



Virginia
Regulatory
Town Hall

Exempt Action Final Regulation 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:	Immediate Final Rule 2003
Date:	May 18, 2004

Where an agency or regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply 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 regulations 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.

This agency background document may be used for actions exempt pursuant to § 9-6.14:4.1(C) at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar at the proposed stage.

In addition, agency actions exempt pursuant to § 9-6.14:4.1(B) of the APA are not subject to the requirements of the Virginia Register Act (§ 9-6.18 et seq. of the Code of Virginia) and therefore are not subject to publication. Please refer to the Virginia Register Form, Style and Procedure Manual for more information.

Summary

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Regulations Governing the Transportation of Hazardous Materials, 9 VAC 20-110, include requirements in the form of incorporated federal regulatory text at Title 49 of the Code of Federal Regulations. The federal regulatory text as it existed October 1, 2002 was specified as that incorporated. Immediate Final Rule 2003 addresses only 9 VAC 20-110-110, the section making the specification of the date of incorporated text. This section is altered by striking the previous prescribed date and adopting the new

date of October 1, 2003, thus making it the new date of reference of all incorporated federal regulatory text. The language is also clarified to the effect that the effective date of the incorporated text will be the effective date as published in the Federal Register notice or the effective date specified in this amendment, whichever is later.

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.

The Virginia Waste Management Board approved Immediate Final Rule: Amendment 2003 on _____ as a final regulation, a revision of 9 VAC 20-110-110 of the Regulations Governing the Transportation of Hazardous Materials.

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.

A copy of Immediate Final Rule 2003, the final regulation, is attached; there are no forms associated with the action; and the only incorporated material is from the U. S. Code of Federal Regulations. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

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.

There is no impact on the institution of the family or family stability.

Table of Changes to Federal Regulations October 1, 2002 to October 1, 2003

Number	Subject and Dates	Summary
<p>RSPA-03-10373 (HM-220D)</p>	<p>Approval Program for Certain Persons Performing Visual Requalification of DOT Specification Cylinders; Extension of Compliance Date; Interim final rule; extension of compliance date and request for comments; Published 09/26/2003; Effective Date: September 26, 2003; 68 FR 55542.</p>	<p>Extends the compliance date of the regulations contained in 49 CFR 107.805(f) and 180.209(g) of the Hazardous Materials Regulations that require persons who perform visual requalification of DOT specification cylinders to obtain approval from RSPA and to mark the requalifier identification number assigned by RSPA on cylinders successfully requalified after May 31, 2004.</p>
<p>RSPA-03-15372 (RSP-5)</p>	<p>Penalty Guidelines and Other Procedural Regulations; Final rule; Published 09/08/2003; Effective Date: September 8, 2003; 68 FR 52844.</p>	<p>Increases to \$32,500 and \$275, respectively, the maximum and minimum civil penalties for a knowing violation of Federal hazardous materials transportation law or a regulation issued under that law. Publishes revised baseline assessments for frequently cited violations to provide the regulated community and the general public with more current information on RSPA's hazardous material penalty assessment process. The revisions to RSPA's baseline penalty assessments consider the increase in the maximum civil penalty to \$32,500. Advises the public that, in proposing or assessing a civil penalty, RSPA will not normally consider a prior violation in a case that was initiated in a calendar year more than six years prior to the year in which the current proceeding is initiated. Updates the address to which civil penalty payments must be sent, and makes editorial changes to procedural regulations for issuing an administrative determination of preemption.</p>
<p>RSPA-98-3554 (HM-213)</p>	<p>Requirements for Cargo Tanks; Final rule; response to appeals; Published 09/03/2003; Effective Date: September 3, 2003; 68 FR 52363.</p>	<p>On April 18, 2003, the Research and Special Programs Administration published a final rule under Docket No. RSPA-98-3554 (HM-213) to update and clarify requirements in the Hazardous Materials Regulations applicable to construction and maintenance of cargo tank motor vehicles. In response to appeals submitted by persons affected by the April 18, 2003 final rule, this final rule amends certain requirements and makes minor editorial corrections.</p>
<p>RSPA-02-13773 (HM-218B)</p>	<p>Miscellaneous Amendments; Final rule; Published 8/14/2003, Effective Date: August 14, 2003 68 FR 48562.</p>	<p>This final rule amends the Hazardous Materials Regulations by incorporating miscellaneous changes based on petitions for rulemaking and RSPA initiatives. The intended effect of these regulatory changes is to update, clarify or provide relief from certain regulatory requirements.</p>
<p>RSPA-03-19016 (HM-215E)</p>	<p>Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation</p>	<p>Amends the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special</p>

	<p>Organization's Technical Instructions; Final rule; Published 7/31/2003, Effective Date: July 31, 2003 68 FR 44991.</p>	<p>provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these revisions are necessary to facilitate the transport of hazardous materials in international commerce.</p>
<p>RSPA-01-10373 (HM-220D)</p>	<p>Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders; Correction of Compliance Dates; Correction to final rule compliance dates; Published 6/2/2003; Effective Date: June 2, 2003; 68 FR 32679.</p>	<p>This document corrects several compliance dates in a final rule published May 8, 2003 (68 FR 24653) that made revisions to certain cylinder requirements. The compliance date for the final rule is corrected to permit immediate voluntary compliance. The delayed compliance dates for two other requirements in the final rule are corrected.</p>
<p>RSPA-01-10533 (HM-218A)</p>	<p>Transportation of Hazardous Materials; Unloading of Intermodal (IM) and UN Portable Tanks on Transport Vehicles; Final rule; Published 5/29/2003; Effective Date: June 30, 2003; 68 FR 32409.</p>	<p>Amends the Hazardous Materials Regulations to permit, for an interim period and subject to certain unloading conditions, the unloading of IM and UN portable tanks transporting certain liquid hazardous materials when those tanks are not equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets. Permitting such unloading for an interim period affords operators time to bring the portable tanks into conformance with the regulations.</p>
<p>RSPA-02-12064 (HM-232)</p>	<p>Hazardous Materials Security Plans; Information Collection Approval; Final rule; Published 5/28/2003; Effective Date: June 20, 2003; 68 FR 31627.</p>	<p>This final rule announces Office of Management and Budget (OMB) approval of information collection request (ICR) OMB No. 2137- 0612, "Hazardous Materials Security Plans". This information collection has been approved by OMB until April 30, 2006. This final rule also makes appropriate revisions to regulations concerning the Paperwork Reduction Act to incorporate this new information collection approval under OMB Control No. 2137-0612.</p>
<p>RSPA-01-10373 (HM-220D)</p>	<p>Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders; Response to Appeals and Extension of Compliance Dates; Final rule; response to appeals; Published 5/8/2003; Effective Date: June 9, 2003; 68 FR 24653.</p>	<p>On August 8, 2002, RSPA published a final rule - 10373 (HM-220D) amending the requirements of the Hazardous Materials Regulations applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. The revisions simplified the regulations, responded to petitions for rulemaking, addressed recommendations of the National Transportation Safety Board, and enhanced the safe transportation of hazardous materials in cylinders. In response to appeals submitted by persons affected by the August 8, 2002 final rule, this final rule amends certain requirements, extends certain compliance dates, and makes minor editorial corrections.</p>
<p>RSPA-03-</p>	<p>Enhancing Hazardous Materials</p>	<p>Incorporates into the Hazardous Materials Regulations a requirement that shippers and</p>

<p>14982 (HM-232C)</p>	<p>Transportation Security; Interim final rule and request for comments; Published 5/5/2003; 68 FR 23831.</p>	<p>transporters of certain hazardous materials comply with Federal security regulations that apply to motor carrier and vessel transportation. In addition, revises the procedures for applying for an exemption from the Hazardous Materials Regulations to require applicants to certify compliance with applicable Federal transportation security laws and regulations. This interim final rule will assure that shippers and transporters are aware of and comply with their security obligations.</p>
<p>RSPA-98-3554 (HM-213)</p>	<p>Requirements for Cargo Tanks; Final rule; Published 4/18/2003; Effective Date: October 1, 2003; 68 FR 19257.</p>	<p>Adopts a number of revisions to the Hazardous Materials Regulations to update and clarify the regulations on the construction and maintenance of cargo tank motor vehicles. This final rule also addresses three National Transportation Safety Board (NTSB) recommendations and several petitions for rulemaking. These revisions will increase the safety of cargo tanks transporting hazardous materials, provide greater flexibility in design and construction of cargo tanks, and reduce operating burdens for owners, operators, and manufacturers of cargo tank motor vehicles.</p>
<p>RSPA-02-12064 (HM-232)</p>	<p>Security Requirements for Offerors and Transporters of Hazardous Materials; Final rule; Published 3/25/2003; 68 FR 14509.</p>	<p>Establishes new requirements to enhance the security of hazardous materials transported in commerce. Shippers and carriers of certain highly hazardous materials must develop and implement security plans. In addition, all shippers and carriers of hazardous materials must assure that their employee training includes a security component.</p>
<p>RSPA-00-7762 (HM-206C)</p>	<p>Availability of Information for Hazardous Materials Transported by Aircraft ; Final rule; Published 3/25/2003; Effective Date: October 1, 2003; 68 FR 14341.</p>	<p>Amends the Hazardous Materials Regulations to require an aircraft operator transporting a hazardous material to: Place a telephone number, on the notification of pilot-in-command or in the cockpit of the aircraft, that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft; retain and provide upon request a copy of the notification of pilot-in-command, or the information contained in it, at the aircraft operator's principal place of business, or the airport of departure, for 90 days, and at the airport of departure until the flight leg is completed; and make readily accessible, and provide upon request, a copy of the notification of pilot-in-command, or the information contained in it, at the planned airport of arrival until the flight leg is completed. The intent of these amendments is to increase the level of safety associated with the transportation of hazardous materials aboard aircraft.</p>
<p>RSPA-00-8439 (HM-208D)</p>	<p>Temporary Reduction of Registration Fees ; Final rule; Published 1/9/2003; Effective Date: March 3, 2003; 68 FR 1341.</p>	<p>Reduces the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials, in order to eliminate the unexpended balance in the Hazardous Materials Emergency Preparedness Grants Fund. Also revises</p>

		regulations to provide that a not-for-profit organization will pay the same registration fee as a small business.
RSPA-02-13658 (HM-215E)	Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Incorporation by Reference; Final rule; Published 1/8/2003; Effective Date: January 8, 2003; 68 FR 1013.	Amends the Hazardous Materials Regulations (HMR) by updating incorporation by reference materials to include the most recent amendments to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). This action is necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft and vessel after these international standards become effective. The other changes proposed in the notice of proposed rulemaking (NPRM) under this docket will be addressed in a separate rule.
RSPA-01-10568 (HM-207B)	Retention of Shipping Papers; Final rule, response to appeals; Published 11/1/2002; Effective Date: November 1, 2002; 67 FR 66571.	Makes changes to a final rule published on July 12, 2002, in which RSPA amended the Hazardous Materials Regulations (HMR) to require shippers and carriers to retain a copy of each hazardous material shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier. This final rule responded to five appeals of the July 12, 2002 final rule.
FMCSA-02-13376; RSPA-02-12773 (HM-232B)	Revision to Periodic Tire Check Requirement for Motor Carriers Transporting Hazardous Materials; Final rule; Published 10/4/2002; Effective Date: November 4, 2002; 67 FR 62191	Eliminates an outdated requirement for certain motor vehicle operators to stop periodically to check their tires. Eliminating this requirement enhances the security of hazardous materials shipments.