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TITLE 16. TRANSPORTATION
CHAPTER 49. TRANSPORTATION OF HAZARDOUS MATERIALS

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:5B-26 and 31.

Expires September 16, 2017

SUBCHAPTER 1. GENERAL PROVISIONS

16:49-1.1 Purpose, scope and application

(a) The purpose of this chapter is to protect public safety, health and welfare from unreasonable risks of the transportation of hazardous materials by rail and motor carrier in New Jersey.

(b) This chapter governs the transportation of hazardous materials by rail and motor carrier in the State of New Jersey, regulates the shipping, packaging, marking, labeling, placarding, handling and transportation of hazardous materials, and, to the maximum extent practicable, conforms to the requirements of the regulations issued by the United States Department of Transportation.

(c) Every person(s) involved, in any manner including, but not limited to, management, maintenance, operation or driving of rail cars or motor carriers related to the transportation of interstate and/or intrastate commerce, shall comply with and be bound by these rules and any future amendments, and shall take such measures as are necessary to insure compliance therewith.

(d) Modes of transportation by air, water or pipeline are not the subject of this chapter.

16:49-1.2 Incorporation by reference

(a) Pursuant to N.J.S.A. 39:5B-25 et seq., the Department adopts and incorporates by reference the following portions of 49 CFR Parts 107 (Subparts F and G), 171, 172, 173, 174, 177, 178, 179, and 180, the Hazardous Materials Regulations, revised as of 2009 and as supplemented and amended. Any portions of the Federal regulations governing transportation of hazardous materials by air, water, or pipeline within 49 CFR Parts 107, 171, 172, 173, 174, 177, 178, 179, and 180 are excluded. The parts adopted and incorporated by reference are summarized below:

1. Part 107 Subpart F - Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers; and Subpart G - Registration of Persons Who Offer or Transport Hazardous Materials.

2. Part 171--General Information, Regulations and Definitions. (Sections 171.6 and 171.20 are omitted from adoption in this paragraph; modifications are made to sections 171.15 and 171.16).

3. Part 172--Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans. (Modifications are made to section 172.3)

4. Part 173--Shippers--General Requirements for Shipments and Packagings (section 173.32a is excluded from adoption in this paragraph).

5. Part 174--Carriage by Rail.

6. Part 177--Carriage by Public Highway. (Modifications are made to section 177.804)

7. Part 178--Specifications for Packagings.

8. Part 179--Specifications for Tank Cars. (Sections 179.3, 179.4, and 179.5 are excluded from adoption in this paragraph)

9. Part 180--Continuing Qualification and Maintenance of Packagings.

(b) The Department adopts and incorporates by reference 49 CFR Parts 380, 382, 390, 391, 392, 393, 394, 395, 396, and 397 of the Federal Motor Carrier Safety Administration regulations, revised as of 2009 and as supplemented and amended. The parts and appendices adopted and incorporated by reference are summarized below:

1. Part 380--Special Training Requirements

2. Part 382--Controlled Substances and Alcohol Use and Testing.

3. Part 390--Federal Motor Carrier Safety Regulations: General. (Modifications are made to sections 390.21 and 390.23)

4. Part 391--Qualification of Drivers and Longer Combination Vehicle (LCV) Driver Instructors. (Exceptions are made to sections 391.21 and 391.23; modifications are made to sections 391.31 and 391.49(a))

5. Part 392--Driving of Commercial Motor Vehicles.

6. Part 393--Parts and Accessories Necessary for Safe Operation.

7. Part 394--(Removed and Reserved).

8. Part 395--Hours of Service of Drivers.

9. Part 396--Inspection, Repair, and Maintenance.

10. Part 397--Transportation of Hazardous Materials; Driving and Parking Rules.

(c) Amendments to the Federal Hazardous Materials regulations and the Federal Motor Carrier Safety Administration regulations that have been adopted and incorporated by reference pursuant to this section are included in a daily updated electronic version found at: <http://ecfr.gpoaccess.gov>.

(d) The following provisions, adopted and incorporated by reference, are modified as set forth below:

1. 49 CFR 171.15 is modified to state the following (Note: Paragraph (a) has been changed):

(a) At the earliest practicable moment, but no later than 12 hours after the occurrence of any incident described in this section, each person in physical possession of the hazardous material must provide notice in accordance with paragraph (b) or paragraph (d) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which--

(1) As a direct result of hazardous materials:

i. A person is killed;

ii. A person receives injuries requiring his or her hospitalization;

- iii. An evacuation of the general public occurs lasting one or more hours;
- iv. One or more major transportation arteries or facilities are closed or shut down for one hour or more; or
- v. The operation flight pattern or routine of an aircraft is altered;

(2) Fire, breakage, spillage or suspected radioactive contamination occurs involving shipment of radioactive material (see also section 176.48 of this subchapter);

(3) Fire, breakage, spillage or suspected contamination occurs involving an infectious substance other than a regulated medical waste; or

(4) A situation exists of such a nature (for example, a continuing danger to life exists at the scene of the incident) that, in the judgment of the person in possession of the hazardous material it should be reported in accordance with (b) and (d) of this section.

(b) Each notice required by paragraph (a) of this section shall be given to the National Response Center (NRC) on 800-424-8802 or 202-267-2675 or online at <http://www.nrc.uscg.mil>. Notice involving an infectious substance other than a regulated medical waste may be given to the Director, Centers for Disease Control and Prevention, U.S. Public Health Service, Atlanta, Georgia, 800-232-0124, in place of the notice to the U.S. Department of Transportation. Each notice must include the following information:

(1) Name of reporter.

(2) Name and address of person represented by reporter.

(3) Phone number where reporter can be contacted.

(4) Date, time, and location of incident.

(5) The extent of injuries, if any.

(6) Class or division, proper shipping name and quantity of hazardous materials involved, if such information is available.

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(c) Each person making a report under this section shall also make the report required by 49 CFR 171.16.

2. 49 CFR 171.16 is modified to state the following (Note: Paragraphs (a) and (b) have been changed):

(a) Each person in physical possession of a hazardous material at the time an incident occurs during transportation (including loading, unloading and temporary storage) must submit a Hazardous Materials Incident Report on DOT Form F 5800.1 (01/2004) within 30 days of discovery of the incident to the U.S. Department of Transportation, unless the requirements of paragraph (e) in this section are met, each incident that occurs during the course of transportation (including loading, unloading or temporary storage) in which any of the circumstances set forth in Section 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge--

(1) A copy of the hazardous waste manifest for the waste must be attached to the report; and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any removed waste must be entered in Section IX of the report form (F 5800.1) (01/2004).

(b) Each person reporting under this section must:

(1) Submit a written Hazardous Materials Incident Report to the Information Systems Manager, PHH-60, Pipeline And Hazardous Materials Safety Administration, Department of Transportation, East Building, 2nd Floor, 1200 New Jersey Ave., SE, Washington, DC 20590-0001, or an electronic Hazardous Material Incident Report to the Information System Manager, PHH-60, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001 at <http://hazmat.dot.gov>.

(2) Each person reporting shall retain a copy of the Hazardous Materials Incident Report for a period of two years at the reporting person's principal place of business. If the written or electronic Hazardous Materials Incident Report is maintained at other than the reporting person's principal place of business, the report must be made available at the reporting person's principal place of business within 24 hours of a request for the report by an authorized representative or special agent of the U.S. Department of Transportation.

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of hazardous materials being transported under the following proper shipping names:

(1) Consumer commodity.

(2) Battery, electric storage, wet, filled with acid or alkali.

(3) Paint and paint related material when shipped in packagings of five gallons or less.

(d) The exceptions to incident reporting provided in paragraph (c) of this section do not apply to:

(1) Incidents required to be reported under Section 171.15(a);

(2) Incidents involving transportation aboard aircraft; nor

(3) Incidents involving the transportation of hazardous waste.

3. 49 CFR 172.3 is modified to state the following (Note: Paragraph (a) has been changed):

(a) This part applies to--

(1) Each person who offers a hazardous material for transportation; and

(2) Each carrier by highway or rail who transports a hazardous material.

(b) When a person other than one of those provided for in paragraph (a) of this section, performs a packaging, labeling or marking function required by this part, that person shall perform the function in accordance with this part.

4. 49 CFR 177.804 is modified to state the following:

(a) Motor carriers and other persons subject to this part shall comply with 49 CFR Parts 380, 382 and 390 through 397 (excluding section 391.69), and all supplements and amendments thereto, to the extent those rules apply. Carriers transporting hazardous materials, substances or wastes as defined herein must comply with these parts as listed below.

5. 49 CFR 390.23 is modified to state the following:

The following commercial motor vehicles, operating in intrastate commerce, are exempt from this section when any emergency occurs that affects the citizens of New Jersey.

(a) Commercial motor vehicles which are owned, operated, or leased by a public or quasi-public or private entity in this State, said entity being subject to the jurisdiction of the Board of Public Utilities; or

(b) Commercial motor vehicles which are owned, operated or leased by a public or quasi-public or private entity in this State and which is or will be operated under a contract to the State of New Jersey or a governmental or quasi-environmental entity thereof.

Such emergencies include, but are not limited to, weather and other acts of nature (e.g., snow, flooding, earthquake, power/telephone outages, disruptions to power or telephone transmission lines or facilities, supply lines or facilities for steam, water, or gas) and other emergencies (e.g., motor vehicle accidents, industrial accidents, fires, etc.).

6. 49 CFR 391.21 shall not apply to persons already employed by the same carrier as of March 4, 1985.

7. 49 CFR 391.23 shall apply only to drivers hired after March 4, 1985.

8. 49 CFR 391.31 is modified to state the following:

The provisions of Section 391.31 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of February 6, 1995, and transports hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Pipeline and Hazardous Materials Safety Administration Regulations (49 CFR 172.500 et seq.), or operates a vehicle displaying a hazardous material(s) placard.

9. 49 CFR 391.49(a) is modified to state the following:

(a) A person who is not physically qualified to drive under Section 391.41(b)(1) or (2), and who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle, if that person has been granted a waiver pursuant to this chapter.

(e) The following provisions of Title 49 CFR are not adopted and incorporated by reference: Subchapter B of Chapter 1.

16:49-1.3 Document availability

(a) Information and documents referenced in this chapter are available from the following sources:

1. The United States government at:

i. The Federal Hazardous Materials Regulations and the Federal Motor Carrier Safety Regulations that are the subject of this rule, which are available online at: <http://www.gpoaccess.gov/cfr/index.html>;

ii. The Federal Register, which is available online at: <http://www.gpoaccess.gov/fr/index.html>; and

iii. The current bound edition of Federal regulations and daily issues of the Federal Register, which are available for purchase through the U.S. Government Bookstore at:

U.S. Government Printing Office
732 N. Capitol Street, NW
Washington, DC 20401
1-866-512-1800
<http://bookstore.gpo.gov/>;

2. The State government as follows:

i. Copies of the Federal Hazardous Materials Regulations and the Federal Motor Carrier Safety Regulations are available for review at the New Jersey Department of Transportation, Bureau of Trucking Services, 1035 Parkway Avenue, Trenton, NJ 08625. Hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. This office may be contacted at (609) 530-8026; and

3. Non-governmental sources as follows (Note: The inclusion of a non-governmental source in this paragraph does not constitute an endorsement or recommendation of the product or service offered, sold, or provided by that source or the accuracy of the information said to be contained therein. Non-governmental sources are listed solely as a convenience to interested parties.):

i. American Trucking Associations

950 North Glebe Road, Suite 210
Arlington, VA 22203-4181
703-838-1759
www.trucking.org;

ii. J.J. Keller & Associates

3003 West Breezewood Lane
P.O. Box 368
Neenah, WI 54976
(877) 564-2333
www.jjkeller.com; and

iii. New Jersey Motor Truck Association

160 Tices Lane
East Brunswick, NJ 08816
(732) 254-5000
Fax: (732) 613-1745
www.njmta.org.
16:49-1.4 Assistance

(a) For general assistance and procedural questions in matters related to the rules of this chapter regarding transportation by motor carrier, contact:

Bureau of Trucking Services
New Jersey Department of Transportation
PO Box 600
Trenton, NJ 08625
(609) 530-8026

(b) For general assistance and procedural questions in matters related to the rules of this chapter regarding transportation by rail, contact:

Bureau of Rail Services
New Jersey Department of Transportation
PO Box 600
Trenton, NJ 08625
(609) 530-2847

(c) For assistance in matters related to enforcement or interpretation of this chapter, contact:

Transportation Safety Bureau
New Jersey Division of State Police
3925 U.S. Rte. 1
Princeton, NJ 08540
(609) 452-2601, ext. 5913

(d) Statements or opinions provided by the Bureau of Freight Services or by the Division of State Police do not constitute legal advice.

16:49-1.5 (Reserved)

16:49-1.6 (Reserved)

SUBCHAPTER 2. DEFINITIONS

16:49-2.1 Definitions

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

"Carrier" means a person who transports property in commerce by rail car or motor vehicle.

"Commissioner" means the Commissioner of the New Jersey Department of Transportation or such person(s) as the Commissioner may designate, when legally permissible.

"Department" means the New Jersey Department of Transportation.

"Person(s)," pursuant to 49 CFR 171.8, means an individual, corporation, company, association, firm, partnership, society or joint stock company; or a government, Indian tribe or authority of a government or tribe offering a hazardous material for transportation in commerce or transporting a hazardous material to support a commercial enterprise. This term does not include the United States Postal Service or, for purposes of 49 U.S.C. §§ 5123 and 5124, a Department, agency or instrumentality of the government.

SUBCHAPTER 3. GENERAL REQUIREMENTS

16:49-3.1 Requirements

(a) Person(s) that do not comply with the requirements of this chapter shall not transport hazardous materials, offer hazardous materials for transport, or accept hazardous materials for transport.

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

(c) Subject to review, the Department will recognize an exemption or special permit, or renewal thereof, issued by the United States Department of Transportation pursuant to 49 CFR Part 107, Subpart B. Any person operating under a current, valid special permit or exemption, or renewal thereof, issued pursuant to 49 CFR Part 107, Subpart B will be deemed to be in

compliance with those portions of these rules to which the exemption applies, provided that the person is complying with the terms of the exemption.

(d) Intrastate carriers and shippers desiring exemptions shall be subject to the same rules and procedures required of interstate carriers and shippers. See 49 CFR Part 107, Subpart B. See also (i) below.

(e) Whenever the term "interstate" is used in the Federal regulations adopted and incorporated by reference herein it shall, for the purpose of these regulations, mean and include both "interstate" and "intrastate" transportation in commerce, except where stated otherwise.

(f) This chapter establishes minimum standards that must be complied with in conjunction with the transportation of hazardous materials. Therefore, in the event of a conflict between this chapter and any other State rule, the stricter, more stringent standard shall apply and govern. This chapter is intended to complement, and not to limit, those related statutory and regulatory provisions of the New Jersey Department of Environmental Protection, the New Jersey Motor Vehicle Commission and the New Jersey State Police, regarding hazardous wastes, radioactive materials, spill compensation and control.

(g) If any provision or clause of this chapter is held invalid to any person or circumstance, such invalidity shall not affect other provisions or applications of the rule, which can be given effect without the invalid provision or application. To this end the provisions of this rule are declared to be severable.

(h) For intrastate movements only, this chapter or any portion or portions thereof may be waived by the Department if, after consideration of the facts involved, it is determined that a particular situation warrants such waiver. Application shall be made in writing to the Commissioner before the subject materials are offered for transportation. The written application shall set forth the full circumstances and facts of the case. The applicant(s) shall not have the right to a hearing. Waivers shall only be granted in cases of unique circumstances or hardship.

16:49-3.2 Inspections

(a) Inspections shall be conducted as follows:

1. The Division of State Police, or personnel duly authorized by the Superintendent of the State Police, may break cargo seals on vehicles during the course of an inspection of the carrier's equipment under this chapter. Under no circumstances will U.S. Postal Service or Department of Defense seals or locks be broken for the purpose of inspecting cargo within any vehicle. If cargo is protected with a seal from any other U.S. Government agency, prior permission shall be obtained from such agency before removal of the seal;

2. Self-locking cargo seals inscribed with the appropriate New Jersey State agency designation and sequential number shall be affixed by the enforcement personnel to replace any cargo seal removed for inspection. In the event that the contents of a vehicle having no cargo seal, or a broken cargo seal, are inspected, the inspecting agency's cargo seal shall not be applied upon completion of the inspection;

3. Seals on tank vehicles shall not be broken except in an emergency situation which poses an immediate hazard to the public, as determined by the State Police, or personnel authorized by the Superintendent of State Police;

4. In the event that a cargo seal is to be broken for the purpose of inspecting the vehicle contents, the owner, operator, driver or yardmaster shall be requested to observe the inspection and sign the inspection report. The signature of a witness, preferably a New Jersey State Police Officer, will also be obtained; and

5. Procedures to be used in conducting such inspections shall be as specified by the New Jersey State Police.

16:49-3.3 Penalties

(a) The penalty for a violation of this chapter, including the Federal regulations adopted and incorporated by reference shall be as specified under N.J.S.A. 39:5B-25 et seq., as amended.

(b) Each violation shall be treated separately. When the violation is a continuing one, each day of the violation constitutes a separate offense.

16:49-3.4 (Reserved)

16:49-3.5 (Reserved)

SUBCHAPTER 4. HAZARDOUS MATERIALS RESTRICTIONS IN THE ROUTE 29 TUNNEL FACILITY

16:49-4.1 General provisions

(a) This subchapter is authorized under N.J.S.A. 39:5B-25 et seq. and shall be read and interpreted in such a manner as to be, to the greatest degree practicable, in conformance with the applicable provisions of the hazardous materials transportation laws of the United States Department of Transportation.

(b) As used in this subchapter, the phrase "Route 29 tunnel facility" shall mean both the constructed Northbound and Southbound covered portions of State Highway Route 29 located within the City of Trenton, in Mercer County, New Jersey.

16:49-4.2 Prohibitions

(a) Except as provided in N.J.A.C. 16:49-4.3, vehicles required to be placarded for hazardous materials under the provisions of 49 CFR 172.500 (Subpart F), as amended and supplemented, shall be prohibited from entering into or traveling through the Route 29 tunnel facility.

(b) Except as provided in N.J.A.C. 16:49-4.3, vehicles transporting one or more containers that individually hold, or are designed to individually hold, 10 or more pounds of compressed gases shall be prohibited from entering into or traveling through the Route 29 tunnel facility.

16:49-4.3 Exceptions

(a) The restrictions contained in N.J.A.C. 16:49-4.2 shall not apply to vehicles that meet one or more of the following exceptions:

1. Vehicles under the control of the New Jersey Department of Transportation, or its contractors, when such vehicles are directly involved in the maintenance, repair, or construction of the Route 29 tunnel facility or its immediate approach roadways;

2. Vehicles excepted by court order;

3. Vehicles for which the United States Department of Transportation or the United States Department of Defense has requested an exception in the name of national interest, when approved by either the Governor, the Commissioner of Transportation, the Attorney General, or the Superintendent of State Police;

4. Emergency vehicles, rescue vehicles, police vehicles, and medical response or medical patient transportation vehicles;

5. Vehicles for which the Governor, the Commissioner of Transportation, the Attorney General, or the Superintendent of State Police orders an exception upon a finding of emergent circumstances; and

6. Alternate fueled vehicles, which means vehicles powered by liquefied petroleum gas (LPG), liquefied natural gas (LNG), or compressed natural gas (CNG) only when the vehicle:

i. Has either:

(1) Has a dedicated alternate fuel system installed by the manufacturer of the vehicle; or

(2) Has a fuel system that has been properly converted to an alternate fuel system;

ii. Has a fuel capacity that does not exceed 150 pounds net weight of fuel; or

iii. Has an alternate fuel system that conforms to applicable Federal regulations including, but not limited to, 40 CFR 85, 86, and 600;

iv. Conforms to the latest editions of the National Fire Protection Association (NFPA) standards as follows, which can be found at www.nfpa.org:

(1) NFPA 52 - Vehicular Gaseous Fuel Systems Code;

(2) NFPA 58 - Liquefied Petroleum Gas Code; and

(3) NFPA 59A - Standard for the Protection, Storage and Handling of Liquefied Natural Gas; and

v. Displays all markings and symbols as required by law or regulation to identify the alternate fuel system.

16:49-4.4 Alternative through routing

Vehicles prohibited from using the Route 29 tunnel facility under the provisions of this subchapter shall utilize appropriate alternative through routing. Vehicles using alternate through routing shall conform with all applicable vehicle weight, length, width, height, operational, equipment, safety, licensing, permit, and registration requirements.

16:49-4.5 Penalties

(a) Penalties under this subchapter shall be imposed and collected in accordance with N.J.S.A. 39:5B-29, as amended and supplemented, adopted and incorporated herein by reference.

(b) The driver, owner, lessee and bailee, jointly and severally, of any vehicle found or operated in violation of this subchapter, shall be subject to penalties in accordance with the following schedule:

1. For taking a vehicle that is required to be placarded for hazardous materials under the provisions of 49 CFR Part 172, Subpart F into or through the Route 29 tunnel facility, the following penalties shall apply:

i. First offense: \$ 5,000;

ii. Second offense: \$ 10,000; and

iii. Subsequent offenses: \$ 25,000.

2. In those cases where (b)1 above would not be applicable, for transporting one or more containers that individually hold, or are designed to individually hold, 10 or more pounds of

compressed gases into or through the Route 29 tunnel facility, the following penalty shall apply:

- i. Each offense: \$ 500.00.

APPENDIX

(RESERVED)