



Virginia
Regulatory
Town Hall

Periodic Review and
Exempt Action or Exempt Agency Final Regulation
Agency Background Document

Agency Name:	Virginia Department of Transportation (Commonwealth Transportation Board)
VAC Chapter Number:	24 VAC 30-61-10
Regulation Title:	Rules And Regulations Governing The Transportation of Hazardous Materials Through Bridge-Tunnel Facilities
Action Title:	APA-Exempt Amendment to Regulation
Date:	April 5, 2001

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 which is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1.

Note that agency actions exempt pursuant to § 9-6.14:4.1 do not require filing with the Registrar a Notice of Intended Regulatory Action or at the proposed stage. The agency must still, however, comply with the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their final regulation in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

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.

This regulation sets forth the rules for users of state-owned bridge-tunnel facilities (four urban, water-proximate facilities in the Hampton Roads District, and two rural, distanced-from water facilities in the Bristol District) transporting hazardous materials.

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 statutes previously cited for this regulation include the following:

- § 33.1-12(3), which permits the Commonwealth Transportation Board to make regulations concerning the use of the system of state highways; and
- § 33.1-49, which gives the Commonwealth Transportation Board authority to regulate the use of the Interstate System in the same manner as it does for the primary system of state highways, as well as the power to comply with the Federal-Aid Highway Act of 1956 and any amendatory or supplementary acts thereto.

Federal regulations associated with this regulation include:

- Exemptions to Hazardous Materials Program Procedures: 49 CFR, Part 107, Subpart B;
- Hazardous Material Regulation/Shipping Container Specifications/Qualifications and Maintenance of Cargo Tanks: 49 CFR, Parts 171-180; and
- Highway Routing of Transportation of Hazardous Materials: 49 CFR, Part 397.

Federal regulations on this subject do not specify how the states should set up their programs, so this regulation does exceed specific minimum requirements of the federal mandate. VDOT has established its regulation based on the hazard classes in 49 CFR, § 172.01.

Finally, the Virginia Waste Management Board has promulgated a regulation entitled *Regulations Governing the Transportation of Hazardous Materials* (9 VAC 20-110-10) which addresses how such materials are loaded, unloaded, packed, identified, marked, placarded, stored and transported, provided that the rules are no more restrictive than any applicable federal laws or regulations.

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.

VDOT received no public comment in response to the Notice of Periodic Review published in *The Virginia Register*. The proposed regulation was reviewed internally by VDOT. No advisory group was formed to assist in the periodic review.

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. Please state the reasons the agency determined the regulation be amended or terminated.

Goals:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. Is the regulation written clearly and understandably?

Goal 1: Accidents involving hazardous materials inside tunnels have the potential to cause catastrophic events that may lead to significant amounts of damage to public and private property, as well as injury or death to motorists and VDOT personnel. This regulation identifies the types of hazardous materials that may be transported using state-owned bridge-tunnel facilities. Therefore, VDOT and the CTB believe that the regulation serves the public interest.

Goal 2: The regulation clearly lists the facilities to which the regulation applies, and includes telephone numbers for each facility. Restrictions are referenced to the hazard class of the commodity being transported. Prior to 1995, VDOT listed each hazardous material individually, which made the regulation quite lengthy, difficult to use and understand, and virtually always out-of-date. Using the hazard class improved the ease of use of the regulation, reducing it in size from approximately 150 pages to two pages.

In addition, a resource is listed to answer questions concerning restrictions on hazardous materials in rural and distanced-from water facilities, which are not subject to the same restrictions as the urban and water-proximate facilities. Finally, a telephone number is also listed for the Chesapeake Bay Bridge-Tunnel, which is not subject to the regulation, so that users may contact that facility to obtain information on that facility's regulations concerning hazardous materials transportation.

VDOT believes that the lack of public comment received concerning the regulation indicates broad satisfaction with the format of the regulation, the manner in which it is implemented, its clarity and ease of comprehension, and its effectiveness.

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.

There is no viable substitute for a regulation addressing the transportation of hazardous materials as permitted by federal and state statutes and regulations. Only members of the trucking industry traveling on specific facilities are affected by this regulation, so it is limited in the number of affected parties, as well as the location of the routes.

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.

VDOT amended the regulation entitled *Rules And Regulations Governing The Transportation of Hazardous Materials Through Bridge-Tunnel Facilities* by signature of the Deputy Commissioner on April 3, 2001. Amendments changed telephone area codes for the urban and rural bridge tunnels.

Under the rules established in *the Registrar's Form, Style, and Procedure Manual*, amendments to regulations exempt from the APA under the provisions of § 9-6.14:4.1 C become effective upon expiration of a 30-day waiting period. VDOT expects the regulatory action will be published in *The Virginia Register* in mid-2001.

Additional Information

Please indicate that the text of the proposed regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law. Note that the OAG's certification is not required for Marine Resources Commission regulations.

If the exemption claimed falls under § 9-6.14:4.1(C) (4)(c) of the APA please include the federal law or regulations being relied upon for the final agency action.

Proposed text is attached. The Office of the Attorney General reviewed the amended regulation and issued an opinion dated March 27, 2001, that the amendments were exempt from Article 2 of

the APA, that VDOT has the authority to repeal the regulation, and that it comports with applicable state and federal law.

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.

This regulation has no direct effect on the family or family stability, nor does it affect any of the factors listed above.