



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Department of Environmental Quality
<b>VAC Chapter Number:</b>	9 VAC 20-110
<b>Regulation Title:</b>	Regulations Governing the Transportation of Hazardous Materials
<b>Action Title:</b>	Final
<b>Date:</b>	Draft-1/27/03

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The Regulations Governing the Transportation of Hazardous Materials regulate the method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored, and transported. By Virginia statute, these regulations shall be no more restrictive than any applicable federal laws or regulations. These regulations incorporate portions of federal regulations governing the transportation of hazardous materials in effect as of October 1, 2001 into Virginia's regulations. Only minor clarifications have been made to the regulations since they were published as proposed regulations.

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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The Virginia Waste Management Board adopted the Regulations Governing the Transportation of Hazardous Materials, Amendment 13 as final regulations on March 28, 2003.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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### State Authority

Section 10.1-1450 requires the board to promulgate regulations “designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported.” This section also requires the regulations to be no more restrictive than any applicable federal laws or regulations. Section 10.1-1454 states that “any person transporting hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of this article, except when such transportation is excluded from regulation under the laws or regulations of the United States.” The department incorporates federal regulations into state regulations to maintain consistent requirements for transporters of hazardous materials. The web site addresses for the full text of sections cited above are:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1450> for Section 10.1-1450; and  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+10.1-1454> for Section 10.1-1454.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The proposed regulatory action will provide consistency between federal and state regulations governing the transportation of hazardous materials. By amending the state regulations to incorporate federal regulations, law enforcement officers in the Commonwealth will be able to protect the public from improper transportation of hazardous materials. The Regulations Governing the Transportation of Hazardous Materials regulate the method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored, and transported. By Virginia statute, these regulations shall not be more restrictive than any applicable federal laws or regulations.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

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The regulations are being amended to incorporate sections of 49 Code of Federal Regulations in effect on October 1, 2001. Additionally, text referencing the director issuing variances from physical qualification requirements to drivers transporting hazardous materials has been removed from the regulations since current statute no longer gives the Director of the Department of Environmental Quality the authority to issue these variances.

### Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The public and the Commonwealth will benefit from amending these regulations. This amendment incorporates federal regulations into state regulations. By incorporating current federal text, the public and the regulated community will benefit from being regulated by federal and state regulations that are consistent. This amendment will assist law enforcement officers in the Commonwealth with protecting the public from improper transportation of hazardous materials.

There are no disadvantages to the public or the Commonwealth.

### Statement of Changes Made Since the Proposed Stage

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

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**9 VAC 20-110-10 Definitions**

The definition of hazardous radioactive material has been revised to read “Hazardous radioactive materials mean, for the purposes of this regulation, radioactive materials regulated requiring advance notification as described in 10 CFR Part 71.97.”

**9 VAC 20-11-121 Register of Shippers**

The first sentence of 9 VAC 20-110-121 has been revised to read “Every shipper transporting or proposing to transport hazardous radioactive materials within the Commonwealth shall register with the Department of Emergency Management at least 30 days prior to the initial transportation of such materials.”

**9 VAC 20-110-122 Monitoring and Transportation**

The first two sentences of 9 VAC 20-110-122 A have been revised to clarify the registration requirements. The name of the local coordinator has also been changed to local emergency management coordinators to be consistent with the name change of the Department of Emergency Management.

### Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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Verbal comments on the proposed regulations were received from a representative of the Virginia Department of Emergency Management. In general, all of the comments were clarifying in nature and related to the transportation of hazardous radioactive materials. Since the Department of Emergency Management maintains a registry of transporters of hazardous radioactive materials and all of the requested changes were clarifications, the suggested changes were made.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

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Throughout these regulations, references to the Department of Emergency Services have been changed to the Department of Emergency Management.

**9 VAC 20-110-10 Definitions**

Definitions for “coordinator”, “monitor” and “hazardous radioactive materials” are being revised. The definition of “variance” is being removed.

**9 VAC 20-110-20 Authority for regulation**

Additional language is being added to this section that gives additional information about the statute that directs the Board to promulgate these regulations.

**9 VAC 20-110-30 Purpose of Regulations**

This section is being clarified to state that shippers of hazardous radioactive materials need to register if the radioactive materials are subject to federal advance notification requirements prior to transportation.

**9 VAC 20-110-40 Administration of regulations**

Section 383 of 49 CFR is no longer being incorporated by reference into these regulations since the Virginia Department of Motor Vehicles has promulgated regulations governing commercial driver's licenses (24 VAC 20-60).

**9 VAC 20-110-100 Application of Administrative Process Act**

The citation to the Administrative Process Act has been changed to reflect the current citation of the Administrative Process Act.

**9 VAC 20-110-110 Compliance**

Changes have been made to this section to incorporate sections of 49 CFR as in effect October 1, 2001. An additional section is being incorporated into the regulations that requires transporters of hazardous materials to register with the federal government. The section no longer incorporates commercial driver's license requirements.

**9 VAC 20-110-115 Variance from physical qualification requirements for drivers of vehicles transporting hazardous materials**

This section is being repealed since the statute has been revised and the Director of the Department of Environmental Quality is no longer directed by statute to issue variances from physical requirements. The Commissioner of the Department of Motor Vehicles is now responsible for issuing these variances.

**9 VAC 20-11-121 Register of Shippers**

This section has been clarified to state that every shipper transporting or proposing to transport hazardous radioactive materials requiring advance notification must register with the Department of Emergency Management.

**9 VAC 20-110-122 Monitoring and Transportation**

Language has been added to this section clarifying that shipments of radioactive materials requiring advance notification shall notify the coordinator of the Department of Emergency Management prior to the shipment taking place. The name of the local coordinator has also been changed from local emergency services coordinator to local emergency management coordinator to be consistent with the name change of the Department of Emergency Management.

## Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulatory action will protect the environment by addressing the need for consistent federal and state regulations governing the transportation of hazardous materials. By amending the state regulations to incorporate federal regulations, law enforcement officers in the Commonwealth will be able to protect the public from improper transportation of hazardous materials. These regulations will not impact disposable family income since transporters of hazardous materials are already required to comply with federal regulations on transportation of hazardous materials.