

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Department of Transportation

(2) Agency Number:

Identification Number: 18-469

IRRC Number: 3155

(3) PA Code Cite:

67 Pa. Code Chapter 403

(4) Short Title:

Hazardous Material Transportation

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Glenn C. Rowe, P.E., 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17105, glrowe@pa.gov, 717-783-6479

Secondary Contact: Jonathan Fleming, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17105, jonfleming@pa.gov, 717-772-1771

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

Federal regulations relative to hazardous materials apply uniformly throughout the country and are to be adopted by the states. The purpose of the proposed regulatory amendments will update existing regulations to make them consistent with federal program requirements set forth at 49 CFR 350.201. Specifically, amendments will formally update the regulations to reflect current industry practices regarding: the packing, loading and unloading of hazardous materials; equipment requirements; and driver qualifications.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Sections 6103 and 8302 of the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, as amended (75 Pa. C.S. §§ 6103 and 8302).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there

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any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The Hazardous Material Regulations are mandated by 49 CFR Part 350 generally, and 49 CFR 350.201, specifically. This amendment will ensure Pennsylvania law is compliant with the Requirements of 49 CFR 350.201.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Federal Motor Carrier Safety Assistance Program (MCSAP), administered by the Federal Motor Carrier Safety Administration (FMCSA), provides financial assistance to states to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles. As a condition of participating in MCSAP, each state must ensure that its laws and regulations are identical to or have the same effect as the Federal Motor Carrier Safety Regulations (FMCSR) and the Hazardous Materials Regulations to be eligible for continued MCSAP funding.

The hazardous materials transportation program is designed to promote the safe transportation of hazardous materials through proper packaging and placarding of hazardous materials. Implementation of these regulations ensures commercial motor vehicles operating on Commonwealth highways are compliant with federal regulations.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no provisions that are more stringent than federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

States are required to adopt and enforce hazardous material regulations that are compatible with the federal Hazardous Materials Regulation. Accordingly, this regulation is substantially similar to those enacted by all other states. Any differences would be minimal.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies?

If yes, explain and provide specific citations.

These proposed amendments will not affect other Department regulations or the regulations of any other Commonwealth agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department worked with the Pennsylvania State Police to prepare these amendments based upon communications with the Federal Motor Carrier Safety Administration and the requirements for MCSAP funding. The amendments have been discussed with the Pennsylvania Motor Truck Association, a trucking industry association. The Department did not solicit input from the public because MCSAP requires states to adopt the federal hazardous materials regulations. Moreover, a person or company transporting hazardous materials is currently required to comply with the federal hazardous materials regulations that are being adopted.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The hazardous material regulations effect all drivers and motor carriers that transport hazardous materials. These requirements apply uniformly across the country. The department is unable to determine the number of persons or entities that will be required to comply.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

As of the first quarter of 2015, interstate Hazardous Material (Hazmat) carriers domiciled in the Pennsylvania and licensed by the United States Department of Transportation (US DOT) total 3,852. US DOT licensed intrastate Hazmat carriers domiciled in Pennsylvania number 1,064. While the information available to the Commonwealth does not specifically track whether an entity is a small business, the regulated community includes industries that are predominantly composed of small businesses, including without limitation freight companies, agriculture, heating oil suppliers and construction companies. All licensed USDOT entities must already comply with the existing federal regulation; thus, there is no impact to small business attributable to this regulation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

This regulation should have no negative impact on individuals, small businesses, businesses and labor communities and other public or private organizations. On the contrary, all licensed USDOT transporters of hazardous materials are already required to comply with the federal hazardous material regulations that are proposed to be adopted. This amendment merely enables the Commonwealth to

comply with its obligation to adopt and enforce the applicable federal regulation. The hazardous material trucking community benefits by being assured of the need to comply with a single, uniform set of hazardous material transportation regulations. Thus, Pennsylvania's official adoption of the federal standards will promote the interests of commerce while continuing to provide for the safe transport of hazard materials.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no evident adverse effects. The benefit to the hazardous materials trucking community is that the hazardous material transportation regulation will be uniform across the country. Additionally, the Department's hazardous material regulations will be compliant with federal requirements ensuring road safety as well as the continued flow of federal MCSAP funding.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There should be no costs to the regulated community. The proposed amendments are the same as the federal hazardous material regulations which currently apply to the hazardous materials trucking community.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There should be no change in the costs or savings to local governments from these amendments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There should be no change in the costs or savings to state government from these amendments.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There should be no change in legal, accounting or consulting procedures or other paperwork, required from implementation of the amendments to this regulation.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A					
Local Government	N/A					
State Government	N/A					
Total Savings	N/A					
COSTS:						
Regulated Community	N/A					
Local Government	N/A					
State Government	N/A					
Total Costs	N/A					
REVENUE LOSSES:						
Regulated Community	N/A					
Local Government	N/A					
State Government	N/A					
Total Revenue Losses	N/A					

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
HAZMAT Inspection Program	\$311,000	\$355,000	\$317,000	\$234,000

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(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

As of the first quarter of 2015, interstate Hazardous Material (Hazmat) carriers domiciled in the Pennsylvania and licensed by the United States Department of Transportation (US DOT) total 3,852. US DOT licensed intrastate Hazmat carriers domiciled in Pennsylvania number 1,064. While the information available to the Commonwealth does not specifically track whether an entity is a small business, the regulated community includes industries that are predominantly composed of small businesses, including without limitation freight companies, agriculture, heating oil suppliers and construction companies. All licensed USDOT entities must already comply with the existing federal regulation; thus, there is no impact to small business attributable to this regulation.

- (a) All small businesses engaged in the transportation of hazardous materials are subject to this regulation; however, they are already subject to the federal regulation which this regulation adopts.
- (b) The reporting, recordkeeping, and administrative requirements will remain unchanged from the promulgation of the proposed amendments, and therefore there is no impact to small business.
- (c) All transporters of hazardous materials are currently required to comply with the federal regulations which are being adopted.
- (d) There is no less costly or less intrusive method, as this regulation merely adopts federal standards.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

There are no special provisions in these amendments to the regulation that address the particular needs of minorities, the elderly, small businesses or farmers. The federal compliance guidelines prohibit alterations and accommodations to promote safety and uniformity across the country.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The federal compliance guidelines prohibit alterations and accommodations to promote safety and uniformity across the country. The regulations adopted here are the least restrictive regulations which could be adopted while still meeting the federal compliance guidelines.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

All licensed USDOT entities must already comply with the existing federal regulation; thus, there is no adverse impact to small business attributable to this regulation. This regulatory amendment adopts the federal regulations (49 CFR Part 171) by reference. In addressing each of the above subparts, the Department offers the following explanation:

a) No less stringent compliance or reporting requirements for small businesses are available or necessary. Small businesses must currently comply with the federal regulations which this amendment adopts by reference.

b) No less stringent schedules or deadlines for compliance or reporting requirements were considered because small businesses must currently comply with the federal regulations which this amendment adopts by reference.

c) There is no practical means of consolidating or simplifying compliance or reporting requirements. Small businesses must currently comply with the federal regulations which this amendment adopts by reference.

d) Establishment of performing standards for small businesses has not been considered because all businesses, including small businesses, must comply with the federal standards which this amendment adopts by reference.

e) Exemption of small businesses cannot be considered because small businesses must comply with the federal regulations which this amendment adopts by reference.

The regulations adopted here are the least restrictive regulations which can be adopted while still meeting the federal compliance guidelines.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used,

please explain why that data was determined not to be acceptable.

Data was not the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|-------------------|
| A. The date by which the agency must receive public comments: | <u>08/22/16</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>02/28/17</u> |
| D. The expected effective date of the final-form regulation: | <u>08/31/2017</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>08/31/2017</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

These regulations will be reviewed periodically as appropriate to ensure compliance with FMCSA requirements.

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FOR FILING DOCUMENTS
WITH THE
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(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General.

By: 
(Deputy Attorney General)

JUL 05 2016
Date of Approval

Check if applicable
Copy not approved. Objections attached.

Copy of below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:


**Department
of
Transportation**
(Agency)

DOCUMENT/FISCAL NOTE NO. 18-469

DATE OF ADOPTION 3/18/16

By: 
Secretary of Transportation

Copy below is hereby approved as to
form and legality. Executive or
Independent Agencies.

BY: 

05-04-2016
(Date of Approval)

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike Inapplicable Title)

Check if applicable. No attorney
General Approval or Objection within
30 days after submission.

NOTICE OF PROPOSED RULEMAKING

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART B. NON VEHICLE CODE PROVISIONS

ARTICLE I. VEHICLE RELATED

CHAPTER 403. HAZARDOUS MATERIAL TRANSPORTATION

TITLE 67, TRANSPORTATION

Part I – Department of Transportation

Subpart B. Nonvehicle Code Provisions

Article I – Vehicle Related

Chapter 403 – Hazardous Material Transportation

Subchapter A. General

Proposed Rulemaking

Preamble

Notice is hereby given that the Department of Transportation, pursuant to the authority contained in Sections 6103 and 8302 of the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, *as amended* (75 Pa. C.S. §§ 6103 and 8302), proposes to amend Chapter 403 of the Department of Transportation Regulations, Title 67, as set forth in Annex A to this Notice.

Purpose of Chapter

The Federal Motor Carrier Safety Assistance Program (MCSAP), administered by the Federal Motor Carrier Safety Administration (FMCSA), provides financial assistance to states to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles. As a condition of participating in MCSAP, each state must ensure that its laws and regulations are identical to or have the same effect as the Federal Motor Carrier Safety Regulations (FMCSR) and the Hazardous Materials Regulations. The purpose of this chapter is to update existing regulations to match the FMCSR and Hazardous Materials Regulations by prescribing: the methods of packing, loading and unloading of hazardous materials; the specifications, marking, inspection, condition and equipment of vehicles

transporting hazardous materials; the qualifications of drivers and other matters relating to operation of the vehicles; the routing and parking of the vehicles; and other factors affecting the nature and degree of risk involved in the transportation of hazardous materials.

Purpose of the Amendments

The Hazardous Material Regulations are mandated by 49 CFR Part 350 generally, and 49 CFR 350.201, specifically. The purpose of these amendments is to remove inconsistencies which currently exist between Pennsylvania's current hazardous materials regulation and the federal program requirements in 49 CFR 350.201, as amended.

Summary of Significant Amendments

Section 403.1 has been amended to remove reference to the Department's authority to grant exemptions or exceptions from Chapter 403.

The definition section, Section 403.2, and the definitions therein, are being removed in furtherance of ensuring consistency between the current regulations and applicable federal regulations.

Section 403.4 has been modified to incorporate by reference Subparts F and G of 49 CFR Part 107.

Section 403.5 has been amended to update the names of the federal agencies that are currently responsible for the motor carrier safety regulations and the hazardous materials regulations.

Section 403.6 has been altered to remove modifications to the federal regulations which are inconsistent with the uniform adoption and enforcement of those regulations.

Section 403.7 has been amended to remove additional supplemental rules which are inconsistent with the uniform adoption and enforcement of the federal regulations.

The Section 403.8a amendment corrects the information relating to the out-of-service criteria.

Section 403.10 has been removed entirely because it is inconsistent with the uniform adoption and enforcement of the hazardous materials regulations.

Persons and Entities Affected

These regulations directly affect anyone who is involved with the packaging, loading, unloading or transporting of hazardous materials.

Fiscal Impact

Implementation of these regulations will likely have no cost because carriers and drivers who transport hazardous materials are already complying with the federal hazardous material regulations being adopted.

Regulatory Review

Pursuant to the Regulatory Review Act, Act of June 25, 1982 (P.L. 633, No. 181), *as amended*, 71 P.S. 745.5(a), the agency submitted a copy of this proposed regulation on July 11, 2016 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting these regulations, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Pursuant to the Regulatory Review Act, *as amended*, 71 P.S. 745.5(g), IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation by the Department, the General Assembly and the Governor of comments, recommendations or objections.

Sunset Provisions

The Department of Transportation will make these regulations effective upon publication in final form following appropriate evaluation of any comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required pursuant to the Vehicle Code (75 Pa. C.S. §101, et seq.) and FMCSA regulations for participation in MCSAP. The Department, however, will continue to closely monitor these regulations for their effectiveness and to ensure continued eligibility for participation in MCSAP.

Public Comments

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendments to the regulations to Glenn C. Rowe, P.E., Highway Safety and Traffic Operations Division, Bureau of Maintenance and Operations, Pennsylvania Department of Transportation, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120, glrowe@pa.gov within thirty days of the publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions about the proposed amendments to the regulations is Glenn C. Rowe, P.E., Highway Safety and Traffic Operations Division, Bureau of Maintenance and Operations, Pennsylvania Department of Transportation, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120, glrowe@pa.gov.

Leslie S. Richards,
Secretary of Transportation

Title 67. Transportation

Part I. Department of Transportation

Subpart B. Non Vehicle Code Provisions

Article I. Vehicle Related

Chapter 403. Hazardous Material Transportation

Notice of Proposed Rulemaking

ANNEX A

§ 403.1. General information and requirements.

(a) *Purpose.* The purpose of this chapter is to prescribe the methods of packing, loading and unloading of hazardous materials; the specifications, marking, inspection, condition and equipment of vehicles transporting hazardous materials; the qualifications of drivers and other matters relating to operation of the vehicles; the routing and parking of the vehicles; and other factors affecting the nature and degree of risk involved in the transportation of hazardous materials.

(b) *Application.* Application shall include the following:

(1) Every shipper and motor carrier and its officers, drivers, agents, [employees] employees and representatives involved or related to the transportation of interstate or intrastate commerce, or both, shall comply with this chapter.

(2) Officers, agents, representatives, drivers and [employees] employees of shippers and carriers involved or concerned with the management, maintenance, operation or driving of vehicles, shall be conversant and knowledgeable with this chapter.

(c) *General rule.*

(1) Hazardous materials that do not comply with the requirements of this chapter may not be offered for transportation or transported.

(2) Hazardous materials which are manufactured, packaged, stored, loaded, unloaded or transported, shall be open to inspection upon request by a Pennsylvania State Police Officer or qualified Commonwealth [employee] employee.

* * * *

[(d) *Exemptions.* The Department may, upon its own motion or upon application from a carrier, grant exemptions or exceptions from this chapter whenever it determines the result of granting the exemption or exception will not constitute a significant risk to the health or safety of the public.]

§ 403.2. [Definitions.] (Reserved).

[Definitions in this section supersede the definitions which may appear in 49 CFR adopted by reference in § 403.4 or § 403.5 (relating to adoption of portions of 49 CFR by reference; and interpretations of Federal Motor Carrier Safety Regulations, Federal Highway Administration, United States Department of Transportation and Hazardous Materials Regulations, Research and Special Programs Administration, United States Department of Transportation) for the same word or phrase. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Department—The Department of Transportation of the Commonwealth.

Empty container—A container that has had its contents removed by purging or cleaning, or both.

Hazardous material—A material meeting the definition of a hazardous material in 49 CFR 171.8 (relating to definitions and abbreviations).

Hazardous substance—A hazardous material meeting the definition of a hazardous substance in 49 CFR 171.8.

Hazardous waste—A hazardous material meeting the definition of a hazardous waste in 49 CFR 171.8.

Highway—A highway, street or other public way or a toll road, including the Pennsylvania Turnpike.

Motor carrier—A common carrier by motor vehicle; a contract carrier by motor vehicle; or a private carrier by motor vehicle; or a person who or which—as owner, lessee, or other possessor of one or more vehicles—directs or controls the transportation of hazardous material either for the possessor’s own account or for hire. The term also includes State and local governmental agencies involved in interstate or intrastate transportation of hazardous materials as defined in this chapter.

Motor vehicle—A vehicle, machine, tractor, semitrailer or a combination thereof propelled or drawn by mechanical power and used upon the highways in the transportation of hazardous material.

Out of service—The temporary prohibition of a vehicle or operator from further service because of one or more violations regarding the safety of either.

Person—A natural person, firm, association, copartnership, corporation, company or joint stock association. The term also includes a trustee, receiver, assignee or personal representative thereof.

Qualified Commonwealth employe—A Commonwealth employe designated by the Department who is authorized to inspect vehicles, drivers, documents, equipment and loads; or cargo as provided in 75 Pa.C.S. § § 4704 and 8302 (relating to inspection by police or Commonwealth personnel; and powers and duties of department).

Secretary—The Secretary of the Department.

Transportation—Carriage by vehicle upon a highway.]

* * * *

§ 403.4. Adoption of portions of 49 CFR by reference.

(a) The Department incorporates by reference the following portions of 49 CFR:

(1) Part 171 (relating to general information, regulations, and definitions).

* * * *

(9) Subparts F and G of Part 107.

(b) Appropriate parts of 49 CFR may be obtained from the following:

* * * *

(3) United States Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, (202) [783-3238] 655-4000.

§ 403.5. Interpretations of Federal Motor Carrier Safety Regulations, [Federal Highway Administration] Federal Motor Carrier Safety Administration, United States Department of Transportation and Hazardous Materials Regulations, [Research and Special Programs Administration,] Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation.

The Department will be guided by interpretations of the Federal Motor Carrier Safety Regulations issued by the [Federal Highway Administration] Federal Motor Carrier Safety Administration, United States Department of Transportation and available at: <http://www.fmcsa.dot.gov/rules->

regulations/administration/fmcsr/fmcsrguide.aspx?section_type=G.; and Hazardous Materials Regulations issued by the [Research and Special Programs Administration,] Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation and available at: <http://www.phmsa.dot.gov/hazmat/regs/interps>. [Copies of these interpretations may be obtained by contacting: Motor Carrier Safety Division, Center for Highway Safety, 215 Transportation and Safety Building, Harrisburg, Pennsylvania 17120, (717) 787-7445.]

§ 403.6. Effect of incorporation of the *Code of Federal Regulations*.

(a) *Title and name changes.* To reconcile differences between this chapter and the incorporated sections of Federal regulations and to effectuate their joint enforcement, unless the context indicates otherwise, the following words and phrases shall be substituted for the language of the Federal regulations as follows:

[(1) A reference to Director means the Secretary.

(2) A reference to the Federal Highway Administration means the Department.

(3) A reference to Department of Transportation means the Department.

(4) (1) A reference to an authorized representative or special agent of the [Federal Highway Administration] United States Department of Transportation, the Federal Motor Carrier Safety Administration or the Pipeline and Hazardous Materials Safety Administration means a Pennsylvania State Police Officer or qualified Commonwealth [employee] employee as the term is defined in 75 Pa.C.S. § 4102.

[(5) A reference to the Department means the Department as defined in § 403.2 (relating to definitions).

(b) *Form and documents.* References to forms in the Federal regulations incorporated by reference will be replaced by the appropriate forms prescribed by the Department.]

§ 403.7. Supplemental rules and regulations.

(a) [*Carrier registration.* Carrier registration shall be completed as follows:

(1) *General.* Interstate and intrastate carriers transporting hazardous materials in quantities requiring the vehicle to display markings or placarding under this chapter shall register with the Department each calendar year between January 1 and January 31. A person who initiates carriage within a given year shall register within 30 days of the initiation and each year thereafter under this paragraph.

(2) *Forms.* Registration shall be made by each carrier on forms prescribed and furnished by the Department. A separate form shall be executed for the Central Office of the carrier and for each terminal maintained by the carrier in this Commonwealth. Registration forms may be

obtained upon request from the Motor Carrier Safety Division, Room 215, Transportation and Safety Building, Harrisburg, Pennsylvania 17120.

(3) *Retention of form.* The motor carrier shall maintain a copy of the forms noted in paragraph (2) in its files for 3 years.

(b)] *Towing of vehicles.* A motor vehicle transporting hazardous materials in a quantity requiring the motor vehicle to display markings or placarding may not be towed on a highway except to remove the motor vehicle and cargo to the nearest place of safety, in the judgment of the carrier or its representative after consultation where possible with police, fire or other emergency personnel. The motor vehicle may not be moved until the hazardous materials are stable unless failure to do so would constitute a threat to persons or property. For requirements regarding accidents involving specific types of hazardous materials, see 49 CFR [177.853—177.861] 177.854 (relating to disabled vehicles and [shipments in transit; accidents]broken or leaking packages; repairs).

[(c) *Extended loads.* A person may not transport hazardous material on a vehicle when the load extends beyond the sides, front or rear of the cargo-carrying compartment of the vehicle.

(d) *Unlawful transportation.* A person may not transport, by vehicle on a highway, hazardous material in a reckless manner or under conditions that will unreasonably endanger persons or property.

(e)] (b) *The Vehicle Code.* Title 75 of the *Pennsylvania Consolidated Statutes* § § 101—9701 (relating to the Vehicle Code), and provisions of this title not inconsistent with this chapter, apply to the transportation of hazardous materials.

[(f) *Weight limitations.* Vehicles subject to this chapter shall comply with the weight limitations set forth in the Vehicle Code and this title.

(g) *Special permits for cargo tanks.*

(1) Cargo tanks used in the transportation of hazardous material in intrastate commerce, shall conform to the United States Department of Transportation specifications in 49 CFR Parts 173, 177, 178 and 180, as applicable, or otherwise be specifically authorized under special permit by the Department.

(2) Special permits will be issued for nonspecification cargo tanks upon application to the Department and upon completion of the testing requirements outlined on the prescribed Department forms. Special permits are effective for 2 years from the date of issue.

(3) Special permits are valid only for intrastate carriers transporting hazardous materials in this Commonwealth.

(4) Special permits are not required for cargo tanks used exclusively for the transportation of combustible liquids.

(h) *Special testing.* The Department may cause a container or cargo tank, or both, to be retested at any time.

(i) *United States Department of Transportation exemptions.* Hazardous materials, shipped under exemption and in containers specified by the United States Department of Transportation may be transported in this Commonwealth without issuance of separate Department special permits.

(j) *Streetcar crossings.* A vehicle, normally required to stop at railroad grade crossings under this chapter need not stop if the tracks are used exclusively by streetcars.

(k) (c) *Presentation of documents.* A driver of a vehicle transporting a hazardous material on a highway shall present upon request to a member of the State Police or qualified Commonwealth employee, [employee] as the term is defined in 75 Pa.C.S. §4102, all documents required by this chapter to be in the driver's [his] possession.

* * * *

§ 403.8a. Out-of-service criteria.

(a) *Application.* In determining whether a vehicle or driver of a vehicle, or both, will be placed out-of-service under 75 Pa.C.S. § 4704(c) (relating to inspection by police or Commonwealth personnel), State Police and qualified Commonwealth employees shall [employees will] use the criteria in this chapter.

(b) *Adoption of [Federal] standards.*

(1) *General.* The out-of-service criteria contained in [Parts I, II and III of Appendix A of the Federal Highway Administration's] the "North American [Uniform] Standard Out-of-Service Criteria" are incorporated by reference, [under 45 Pa.C.S. § 727(9) (relating to matter not required to be published), upon approval of the Legislative Reference Bureau, with the following exceptions to Part II:

- (i) 1.a.(6)(c) (relating to brake lining).
- (ii) 1.b.(3)(c) (relating to steering axle brake lining).
- (iii) 3.(3) (relating to bus exhaust).]

(2) *[Additional standards.* The following additional vehicle out-of-service criteria apply:

- (i) A vehicle's brake linings or pads shall be declared out-of-service if:
 - (A) Bonded linings are less than 2/32-inch at the thinnest point.

- (B) Riveted linings are less than 1/32-inch above the rivet head at the thinnest point.
- (C) Bolted lining is worn to less than 1/8-inch at the center of the shoe.

(ii) A bus shall be declared out-of-service if the exhaust system is leaking or not discharging at an outside edge of the vehicle.

(iii) A vehicle shall be declared out-of-service if a tire is marked “Not for Highway Use” or otherwise marked and having like meaning, except vehicles permitted to operate with oversize wheels and tires under 75 Pa.C.S. § 4969 (relating to permit for movement of vehicles with oversize wheels and tires) (Repealed).

(3) *Obtaining criteria.* The “North American [Uniform] Standard Out-of-Service Criteria” may be obtained by contacting: [Department of Transportation, Motor Carrier Safety Division, Center for Highway Safety, 215 Transportation and Safety Building, Harrisburg, Pennsylvania 17120, (717) 787-7445.] Commercial Vehicle Safety Alliance, 1101 17th Street NW, Suite 803, Washington, D.C. 20036, (301) 830-6143.

* * * *

§ 403.10. [Exceptions.] (Reserved).

[A driver, who was a regularly employed driver of a motor carrier as of April 1, 1994, and who continues to be a regularly employed driver of that motor carrier, is exempt from 49 CFR 391.1, 391.2, 391.11, 391.21—391.27, 391.31—391.37, 391.41—391.49, 391.51 and 391.61—391.71, if the driver only operates a truck transporting combustible liquids in intrastate retail delivery.]



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 11, 2016

David Sumner, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

Re: Proposed Rulemaking, Regulation # 18-469
67 Pa. Code, Chapter 403
Hazardous Material Transportation

Dear Mr. Sumner:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form, for amendments to Chapter 403 of the Department of Transportation's (Department) regulations which the Department intends to adopt in accordance with the provisions of Section 5 of the Regulatory Review Act, Act of June 25, 1982, P.L. 633, *as amended*.

Copies of these materials were also delivered today to the Legislative Reference Bureau and to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees.

The Department will provide the Independent Regulatory Review Commission with any assistance required to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jeffrey M. Spotts".

Jeffrey M. Spotts,
Regulatory Counsel

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

2016 JUL 11 AM 11:10

RECEIVED
IRRC

I.D. NUMBER: #18-469
SUBJECT: Hazardous Material Transportation
67 Pa. Code, Chapter 403
AGENCY: Department of Transportation

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/11	<u>Nancy S Cole</u> for Majority Chair Hon. John Taylor	HOUSE COMMITTEE ON TRANSPORTATION
7/11	<u>Wyle Wagoner</u> for Minority Chair Hon. William F. Keller	
7/11	<u>C. Boyer</u> for Majority Chair Hon. John C. Rafferty, Jr.	SENATE COMMITTEE ON TRANSPORTATION
7/11	<u>JN</u> for Minority Chair Hon. John N. Wozniak	
	<u>N/A</u>	OFFICE OF ATTORNEY GENERAL
7/11/16	<u>K Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
7/11/16	<u>Guinne Grant</u>	LEGISLATIVE REFERENCE BUREAU

Date: July 11, 2016