

**CHAPTER 49**

**TRANSPORTATION OF HAZARDOUS MATERIALS**

**Authority**

N.J.S.A. 6:1-32, 27:1A-5, 27:1A-6, and the Air Safety and Zoning Act of 1983, P.L. 1983, c.260, as amended.

**Source and Effective Date**

R.2000 d.7, effective December 7, 1999.  
See: 31 N.J.R. 2692(a), 32 N.J.R. 102(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 49, Transportation of Hazardous Materials, expires on December 7, 2004.

**Chapter Historical Note**

Chapter 49, Transportation of Hazardous Materials, was adopted as R.1985 d.123, effective March 18, 1985. See: 16 N.J.R. 2979(a), 17 N.J.R. 712(a).

Pursuant to Executive Order No. 66(1978), Chapter 49, Transportation of Hazardous Materials, was readopted as R.1990 d.156, effective February 8, 1990. See: 22 N.J.R. 21(a), 22 N.J.R. 837(c).

Pursuant to Executive Order No. 66(1978), Chapter 49, Transportation of Hazardous Materials, was readopted as R.1995 d.74, effective January 12, 1995. See: 26 N.J.R. 4488(b), 27 N.J.R. 509(a).

Pursuant to Executive Order No. 66(1978), Chapter 49, Transportation of Hazardous Materials, was readopted as R.2000 d.7, effective December 7, 1999. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. GENERAL REQUIREMENTS**

**16:49-1.1 Purpose**

This chapter prescribes the requirements of the New Jersey Department of Transportation ("Department") gov-

erning the transportation of hazardous materials in the State of New Jersey. This chapter is adopted to establish comprehensive regulation of the shipping, packaging, marking, labelling, placarding, handling, and transportation of hazardous materials, and is established consistent with the regulations issued by the United States Department of Transportation.

Amended by R.1990 d.550, effective November 19, 1990.  
See: 22 N.J.R. 2676(a), 22 N.J.R. 3500(c).  
Stylistic changes.

**16:49-1.2 Application**

(a) This chapter shall apply to:

1. Every shipper and motor carrier and its officers, drivers, agents, employees, and representatives involved or in any manner related to the transportation of interstate and/or intrastate commerce, shall comply with and be bound by these regulations or any future amendments, and shall take such measures as are necessary to insure compliance therewith.

2. All officers, agents, representatives, drivers, and employees of shippers and carriers involved or concerned with the management, maintenance, operation or driving of vehicles, shall be conversant and knowledgeable with the rules and regulations set forth in this chapter.

**Case Notes**

State law governing transportation of hazardous materials preempted enforcement of city resolution. Consolidated Rail Corp. v. City of Bayonne, D.N.J.1989, 724 F.Supp. 320.

**16:49-1.3 General requirements**

(a) Hazardous materials that do not comply with the requirements of this chapter shall not be offered for transportation, accepted for transportation, or transported.

(b) Vehicles, railroad cars, containers, shipping records, carrier records, and places of origin in the state involved in the transportation of hazardous materials, substances, or wastes are subject to inspection by duly authorized representatives of the Division of State Police as may be necessary to carry out the provisions of N.J.S.A. 39:5B-25 et seq., and the regulations adopted supplementary thereto. Inspections shall be conducted as follows:

- 1. The Division of State Police, or personnel 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.

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

(c) 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.

(d) The New Jersey Department of Transportation will recognize an exemption or renewal thereof issued by the United States Department of Transportation under Section 107, Subpart B of Title 49 subject to review by the New Jersey Department of Transportation. Any person operating under a current, valid exemption or renewal thereof under Section 107 subject to review by the New Jersey Department of Transportation will be deemed to be in compliance with those portions of these regulations to which the exemption applies, provided that the person is complying with the terms of the exemption.

(e) Intrastate carriers and shippers desiring exemptions shall be subject to the same rules and procedures required of interstate carriers and shippers. See Title 49, Code of Federal Regulations, Part 107, Subpart B. Also see N.J.A.C. 16:49-1.3(k) herein.

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

(g) The modes of transportation by air, water, or pipeline are governed by other agencies and other Federal regulations and are not under the jurisdiction of the Department. Thus, any portion of the Federal regulations governing transportation of hazardous materials by air, water, or pipeline within Parts 107, 171, 172, 173, 174, 177, 178, 179 and 180 are hereby excluded and not adopted by the Department.

(h) This chapter establishes minimum standards which 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 regulation, 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 regarding hazardous wastes, radioactive materials, spill compensation and control.

(i) This chapter may be amended from time to time by the New Jersey Department of Transportation.

1. The Federal "Hazardous Materials Regulations" referenced herein, are adopted as revised as of April 1, 1999.

**16:49-1.6 Assistance**

(a) For general assistance and procedural questions in matters related to New Jersey's Hazardous Materials Regulations, as adopted herein, contact:

Bureau of Ports, Terminals and Freight Services  
 New Jersey Department of Transportation  
 1035 Parkway Avenue  
 PO Box 600  
 Trenton, NJ 08625-0600  
 (609) 530-8031

(b) For assistance in matters related to enforcement or interpretation of the Hazardous Materials Regulations, contact:

Office of Hazardous Materials Transportation,  
 Compliance and Enforcement  
 New Jersey Division of State Police  
 Division Headquarters  
 River Road  
 P.O. Box 7068  
 West Trenton, NJ 08628  
 (609) 882-2000, extension 2582 or 2586

(c) Statements or opinions provided by the Bureau of Ports, Terminals and Freight Services or by the Division of State Police do not constitute legal advice.

Amended by R.1986 d.447, effective November 3, 1986.  
 See: 18 N.J.R. 1791(a), 18 N.J.R. 2212(b).

Amended address.

Amended by R.1989 d.101, effective February 21, 1989.  
 See: 20 N.J.R. 3005(a), 21 N.J.R. 456(a).

Phone number changed.

Amended by R.1990 d.550, effective November 19, 1990.  
 See: 22 N.J.R. 2676(a), 22 N.J.R. 3500(c).

Stylistic changes.

Amended by R.1995 d.74, effective February 6, 1995.  
 See: 26 N.J.R. 4488(b), 27 N.J.R. 509(a).

**SUBCHAPTER 2. ADOPTION OF PORTIONS OF TITLE 49, CODE OF FEDERAL REGULATIONS, BY REFERENCE, AND ADOPTION AND INCORPORATION, BY REFERENCE, OF FEDERAL MOTOR CARRIER SAFETY REGULATIONS WHEN ADOPTED, AMENDED, OR SUPPLEMENTED BY THE FHWA**

**16:49-2.1 Parts adopted by reference**

(a) The New Jersey Department of Transportation, pursuant to N.J.S.A. 39:5B-25 et seq., hereby incorporates by reference the following portions of Title 49 Transporta-

tion, Code of Federal Regulations, revised as of April 1, 1999. The parts adopted by reference are found in Chapter 1, referred to as "Research and Special Programs Administration, Department of Transportation." These parts are detailed in the APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS. The portions adopted are summarized below.

1. Part 171—General Information, Regulations, and Definitions. (Sections 171.1, 171.4, 171.5, 171.6 and 171.20 are omitted from adoption herein; modifications are made to Sections 171.15 and 171.16).
2. Part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements. (Modifications are made to Section 172.3.)
3. Part 173—Shippers—General Requirements for Shipments and Packagings (Section 173.32a is excluded from adoption herein).
4. Part 174—Carriage by Rail.
5. Part 177—Carriage by Public Highway.
6. Part 178—Specifications for Packagings.
7. Part 179—Specifications for Tank Cars. (Sections 179.3, 179.4, and 179.5 are excluded from adoption herein.)
8. Part 180—Continuing Qualification and Maintenance of Packagings.

(b) The Parts and Appendices of the Federal Motor Carrier Safety Regulations and all supplements and amendments thereto, adopted as a final rule action by the Federal Highway Administration, United States Department of Transportation, and adopted and incorporated by reference herein by the Department, are summarized below.

1. Part 382—Controlled Substances and Alcohol Use Testing.
2. Part 390—Federal Motor Carrier Safety Regulations: General.
3. Part 391—Qualification of Drivers.
4. Part 392—Driving of Commercial Motor Vehicles.
5. Part 393—Parts and Accessories Necessary for Safe Operation.
6. Part 394—(Removed and Reserved).
7. Part 395—Hours of Service of Drivers.
8. Part 396—Inspection, Repair, and Maintenance.
9. Part 397—Transportation of Hazardous Materials; Driving and Parking Rules.
10. Part 177—Carriage by Public Highway.

11. Part 178—Specifications for Packagings.
12. Part 179—Specifications for Tank Cars.
13. Part 180—Continuing Qualification and Maintenance of Packagings.

(c) Supplements and amendments to the Federal Motor Carrier Safety Regulations, Appendices to the Federal Motor Carrier Safety Regulations, and the Federal Hazardous Materials Regulations, which have been adopted as a final rule action by the Federal Highway Administration and become effective after April 1, 1999, are not listed in the appendix to this chapter. Those supplements and amendments are, pursuant to the above, adopted and incorporated by reference herein as if set forth in full. The full text of such supplements and amendments can be found by examining the Federal Register published after the above noted date. See also N.J.A.C. 16:49-1.5, Document availability, and N.J.A.C. 16:49-1.6, Assistance.

Amended by R.1986 d.447, effective November 3, 1986.

See: 18 N.J.R. 1791(a), 18 N.J.R. 2212(b).

Amended by R.1989 d.101, effective February 21, 1989.

See: 20 N.J.R. 3005(a), 21 N.J.R. 456(a).

Date changed from November 1, 1985 to October 1, 1987; deleted text in (a)3 "modifications are made ..."; and in (a)5 "(Section 177.825(a), ...".

Amended by R.1990 d.550, effective November 19, 1990.

See: 22 N.J.R. 2676(a), 22 N.J.R. 3500(c).

Part 180 added at (a)8.

Amended by R.1993 d.235, effective June 7, 1993.

See: 25 N.J.R. 1065(a), 25 N.J.R. 2497(a).

Amended by R.1995 d.74, effective February 6, 1995.

See: 26 N.J.R. 4488(b), 27 N.J.R. 509(a).

Amended by R.2000 d.7, effective January 3, 2000.

See: 31 N.J.R. 2692(a), 32 N.J.R. 102(a).

In (a), changed date in the introductory paragraph; in (b), changed Part references in 1, 4 and 11; and in (c), inserted a reference to the Federal Hazardous Materials Regulations and changed date in the first sentence.

## APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS

This Appendix to the Regulations Regarding the Transportation of Hazardous Materials details the adopted portions of Title 49, C.F.R., by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

### CHAPTER 1 RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

(Subchapter B is not being incorporated upon adoption)

#### SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

#### PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

§ 171.2—General requirements.

§ 171.3—Hazardous waste.

§ 171.7—Reference material.

These materials incorporated by reference are technical documents referred to, on occasion, in Title 49, Code of Federal Regulations. Specific technical document names, associations, and addresses where they may be found are contained in Section 171.7 of Title 49, Code of Federal Regulations.

§ 171.8—Definitions and abbreviations.

§ 171.9—Rules of construction.

§ 171.10—Units of measure.

§ 171.11—Use of ICAO technical instructions.

§ 171.12—Import and export shipments.

§ 171.12a—Canadian shipments and packagings.

§ 171.14—Transitional provisions for implementing requirements based on the UN Recommendations.

§ 171.15—Immediate notice of certain hazardous materials incidents. (New Jersey revisions as noted below.)

Section 171.15 is revised to state the following. (Note: Paragraph (a) has been changed and paragraph (d) has been added.)

(a) At the earliest practicable moment, each carrier who transports hazardous materials (including hazardous wastes) shall give 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; or
- ii. A person receives injuries requiring his or her hospitalization; or
- iii. Estimated carrier or other property damage exceeds \$50,000; or
- iv. An evacuation of the general public occurs lasting one or more hours; or

v. One or more major transportation arteries or facilities are closed or shut down for one hour or more; or

vi. The operation flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also ss 174.45, 175.45, 176.48, and 177.807 of this subchapter); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or