criteria for “hazard zone C,” or “hazard zone D,” as specified in 49 CFR § 173.116(a), in a packaging having a capacity equal to or greater than 13,248 L (3,500) gallons; or
- (f) A shipment of methane (compressed or refrigerated liquid), natural gas (compressed or refrigerated liquid), or any other compressed or refrigerated liquefied gas with a methane content of at least 85 percent, in bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

FMCSA no longer interprets 49 CFR § 385.403(e) as requiring a HMSP to transport anhydrous ammonia domestically (UN1005 ammonia, anhydrous 2.2 Inhalation Hazard). Anhydrous ammonia is identified in the Hazardous Materials

Table (HMT) as a Division 2.2 material when transported domestically (See 49 CFR § 172.101). Section 173.116(a) does not assign hazard zones to Division 2.2 hazardous materials. Therefore, FMCSA no longer considers this material as meeting the criteria for “hazard zone C,” or “hazard zone D,” as specified in § 173.116(a) under § 385.403(e).

A HMSP is still required when transporting anhydrous ammonia using the international description (UN1005, ammonia, anhydrous 2.3 Poison Inhalation Hazard or Toxic Inhalation Hazard, Zone D), in a packaging with a capacity greater than 13,248 L (3,500 gallons). FMCSA has communicated this information to motor carriers that were holding or applying for a HMSP specifically for the transportation of anhydrous ammonia.

The FMCSA Hazardous Materials Safety Permit Program brochure and the Hazardous Materials Frequently Asked Questions at <https://www.fmcsa.dot.gov> have been updated accordingly.

Issuance of and Holding a HMSP:

It is the position of FMCSA that **neither a HMSP nor a Temporary HMSP (T-HMSP) will be issued to a motor carrier that does not intend to actively transport materials requiring a HMSP.** No motor carrier should apply for a HMSP unless it intends to transport a material requiring a HMSP at the time of the application for a permit.

If your company currently holds a HMSP, but no longer actively transports materials requiring a HMSP, please contact FMCSA for removal from the HMSP program by sending an email to fmcsa.hmsp@dot.gov. **You cannot remove yourself online.** The email should include your company name, US DOT number, a point of contact, and a brief statement as to the reason for removal, including that you no longer transport a material requiring a HMSP. FMCSA will rescind the HMSP and place the email in your company’s file. **You are welcome to reapply for a HMSP at any time if materials requiring a HMSP will be transported by the company.**

If, during an investigation, it is determined that you hold a HMSP when you do not transport materials requiring an HMSP, FMCSA will rescind the HMSP after notification from the investigator.

HMSP Applications and Renewals:

The procedures for applying for a HMSP are provided in 49 CFR § 385.405 and further outlined in the FMCSA HMSP Program brochure at <https://www.fmcsa.dot.gov>.

Motor carriers are reminded of the following:

- Do not complete the MCS-150B unless materials requiring a HMSP are to be transported. A HMSP is only required for the transportation of the materials specified in the Background section of this document.
- Accurately declare the Class/Division of the hazardous materials being transported in the appropriate section of the application. It is the motor

carrier's responsibility to determine the types of materials transported. As previously discussed, the domestic transportation of anhydrous ammonia (UN1005 ammonia, anhydrous 2.2 Inhalation Hazard) no longer requires a HMSP. However, **the transportation of anhydrous ammonia using the international description (UN1005, ammonia, anhydrous 2.3 Poison Inhalation Hazard or Toxic Inhalation Hazard, Zone D), in a packaging with a capacity greater than 13,248 L (3,500 gallons) requires a HMSP. This material must be declared as "Div. 2.3D."**

- When applying for a HMSP, select the "Initial" option.
- When renewing a HMSP, select the "Renewal" option. **Do not apply for a renewal of a HMSP earlier than 60 days prior to the expiration of the existing permit.** The renewal date coincides with the submission of your biennial update.
- When applying for or renewing a HMSP, always submit proof of required insurance using the DOT MCS-90 form. Also, submit a current Pipeline and Hazardous Materials Safety Administration (PHMSA) Hazardous Materials Certificate of Registration in conjunction with your application. Submit the documents to the Hazardous Materials Division of FMCSA at fmcsa.hmsp@dot.gov or fax to (202) 366-3621.

For more information or questions concerning this Advisory please contact the Hazardous Materials Division, at 202-366-0735 or by email at: fmcsa.hmsp@dot.gov.