



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-110
Regulation Title:	Regulations Governing the Transportation of Hazardous Materials
Action Title:	Notice of Intended Regulatory Action
Date:	4/24/01

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

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.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

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.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

No comments were received during the Notice of Periodic Review comment period.

Since the regulations are being amended to incorporate federal regulations, a technical advisory committee will not be formed.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goal of the regulation is to protect the health, safety and welfare of citizens by requiring transporters of hazardous materials in the Commonwealth to load, unload, pack, identify, mark, placard, store, and transport hazardous materials in a safe manner. By incorporating federal

regulations into state regulations, the Commonwealth's requirements are consistent with federal requirements governing the transportation of hazardous materials. Transporters regulated by these regulations are already required to comply with federal regulations; therefore, the regulated community is not subjected to additional regulations concerning the transportation of hazardous materials. Incorporation of these standards into state regulations will allow trained state and local law enforcement officials to enforce the requirements of these regulations.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The Code of Virginia mandates the promulgation of the regulations governing the loading, unloading, packing, identifying, marking, placarding, storing, and transporting of hazardous materials, so there is no alternative to their promulgation. The Code of Virginia also states that the regulations promulgated may be no more restrictive than applicable federal laws and regulations. The Regulations Governing the Transportation of Hazardous Materials incorporate federal requirements for loading, unloading, packing, identifying, marking, placarding, storing, and transporting hazardous materials. Any deviation from federal requirements would be in conflict with federal regulations. This approach is also the least burdensome method for regulating transporters of hazardous materials. Transporters of hazardous materials are already aware of federal regulations governing the transport of hazardous materials and are responsible for following federal regulations.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The agency is recommending the regulation be amended to incorporate current federal regulations. Federal regulations have been amended since the adoption of these regulations.

Substance

Please detail any changes that would be implemented.

The amendment of the regulations may include but will not be limited to the following:

1. Review of the definition section for consistency with definitions in the federal regulations;
2. Update references in the regulations to cite current federal regulations;

3. Remove obsolete sections; and
4. Review the registration of shippers requirement with the Department of Emergency Management.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential 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.

The proposed regulatory action will protect families’ health and 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.

Purpose*

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

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. The goal of amending the regulation is to incorporate federal regulations into state regulations to maintain consistency with federal regulations. By Virginia statute, these regulations are not allowed to be more restrictive than any applicable federal laws or regulations. Incorporation of these standards into state regulations will allow trained state and local law enforcement officials to enforce the requirements of these regulations.

Need*

Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied

The proposed regulatory action will protect families’ health and 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. 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 detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.

The amendment of the regulations may include but will not be limited to the following:

1. Review of the definition section for consistency with definitions in the federal regulations;
2. Update references in the regulations to cite current federal regulations;
3. Remove obsolete sections; and
4. Review the registration of shippers requirement with the Department of Emergency Management.

Alternatives*

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action, and the reasoning by which the agency has rejected any of the alternatives considered.

The Code of Virginia mandates the promulgation of the regulations governing the loading, unloading, packing, identifying, marking, placarding, storing, and transporting of hazardous materials, so there is no alternative to their promulgation. The Code of Virginia also states that the regulations promulgated may be no more restrictive than applicable federal laws and regulations. The Regulations Governing the Transportation of Hazardous Materials incorporate federal requirements for loading, unloading, packing, identifying, marking, placarding, storing, and transporting hazardous materials. Any deviation from federal requirements would be in conflict with state statute. This approach is also the least burdensome method for regulating transporters of hazardous materials. Transporters of hazardous materials are already aware of federal regulations governing the transport of hazardous materials and are responsible for compliance with federal regulations.

Public Participation*

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.

The Board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail or by e-mail. Written comments should be signed by the commenter and include the name and address of the commenter. E-mail comments will be accepted and commenters should include their name and address. In order to be considered comments must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Oral comments may be submitted at that time.

Participatory Approach*

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is not using the participatory approach in the development of the proposal. The Board has authorized the department to prepare a proposal without using an ad hoc advisory group.