

REGULATION GOVERNING THE TRANSPORTATION OF HAZARDOUS MATERIALS

PART I: Definitions

9 VAC 20-110-10 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Board" means the Virginia Waste Management Board.

"Carrier" means a person engaged in the transportation of passengers or property by:

1. Land or water, as a common, contract, or private carrier; or
2. Civil aircraft.

"CFR" means the Code of Federal Regulations.

"Coordinator" means the Chief Executive Officer of the Virginia Department of Emergency [Services Management](#).

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality.

"Hazardous material" means a substance or material in a form or quantity which may pose an unreasonable risk to health, safety or property when transported, and which has been incorporated under Part III (9 VAC 20-110-110 et seq.).

"Hazardous radioactive materials" mean, for the purposes of this regulation, radioactive materials regulated by 10 CFR Parts 20, 71, and 73.

"Monitor" means to track the transportation of hazardous radioactive materials requiring advance notification prior to transportation within the Commonwealth by:

1. Requiring transporters shippers to register with the coordinator and to notify the coordinator of shipments of hazardous radioactive materials within the Commonwealth; and
2. ~~The coordinator's~~ In requiring the coordinator report prepared to prepare a report annually for the Governor and the director summarizing the hazardous radioactive materials transportation for the preceding year.

"Person" means an individual, firm, co-partnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe, when it offers hazardous materials, or hazardous radioactive materials for transportation, or transports hazardous materials or hazardous radioactive materials, but such term does not include:

1. The United States Postal Service; or
2. For the purposes of ~~"110 and 111 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1809-1810), 49 U.S.C. 5123 and 5124,~~ any agency or instrumentality of the federal government.

"Shipper" means a person who transfers possession of hazardous material or hazardous radioactive material to the carrier for transport through the Commonwealth.

"Transport" or "transportation" means any movement of property by any mode, and any packing, loading, unloading, identification, marking, placarding, or storage incidental thereto.

~~"Variance" means authorization, granted by the director, to engage in an activity covered by these regulations without following specific regulatory requirements.~~

PART II: General Information and Legislative Authority.

9 VAC 20-110-20 Authority for regulation.

A. These regulations are issued under authority of Article 7 (" 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Transportation of Hazardous Materials, and Chapter 3.3 (" 44-146.30) of Title 44 of the Code of Virginia.

B. Section 10.1-1450 of the Code of Virginia assigns the Virginia Waste Management Board the responsibility for promulgating regulations governing the transportation of hazardous materials. Section 44-146.30 of the Code of Virginia also assigns to the board the responsibility for promulgating regulations by which the coordinator will maintain a register of shippers of hazardous radioactive materials and monitor transportation of hazardous radioactive materials within the Commonwealth, which may constitute a significant potential danger to the citizens of the Commonwealth in the event of accidental spillage or release.

C. The board is authorized to promulgate rules and regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported, such rules to be no more restrictive than any applicable federal laws or regulations.

9 VAC 20-110-30 Purpose of regulations.

The purpose of these regulations is to regulate the transportation of hazardous materials and to maintain a register of shippers and monitor the transportation of hazardous radioactive materials requiring advance notification in Virginia.

9 VAC 20-110-40 Administration of regulations.

A. The director has the responsibility to administer these regulations. When used in this regulation in any such provisions as may be adopted from 49 CFR Parts 107, 171 through 180, ~~383,~~ and 390 through 397, except in reference to regulations on international transportation, United States means the "Commonwealth of Virginia"; Environmental

Protection Agency means the "Virginia Department of Environmental Quality"; and the Secretary of Transportation, regional director, and administrator mean the "~~Director~~director," unless the context clearly indicates otherwise.

B. The department is responsible for the planning, development and implementation of programs to meet the requirements of Article 7 (" 10.1-1450 et seq.) of Chapter 14 of Title 10.1 and Chapter 3.3 (" 44-146.30) of Title 44 of the Code of Virginia.

C. The coordinator is responsible for registering shippers and monitoring transportation of hazardous radioactive materials in accordance with these regulations.

D. The Radiation Advisory Board, established pursuant to §32.1-233 of the Code of Virginia, shall make recommendations to the director and the board, furnishing such technical advice as may be required, on matters related to development, utilization, and regulations of sources of ionizing radiation.

9VAC20-110-50. Application of regulations.

Notwithstanding the limitations contained in 49 CFR 171.1(a)(3), and subject to the exceptions set forth in 9 VAC20-110-60, these regulations apply to any person who transports hazardous materials or hazardous radioactive materials, or offers such materials for shipment.

9VAC20-110-60. Exceptions.

Nothing contained in these regulations shall apply to regular military or naval forces of the United States, nor to the duly authorized militia of any state or territory thereof, nor to the police or fire departments of this Commonwealth, providing the same are acting within their official capacity and in the performance of their duties.

The shipment or transportation of hazardous radioactive materials by the U.S. Government, for military or national defense, that is specifically exempt from federal regulations is not subject to the requirements of these regulations. Nothing herein shall be construed as requiring the disclosure of any defense information or restricted data as defined in the Atomic Energy Act of 1954 (68 Stat 919) or the Energy Reorganization Act of 1974 (42 USCS §5841), as amended.

9VAC20-110-70. Regulations not to preclude exercise of certain regulatory powers.

Pursuant to §10.1-1452 of the Code of Virginia, the provisions of these regulations shall not be construed so as to preclude the exercise of the statutory and regulatory powers of any agency, department or political subdivision of the Commonwealth having statutory authority to regulate hazardous materials on specified highways or portions of them.

9 VAC 20-110-80 Transportation under United States Regulations.

Pursuant to " 10.1-1454 of the Code of Virginia, any person transporting or offering for shipment hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of these regulations, except when such transportation is excluded from regulation under the laws or regulations of the United States.

9 VAC 20-110-90 Enforcement.

A. The Department of State Police and all other law-enforcement officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation in federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of Article 7 (" 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, and any rule or regulation promulgated herein. Those law-enforcement officers certified to enforce the provisions of this article, and any regulation promulgated under such article, shall annually receive in-service training in current federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials.

B. Judicial enforcement of these regulations shall be governed by " 10.1-1455 of the Code of Virginia.

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

The provisions of the Virginia Administrative Process Act, codified as "~~9-6.14:1 2.-4000~~ et seq. of the Code of Virginia, govern the adoption, amendment, modification, and revision of these regulations, and the conduct of all administrative proceedings hereunder.

PART III: Compliance with Federal Regulations ~~and Variance from Physical Qualification Requirements for Drivers of Commercial Motor Vehicles Transporting Hazardous Materials.~~

9 VAC 20-110-110 Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the United States Secretary of Transportation with amendments promulgated and in effect as of ~~March 18, 1994~~ October 1, 2001 (except as otherwise specified below) pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Exemptions. ~~Hazardous Materials Program Procedures in~~ 49 CFR Part 107, Subpart B.

2. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.

2-3. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.

~~3.4. Shipping Container~~ Specifications for Packagings in 49 CFR Part 178.

~~4.5.~~ Specifications for Tank Cars in 49 CFR Part 179.

~~5.6. Continuing~~ Qualifications and Maintenance of ~~Cargo Tanks~~Packagings in 49 CFR Part 180.

~~6. Commercial Licensing Requirements in 49 CFR Part 383.~~

7. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

9 VAC 20-110-115 ~~Variance from physical qualification requirements for drivers of vehicles transporting hazardous materials.~~ [Repealed]

~~A. The driver of a commercial motor vehicle transporting hazardous materials may apply to the director for a variance from the physical qualification requirements as specified in "10.1-1450-B of the Code of Virginia. The driver or his employer shall submit the following information to the director:~~

- ~~1. A letter, showing the company name, address, and telephone number, that describes the driver's duties and years of service;~~
- ~~2. A copy of the driver's motor vehicle driving record obtained from the Department of Motor Vehicles;~~
- ~~3. A copy of the driver's physical examination on a form that meets the U.S. Department of Transportation requirements;~~
- ~~4. A copy of the Commercial Driver's License Physician's Report of Visual Acuity or a letter stating the operator's ability to operate a commercial motor vehicle safely, completed by the driver's ophthalmologist or optometrist, if the driver has either monocular vision or his visual acuity is not 20/40 or better;~~
- ~~5. A copy of a road test administered by the Virginia State Police to drivers who have use of only one arm, hand, foot, or leg along with a statement by the administering trooper that the driver is qualified to operate the vehicle;~~
- ~~6. For drivers who have diabetes, a copy of the physician's letter stating the driver is capable of operating a vehicle safely; and~~
- ~~7. Any other information bearing on the criteria requested in the statute. This variance shall be effective for one year from the date signed by the director.~~

~~B. Variance renewal. This variance may be renewed 30 days prior to expiration by submitting the following information:~~

- ~~1. A letter, showing the company's name, address, and telephone number, that describes the driver's duties and years of service;~~
- ~~2. A copy of the driver's history record obtained from the Department of Motor Vehicles;~~
- ~~3. A copy of the driver's physical examination report on a form that meets the U.S. Department of Transportation requirements shall be submitted biennially;~~
- ~~4. A copy of the Commercial Driver's License Physician's Report of Visual Acuity or a letter stating the driver's ability to operate a commercial motor vehicle safely, completed~~

~~by the driver's ophthalmologist or optometrist, if the driver has either monocular vision or his visual acuity is not 20/40 or better;~~

~~5. A copy of a road test administered by the Virginia State Police to drivers who have use of only one arm, hand, foot, or leg along with a statement by the administering trooper that the driver is qualified to operate the vehicle;~~

~~6. For drivers who have diabetes, a copy of the physician's letter stating the driver is capable of operating a vehicle safely; and~~

~~7. Any other information bearing on the criteria requested in the statute.~~

~~This variance shall be effective for one year from the date signed by the director.~~

PART IV: Hazardous Radioactive Materials Transportation.

9 VAC 20-110-120 [Repealed.]

9VAC20-110-121 Register of shippers.

Every ~~person~~, shipper ~~or carrier~~ transporting or proposing to transport within the Commonwealth hazardous radioactive materials, ~~requiring advance notification~~, shall register with the Department of Emergency Services Management at least 30 days prior to the initial transportation of such materials. Application for registration or renewal of registration shall be completed on forms furnished by the coordinator and shall contain all the information required by the forms and accompanying instructions. Upon receipt of a complete application form and any other information required by the coordinator, the Department of Emergency Services Management shall issue a registration certificate. The certificate shall expire two years from the date of issue. Registration information shall be provided by the coordinator to the director upon request.

9VAC20-110-122 Monitoring and transportation.

A. Notification. Prior to each shipment or series of shipments of hazardous radioactive materials ~~requiring advance notification by a registrant~~ within the Commonwealth of Virginia, the registrant shall notify the coordinator in writing as required by ~~the 10 CFR 71.97, 10 CFR 73.37 (f) or other~~ applicable federal regulations. The coordinator shall disseminate the notification to local law-enforcement agencies, local emergency services coordinators, local fire departments, or other designated local officials along the transportation route as requested by county or municipal authorities, or as determined by the coordinator to be necessary for effective implementation of these regulations.

B. Reports. At least annually, the coordinator shall submit to the director and the Governor's Office a report summarizing activities carried out under the provisions of these regulations pertaining to the transportation of hazardous radioactive materials.

PART V: Out of Service.

9 VAC 20-110-130 Out of service.

The Department of State Police and all other law-enforcement officers of the Commonwealth who have met the qualifications set forth in 9 VAC 20-110-90 shall be

the agents authorized to perform inspections of motor vehicles in operation and to declare and mark vehicles "out of service" as set forth in 49 CFR 396.9.