

# PROPOSED RULEMAKING

## DEPARTMENT OF TRANSPORTATION

[ 67 PA. CODE CH. 403 ]

### Hazardous Material Transportation

The Department of Transportation (Department), under the authority in 75 Pa.C.S. §§ 6103 and 8302 (relating to promulgation of rules and regulations by department; and powers and duties of department), proposes to amend Chapter 403 (relating to hazardous material transportation) to read as set forth in Annex A.

#### *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 Chapter 403 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 this Proposed Rulemaking*

The Hazardous Materials Regulations are mandated by 49 CFR Part 350 (relating to Commercial Motor Carrier Safety Assistance Program), generally, and 49 CFR 350.201 (relating to what conditions must a State meet to qualify for Basic Program Funds), specifically. The purpose of this proposed rulemaking is to remove inconsistencies which currently exist between the Commonwealth's hazardous materials regulations and the Federal program requirements in 49 CFR 350.201.

#### *Summary of Significant Amendments*

Proposed amendments to § 403.1 (relating to general information and requirements) delete the reference to the Department's authority to grant exemptions or exceptions from Chapter 403.

Section 403.2 (relating to definitions) is proposed to be rescinded in furtherance of ensuring consistency between the Commonwealth's regulations and applicable Federal regulations.

Proposed amendments to § 403.4 (relating to adoption of portions of 49 CFR by reference) incorporate by reference 49 CFR Part 107, Subparts F and G (relating to registration of cargo tank and cargo tank motor vehicle manufacturers, assemblers, repairers, inspectors, testers, and design certifying engineers; and registration of persons who offer or transport hazardous materials).

Proposed amendments to § 403.5 (relating to interpretations of Federal Motor Carrier Safety Regulations, Federal Motor Carrier Safety Administration, United

States Department of Transportation and Hazardous Materials Regulations, Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation) update the names of the Federal agencies that are currently responsible for the FMCSR and the Hazardous Materials Regulations.

Proposed amendments to § 403.6 (relating to effect of incorporation of the *Code of Federal Regulations*) delete modifications to the Federal regulations which are inconsistent with the uniform adoption and enforcement of those regulations.

Proposed amendments to § 403.7 (relating to supplemental rules and regulations) delete additional supplemental rules which are inconsistent with the uniform adoption and enforcement of the Federal regulations.

Proposed amendments to § 403.8a (relating to out-of-service criteria) correct the information regarding out-of-service criteria.

Section 403.10 (relating to exceptions) is proposed to be rescinded because it is inconsistent with the uniform adoption and enforcement of the Hazardous Materials Regulations.

#### *Persons and Entities Affected*

This proposed rulemaking directly affects anyone who is involved with the packaging, loading, unloading or transporting of hazardous materials.

#### *Fiscal Impact*

Implementation of this proposed rulemaking will likely not have a cost because carriers and drivers who transport hazardous materials are already complying with the Hazardous Materials Regulations.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 11, 2016, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

#### *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* following appropriate evaluation of comments, suggestions or objections received during the public comment period.

#### *Sunset Date*

The Department is not establishing a sunset date for these regulations, as the regulations are needed to administer provisions required under 75 Pa.C.S. (relating to Vehicle Code) and FMCSA regulations for participation in MCSAP. The Department 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 this proposed rulemaking to Glenn C. Rowe, PE, Highway Safety and Traffic Operations Division, Bureau of Maintenance and Operations, Department of Transportation, Commonwealth Keystone Building, 400 North Street, 6th Floor, Harrisburg, PA 17120, glrowe@pa.gov within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

#### Contact Person

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

LESLIE S. RICHARDS,  
Secretary

**Fiscal Note:** 18-469. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 67. TRANSPORTATION

#### PART I. DEPARTMENT OF TRANSPORTATION

#### Subpart B. NONVEHICLE CODE PROVISIONS

#### ARTICLE I. VEHICLE-RELATED

#### CHAPTER 403. HAZARDOUS MATERIAL TRANSPORTATION

#### § 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**.

(3) No person may represent, by marking or otherwise, that a container or package for the transportation of hazardous materials is safe, certified or in compliance with the requirements of the Department unless the container or package meets the requirements of this chapter.

[ (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, semi-trailer 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, co-partnership, 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:

\* \* \* \* \*

(8) Part 397 (relating to transportation of hazardous materials; driving and parking rules).

(9) Part 107, Subparts F and G (relating to registration of cargo tank and cargo tank motor vehicle manufacturers, assemblers, repairers, inspectors, testers, and design certifying engineers; and registration of persons who offer or transport hazardous materials).

(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** ] **Motor Carrier Safety Administration**, United States Department of Transportation, available at [http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.aspx?section\\_type=G](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, 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, 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) A reference to an authorized representative or special agent of the Federal Highway Administration means a Pennsylvania State Police Officer or qualified Commonwealth employe.

(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. ]

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. A reference to an authorized representative or special agent of the 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 as the term is defined in 75 Pa.C.S. § 4102 (relating to definitions).

§ 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) ] (a) *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 (relating to vehicles and shipments in transit; acci-

dents) ] 177.854 (relating to disabled vehicles and 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 [ employe ] employee, as the term is defined in 75 Pa.C.S. § 4102 (relating to definitions), all documents required [ by ] under this chapter to be in [ his ] the driver's 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 [ employes ] 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 ] in 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) ] (2) *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 ] the 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. ]

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