



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	Transportation of Hazardous Materials - Immediate Final Rule 2011
Final agency action date	December 5, 2011
Document preparation date	December 5, 2011

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 36 (06) 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.

Each year the U.S. Department of Transportation 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, 2010 through September 30, 2011, and there are ten (10) changes. A table is attached that provides a summary and more information on these 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 Transportation of Hazardous Materials - Immediate Final Rule 2011 on December 5, 2011, as a final regulation, a revision of 9VAC20-110-110 of the Regulations Governing the Transportation of Hazardous Materials.

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 regulation applies to all persons who transport or offer for transportation hazardous materials within or through the Commonwealth of Virginia.

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.

Table of Changes to Federal Hazardous Materials Transportation Regulations Under Title 49: October 1, 2006 - September 30, 2010

Item	Docket	49 CFR Sections	Subject and Dates	Summary
1	PHMSA-2009-0410 (HM-233B) 75 FR 454	105; 107; and 171	Hazardous Materials Transportation: Revisions of Special Permits Procedures Final Rule: Published January 5, 2011 Effective Date: March 7, 2011	This final rule is amending the HMR to revise its procedures for applying for a special permit to require an applicant to provide sufficient information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. In addition, PHMSA is providing an on-line application option.
2	PHMSA – 2009-0126 (HM-215K) 76 FR 3308	171, 172, 173, 175, 176, 178, and 180	Hazardous Materials: Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air Final Rule: Published January 19, 2011 Effective Date: January 1, 2011	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 limited quantities, and vessel stowage requirements. These revisions are necessary to harmonize the Hazardous Materials Regulations with recent changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods - Model Regulations.
3	PHMSA – 2010-0017 (HM-245) 76 FR 5483	171 and 173	Hazardous Materials; Incorporation of Certain Cargo Tank Special Permits into Regulations Final Rule: Published: February 1, 2011 Effective Date: March 3, 2011	The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations by incorporating provisions contained in certain widely used or longstanding cargo tank special permits that are granted to multiple parties and have established safety records. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations provided an equivalent level of safety is maintained. The revisions are intended to provide wider access to the regulatory flexibility offered in the special permits and eliminate the need for numerous renewal requests, thereby facilitating commercial activity and reducing paperwork burdens while continuing to maintain an appropriate level of safety.

<p>4</p>	<p>PHMSA-2010-0221 (HM-256) 76 FR 10771</p>	<p>177</p>	<p>Hazardous Materials: Limiting the Use of Electronic Devices by Highway Final Rule: Published February 28, 2011 Effective Date: March 30, 2011</p>	<p>The Pipeline and Hazardous Materials Safety Administration (PHMSA) is prohibiting texting on electronic devices by drivers during the operation of a motor vehicle containing a quantity of hazardous materials requiring placarding or any quantity of a select agent or toxin listed in the Department of Health and Human Services "Select Agents and Toxins" regulations. Additionally, in accordance with requirements adopted on September 27, 2010 by the Federal Motor Carrier Safety Administration (FMCSA), motor carriers are prohibited from requiring or allowing drivers of covered motor vehicles to engage in texting while driving. This rulemaking improves the health and safety on the Nation's highways by reducing the prevalence of distracted driving-related crashes, fatalities, and injuries involving drivers of commercial motor vehicles.</p>
<p>5</p>	<p>PHMSA-2005-22356 76 FR 11570</p>	<p>109</p>	<p>Hazardous Materials: Enhanced Enforcement Authority Procedures Final Rule: Published March 2, 2011 Effective Date: May 2, 2011</p>	<p>PHMSA is implementing enhanced inspection, investigation, and enforcement authority conferred on the Secretary of Transportation by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005. This final rule establishes procedures for issuance of emergency orders (restrictions, prohibitions, recalls, and out-of-service orders) to address unsafe conditions or practices posing an imminent hazard; opening packages to identify undeclared or noncompliant shipments, when the person in possession of the package refuses a request to open it; and the temporary detention and inspection of potentially non-compliant packages. These inspection and enforcement procedures will not change the current inspection procedures for DOT, but will enhance DOT's existing enforcement authority and allow us to respond immediately and effectively to conditions or practices that pose serious threats to life, property, or the environment. As this rule affects only agency enforcement procedures, it therefore results in no additional burden of compliance costs to industry.</p>
<p>6</p>	<p>PHMSA-2005-22987 (HM-238) 76 FR 32867</p>	<p>171 and 177</p>	<p>Hazardous Materials: Requirements for Storage of Explosives During Transportation Final Rule: Published June 7, 2011 Effective Date: July 7, 2011</p>	<p>In this final rule, PHMSA, in coordination with the Federal Motor Carrier Safety Administration (FMCSA), is approving the use of the National Fire Protection Association Standard (NFPA) 498-Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives (2010 Edition) for the construction and maintenance of safe havens used for unattended storage of Division 1.1, 1.2, and 1.3 explosives.</p>

7	PHMSA-2011-0102 (HM-1450) 76 FR 37283	172	Hazardous Materials: Revision to the List of Hazardous Substances and Reportable Quantities Final Rule: Published June 27, 2011 Effective Date: June 27, 2011	PHMSA amends the Hazardous Materials Regulations by removing saccharin and its salts from the list of hazardous substances and reportable quantities. The Comprehensive Environmental Response, Compensation and Liability Act, requires PHMSA to list and regulate all hazardous substances designated by statute or by the U.S. Environmental Protection Agency (EPA). EPA recently removed saccharin and its salts from their list of hazardous substances through notice and rulemaking. This final rule simply harmonizes the lists to better enable shippers and carriers to identify the affected hazardous substances, comply with all applicable regulatory requirements, and make required notifications if the release of a hazardous substance occurs.
8	PHMSA-2009-0151 (HM-218F) 76 FR 43510	107, 171, 172, 173, 174, 177, 178 and 180	Hazardous Materials: Miscellaneous Amendments Final Rule: Published July 20, 2011 Effective Date: August 19, 2011	PHMSA is amending the Hazardous Materials Regulations to make miscellaneous amendments to update and clarify certain regulatory requirements. These amendments are intended to: promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and simplify the regulations. PHMSA anticipates that the amendments contained in this rule will generate economic benefits to the regulated community.
9	PHMSSA-2009-0410 (HM-233B)	107	Hazardous Materials Transportation: Revisions of Special Permits Procedures; Responses to Appeals; Corrections Final Rule: Published July 26, 2011 Effective Date: July 26, 2011	On January 5, 2011, PHMSA published a final rule under Docket Number PHMSA-2009-0410 (HM-233B) that amended the Hazardous Materials Regulations to revise the application procedures for special permits. Specifically, the revisions required an applicant to provide additional information about its operation to enable the agency to better evaluate the applicant's ability to demonstrate an equivalent level of safety and the safety impact of operations that would be authorized in the special permit. In response to appeals submitted by entities affected by the January 5 final rule, this final rule amends requirements and provides additional clarification to the January 5 final rule.
10	PHMSA-2011-0134 (HM-244D)	105, 106, 107, 130, 171, 172, 173, 174, 176, and 177	Hazardous Materials: Minor Editorial Corrections and Clarifications Final Rule: Published September 13, 2011 Effective Date: September 13, 2011	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 misunderstanding of the regulations. The amendments contained in this rule are non-substantive changes and do not impose new requirements.