



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9VAC20-110
Regulation title	Regulations Governing the Transportation of Hazardous Materials
Action title	Annual Update 2013
Final agency action date	December 13, 2013
Document preparation date	November 14, 2013

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Virginia's *Regulations Governing the Transportation of Hazardous Materials* under 9VAC20-110, incorporate by reference certain federal regulations from Title 49 of the Code of Federal Regulations (CFR). This amendment will bring these regulations up to date with the latest update to Title 49 of the CFR as published on October 1, 2013.

Each year the U.S. Department of Transportation (U.S. DOT) makes several changes to the federal rules regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia regulations incorporate the federal regulations, with certain exceptions, it is only necessary to change one item to bring Virginia's regulations up-to-date with the federal changes. The item that must be amended is 9VAC20-110-110, which specifies the date of the federal regulations that are incorporated into Virginia regulations. For the ease of use by the regulated community, this date is always October 1; however, the text is amended to change the year, thus incorporating federal changes from October 1 of the previously incorporated year through September 30 of the newly specified year.

This amendment covers one year, October 1, 2012 through September 30, 2013. A table is attached that provides a summary and more information on the changes.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Virginia Waste Management Board approved this amendment on December 13, 2013 as a final regulation and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision. This amendment revises 9VAC20-110-110.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC20-110-110		Incorporates U.S. DOT's regulations under Title 49 of the CFR by reference.	Updated to the most recent adoption date, October 1, 2013. This change is needed to ensure that the most recent and accurate federal documents are adopted and enforceable by Virginia.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulations apply to all persons, including small business owners, who transport or offer for transportation hazardous materials within or through Virginia. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance and reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small

businesses to replace design or operational standards required in the regulation; or (5) exemption of small businesses from all or any part of the requirements contained in this regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations.

Conforming state regulations to those of the U.S. DOT is necessary to maintain authority to implement the national programs. Additionally, facilities benefit from state implementation of the program as they have easier access to decision makers with a clearer understanding of state-specific issues and needs.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

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

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CFR - Code of Federal Regulations

U.S. DOT – United States Department of Transportation

**Changes to Title 49 of the CFR
October 1, 2012 through September 30, 2013**

Item	Effective Date	49 CFR Parts	Federal Register	Summary
1	October 5, 2012 Docket No. PHMSA-2012-0080 (HM-244E)	49 CFR 107 49 CFR 171 49 CFR 172 49 CFR 173 49 CFR 175 49 CFR 178 49 CFR 179	77 FR 60935	This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes and do not impose new requirements.
2	January 1, 2013 Docket No. PHMSA-2009-0126 (HM-215K)	49 CFR 171 49 CFR 172 49 CFR 173 49 CFR 175 49 CFR 176 49 CFR 178	78 FR 1101	This document responds to administrative appeals generated as a result of certain amendments adopted in an international harmonization final rule published on January 19, 2011. The January 19, 2011 final rule amended the Hazardous Materials Regulations (HMR) by revising, removing or adding proper shipping names, the hazard class of a material, packing group assignments, special provisions, packaging authorizations, packaging sections, air transport quantity limitations, and vessel stowage requirements. The amendments were necessary to align the HMR with recent revisions to international standards for the transport of hazardous materials by all modes. In this final rule, PHMSA amends the HMR as a result of administrative appeals submitted in response to various amendments adopted in the January 19, 2011 final rule. This document also addresses recent actions taken by the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) regarding certain lithium ion battery-powered mobility aids (e.g., wheelchairs, travel scooters) offered by passengers for air transport and passenger notification of hazardous materials restrictions by operators. Further, this final rule adopts amendments to the HMR as a result of two administrative appeals submitted by an appellant in response to a final rule published February 2, 2010, that revised shipper responsibilities related to packaging design variation, manufacturer notification, and recordkeeping requirements for certain packaging types.
3	January 1, 2013 Docket Nos. PHMSA-2012-0027 (HM-215L)	49 CFR 171 49 CFR 172 49 CFR 173 49 CFR 175 49 CFR 176 49 CFR 177 49 CFR 178	78 FR 987	PHMSA is amending the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the Hazardous Materials Regulations (HMR) with recent changes made to the International Maritime Dangerous Goods (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—Model Regulations (UN Model Regulations) and address a petition for rulemaking.

Item	Effective Date	49 CFR Parts	Federal Register	Summary
4	May 6, 2013 Docket No. PHMSA-2011-0142 (HM-219)	49 CFR 172 49 CFR 173 49 CFR 176 49 CFR 178	78 FR 14702	PHMSA is amending the Hazardous Materials Regulations in response to petitions for rulemaking submitted by the regulated community to update, clarify, or provide relief from miscellaneous regulatory requirements. Specifically, PHMSA is amending the recordkeeping and package marking requirements for third-party labs and manufacturers to assure the traceability of packaging; removing the listing for "NA1203, Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol"; harmonizing internationally and providing a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids Types B through F; allowing smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material; and providing greater flexibility by allowing the Dangerous Cargo Manifest to be in locations designated by the master of the vessel besides "on or near the vessel's bridge" while the vessel is in a United States port.
5	May 10, 2013 Docket No. PHMSA-2011-0138 (HM-218G)	49 CFR 105 49 CFR 171 49 CFR 172 49 CFR 173 49 CFR 177 49 CFR 178 49 CFR 180	78 FR 15303	PHMSA is amending the Hazardous Materials Regulations (HMR) to make miscellaneous amendments to update and clarify certain regulatory requirements. These amendments promote safer transportation practices, eliminate unnecessary regulatory requirements, address a petition for rulemaking, incorporate a special permit into the HMR, facilitate international commerce, and simplify the regulations. These amendments also update various entries in the Hazardous Materials Table (HMT) and corresponding special provisions, clarify the lab pack requirements for temperature-controlled materials, and require hazmat employers to make hazmat employee training records available upon request to an authorized official of the Department of Transportation (DOT) or an entity explicitly granted authority to enforce the HMR.
6	April 17, 2013 Docket No. PHMSA-2012-0257 (HM-258)	49 CFR 107 49 CFR 171	78 FR 22798	PHMSA is revising the references in its regulations to the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. As amended in the "Moving Ahead for Progress in the 21st Century Act" (MAP-21), effective October 1, 2012, the maximum civil penalty for a knowing violation is now \$75,000, except that the maximum civil penalty is \$175,000 for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property. In addition, there is no longer a minimum civil penalty amount, except that the minimum civil penalty amount of \$450 applies to a violation relating to training.
7	April 19, 2013 Docket No. PHMSA-2012-0185 (HM-208I)	49 CFR 107	78 FR 23503	The Federal hazardous materials transportation law requires DOT to adjust the amount of the annual registration fee to account for any unexpended balance in the Hazardous Materials Emergency Preparedness (HMEP) Fund. Due to an unexpended balance that has accumulated in the Fund, PHMSA is lowering the registration fees for registration year 2013-2014 for all persons, as defined in PHMSA regulations, that transport or offer for transportation in commerce certain categories and quantities of hazardous materials. Specifically, for registration year 2013-2014 the fee for a small business or not-for-profit organization is revised to be \$125 (plus a \$25 processing fee), and for all other businesses the fee is \$1300 (plus a \$25 processing fee). After the 2013-2014 registration year, the registration fees will return to 2012-2013 registration year levels. Additionally, PHMSA is making an editorial change to its regulations to clarify the appropriate fee amounts; there are no substantive changes other than the addition of the fees for 2013-2014 and for 2014-2015 and later. In order to make the change effective for the 2013-2014 registration year and thus draw down the unexpended balance as soon as possible, PHMSA is issuing this final rule without a prior notice of proposed rulemaking in accordance with good cause exemption specified in the Administrative Procedures Act. Additionally, for good cause this final rule is effective immediately.

Item	Effective Date	49 CFR Parts	Federal Register	Summary
8	August 15, 2013 Docket No. PHMSA-2010-0320 (HM-257)	49 CFR 107 49 CFR 171 49 CFR 172 49 CFR 173	78 FR 42457	PHMSA is revising the Hazardous Materials Regulations applicable to the approval of Division 1.4G consumer fireworks (UN0336 Fireworks) and establishing DOT-approved fireworks certification agencies that provide an alternative to the approval process for Division 1.4G consumer fireworks. PHMSA is also reformatting the procedural regulations pertaining to certification agencies. These actions clarify regulations with respect to PHMSA's fireworks approval process and provide regulatory flexibility in seeking authorization for the transportation of Division 1.4G consumer fireworks.
9	August 29, 2013 Docket No. PHMSA-2010-0201 (HM-254)	49 CFR 172 49 CFR 173	78 FR 45880	The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations applicable to air bag inflators, air bag modules, and seat-belt pretensioners. The revisions incorporate the provisions of two special permits into the regulations. In addition, PHMSA is amending the current approval and documentation requirements for a material classified as a UN3268 air bag inflator, air bag module, or seat-belt pretensioner. These revisions are intended to reduce the regulatory burden on the automotive industry and facilitate commerce, while continuing to maintain an equivalent level of safety.
10	October 25, 2013 Docket Numbers PHMSA-2010-0319 (HM-255) & FMCSA-2006-25660	49 CFR 177 49 CFR 392	78 FR 58915	FMCSA and PHMSA amend the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs), respectively, to prohibit a driver of a commercial motor vehicle or of a motor vehicle transporting certain hazardous materials or certain agents or toxins (hereafter collectively referenced as "regulated motor vehicle") from entering onto a highway-rail grade crossing unless there is sufficient space to drive completely through the grade crossing without stopping. This action is in response to section 112 of the Hazardous Materials Transportation Authorization Act of 1994, as amended by section 32509 of the Moving Ahead for Progress in the 21st Century Act (MAP-21). The intent of this rulemaking is to reduce highway-rail grade crossing crashes.