TRANSPORTATION OF DANGEROUS ARTICLES

39A:DA-1. Radioactive material

a. As used in this section:

   (1) "Certificate of handling" means a written document issued by the DEP pursuant to 26:2D-18 et seq., approving the use of certain specified New Jersey highways for the transport of specified quantities of radioactive materials.

   (2) "Certificate number" means the number associated with the certificate of handling issued by the DEP.

b. For the transport of certain types and quantities of radioactive material as specified by 26:2D-18 et seq., the operator of the motor vehicle shall produce the certificate of handling or certificate number when requested to do so by any State Police officer or any representative of the DEP acting in performance of the office, and shall produce any other documents as may be required by law to determine the identity of the certificate holder.

c. Where a radioactive material shipment has been certified pursuant to 26:2D-18 et seq., and the applicable regulations, and it does not require placarding on the outside of the shipping vehicle pursuant to federal law or regulations, the operator of the vehicle shall conspicuously post a placard in the cab to be readily visible from outside the cab of the vehicle bearing the conventional radiation symbol and the words:

   "CAUTION: THIS VEHICLE CONTAINS RADIOACTIVE MATERIAL".

Compliance with this section shall be deemed compliance with 39:5B-11.

d. In addition to any other conditions or liability imposed by law, it shall be unlawful to ship or transport, or cause to be shipped or transported, by motor vehicle over the highways of this State, those types and quantities of radioactive material for which a certificate of handling is required pursuant to 26:2D-18 et seq., unless the certificate of handling or certification number is obtained from the DEP and is in the possession of the operator of the motor vehicle used for transport of the material on the highways of this State.

e. Where a certificate of handling is required and has been issued by the DEP, it shall be unlawful to ship or transport, or cause to be shipped or transported, radioactive material that in any way constitutes a deviation from the conditions of the certificate of handling by motor vehicle over the highways of this State.

f. A State Police officer or representative of the DEP, while in the performance of their duties, is authorized to inspect a motor vehicle to investigate an actual or suspected source of radiation for the purpose of determining compliance with the provisions of, or the need for, a certificate of handling.

g. Violation of this section by an authorized carrier of radioactive materials is a class B offense. Violation of this section by an unauthorized carrier of radioactive materials is a class A offense. The penalty shall be recovered pursuant to 2A:58-1 et seq.
COMMENT

This section contains the substance of the original sections and has been consolidated.

Subsection (g) designates penalties according to the new penalty classification system contained in 39A:44-GP1. The level of the offense had been changed by the Commissioners from class C to class B for authorized carriers and from class C to class A for unauthorized carriers to bring the penalty in accord with penalties for similar offenses and to address concerns raised by law enforcement officers. Additional research is required to make sure that the proposed modifications do not contravene federal law or regulation.

39A:DA-2. Hazardous material

a. As used in this section, "Hazardous material" means a substance or material determined by the Secretary of the United States Department of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce and so designated pursuant to the provisions of 49 U.S.C. § 1801 et seq.

b. There is created in the Division of State Police of the Department of Law and Public Safety, an Office of Hazardous Materials Transportation Compliance and Enforcement. It shall be the responsibility of this office to coordinate the implementation and enforcement of the provisions of this section and the applicable regulations.

c. The DOT, in consultation with the DEP, the Department of Labor, the Department of Commerce and Economic Development, the MVC and State Police of the Department of Law and Public Safety, and other appropriate State departments and agencies, shall annually prepare and submit to the Governor and the Legislature a report detailing the incidence and means of the transportation of hazardous materials in this State, evaluating the protection afforded New Jersey citizens by all relevant federal and State statutes and regulations, and recommending executive or legislative actions necessary to insure the safe and proper transportation of hazardous materials.

d. Any person who violates the provisions of this section or any rule adopted pursuant to this chapter is subject to a penalty between $100 and $5,000 for the first offense, between $200 and $10,000 for the second offense, and between $500 and $25,000 for the third or any subsequent offense. Notwithstanding any other provision of law, 50 percent of the penalty moneys collected pursuant to this paragraph shall be deposited into the "Highway Safety Fund" created pursuant to 39:3-20.4. The complaint and summons shall state whether the charges pertain to a first offense, or to a second or subsequent offense. If the complaint or summons fails to allege a second or subsequent offense, the penalty imposed shall be for a first offense. The penalty may be reduced to $25 for a first offense, $50 for a second offense, and $125 for a third and subsequent offense for a non-out-of-service equipment violation if the defendant provides proof of repair to the vehicle that is satisfactory to the court. Proof that the violation has been corrected shall be by a document certifying that the non-out-of-service equipment violation has been corrected. The Division of State Police, a diesel emissions inspection center licensed by the MVC, a certified fleet mechanic approved by the MVC, or any other entity approved by the MVC shall be authorized to issue the requisite certifying
documentation. The Division of State Police may, in its discretion, designate times and locations where a defendant may bring a vehicle for an inspection pursuant to which a requisite certifying document may be issued. Nothing in this chapter shall be construed as requiring the Division of State Police to conduct a vehicle inspection pursuant to which a requisite certifying document may be issued other than at the time and locations as the Division of State Police may provide.

e. Repairs to effect a reduction of penalty pursuant to this section shall be made before the hearing date. A defendant may be permitted to submit the certification of repairs by mail; provided that if the court deems the certification to be inadequate, it shall afford the defendant the option to withdraw the defendant's guilty plea.

f. The DOT may adopt a schedule of penalties for any specific violation of 39:5B-25 et seq. or any applicable regulation. A penalty imposed pursuant to this section may be collected in a civil action by a summary proceeding under 2A:58-10 et seq., or in a summary proceeding before a court wherein injunctive relief has been sought. The State Police and police officers of the Port Authority of New York and New Jersey may issue a summons and complaint returnable in a municipal court or other court for violations of 39:5B-25 et seq., this section and any applicable regulation. The Superior Court shall have jurisdiction of proceedings for the enforcement of the penalties provided in this section and municipal courts shall have jurisdiction of proceedings for the enforcement of penalties under $5,000.

g. Penalties imposed pursuant to this section shall not reduce or limit the liability of any person under State law for cleanup costs or other damages arising from a discharge of hazardous materials.

h. The Superintendent of the State Police, police officers of the Port Authority of New York and New Jersey and personnel of the DOT and the DEP authorized by the Superintendent may, in addition to seeking a civil penalty, seek injunctive relief in the Superior Court as to any person found to have violated 39:5B-25 et seq., this chapter, or any applicable regulation.

Source: 39:5B-25; 39:5B-26; 39:5B-27; 39:5B-28; 39:5B-29.

COMMENT

This section contains the substance of the original sections and has been consolidated.

Subsections (d) – (f) are the former 39:5B-29. These sections have not been included in the new penalty classification system.

39A:DA-3. Transportation of hazardous material

a. The transportation of hazardous materials in this State shall be carried out in accordance with 39:5B-25 et seq. and this chapter, except that this chapter shall not be construed to limit the application or enforcement of the system of reporting the generation, transportation, storage and disposal of hazardous wastes required to be reported to the DEP on the special waste manifest pursuant to N.J.A.C. 7:26-7.1 et seq., or as otherwise provided by law.
b. The Superintendent of the State Police may inspect vehicles, railroad cars, and places of origin or destination in the State of the hazardous materials being transported, as may be necessary to carry out P.L.1983, c. 401 and this chapter. The Superintendent may also break cargo seals on vehicles and railroad cars as necessary to inspect vehicles and railroad cars transporting hazardous materials to ascertain that packages as defined in 49 C.F.R. § 171.8 have been properly classified, described, packaged, marked, labeled, blocked and braced and are in proper condition for shipment.

c. The powers exercised by the Superintendent pursuant to this section may also be exercised by police officers of the Port Authority of New York and New Jersey, and by personnel of the Department of Transportation authorized by the Superintendent. Personnel of the DEP authorized by the Superintendent may, consistent with federal regulations, inspect the contents of packages referred to in subsection (b) at places of origin prior to acceptance by the transporter or at places of destination after acceptance by the consignee. Authorized personnel of the DEP may also conduct, in conjunction with and under the direction of State Police personnel, inspections and break cargo seals as described in subsection (b) when at off-highway facilities, including, but not limited to, public truck stops, public rest areas, State weigh stations, and commercial motor vehicle inspection stations.

d. The COT is authorized to adopt, in consultation with the Superintendent of the State Police regulations governing inspection and breaking of cargo seals by those authorized to do so under this section. A person not given specific authority in this section to do so shall not break cargo seals under this section or otherwise implement the provisions of this section.

e. a. Notwithstanding any provision of Title 39 or Title 48, the COT shall require all railroads operating in New Jersey to annually report to the DOT the number of placarded rail freight cars transporting hazardous materials, as defined in 39:5B-25 et seq., originating or terminating in the State, and shall annually pay the department a $3 fee per placarded rail freight car transporting hazardous materials which originates or terminates in this State during the reporting year.

f. The COT may, annually or less frequently, adopt regulations in accordance with the "Administrative Procedure Act," providing for the revision of the fee set forth in subsection (e), provided that such fee shall not be increased by more than the increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) in the Philadelphia-New Jersey Area, as reported by the United States Department of Labor for the period since the fee was last determined.

g. Moneys received from fees collected pursuant to this section shall be deposited in the General Fund and disbursed to the DOT, subject to appropriation, to defray the expenses of the placarded rail freight car transporting hazardous materials program.

Source: 39:5B-30; 39:5B-31; 39:5B-31.1.

COMMENT
This section contains the substance of the source sections and has been consolidated.
39A:DA-4. Qualification of interstate motor carriers

a. The Superintendent of the State Police has been charged with the responsibility for the adoption of regulations concerning the qualifications of interstate motor carrier operators and vehicles, which were to substantially conform to the requirements established pursuant to sections 401 to 404 of the "Surface Transportation Assistance Act of 1982," 49 U.S.C. App. s. 2301-2304. The Superintendent shall, in consultation with the MVC and the DOT maintain regulations that:


2. Include provisions with regard to motor carrier operators and vehicles engaged in intrastate commerce or used wholly within a municipality or a municipality's commercial zone, except for farm vehicles weighing 26,000 pounds or less that are operated exclusively in intrastate commerce and are registered pursuant to 39:3-24 and 39:3-25, that are compatible with federal rules and regulations.

b. Notwithstanding subsection c. of this section, the hours of service variances as adopted in 49 CFR s. 350.341(e), as amended and supplemented, are hereby adopted effective immediately for CMVs weighing 26,001 pounds or more operating in intrastate commerce provided that these vehicles are not designed to transport 16 or more passengers, including the driver, or used in the transportation of hazardous materials and required to be placarded in accordance with 49 CFR s. 172.500 et seq., or display a hazardous materials placard. The superintendent shall adopt regulations that conform to the requirements established in 49 CFR s. 350.341(e) as amended and supplemented.

c. Notwithstanding any provision of law or regulation to the contrary, a person shall not operate a CMV in this State unless the operation of the CMV is in accordance with the regulations adopted pursuant to this section.

d. The regulations adopted pursuant to this section shall include rules concerning protection against shifting or falling cargo contained in 49 C.F.R. s. 393.100 to 393.106.

e. The superintendent shall enforce registration requirements under 49 U.S.C. 13902, 49 CFR Parts 356 and 365 and 49 CFR s. 392.9a by placing out of service a CMV in interstate commerce discovered to be operating without its Federal Motor Carrier Safety Administration registration as required by 49 U.S.C. 13902, 49 CFR Parts 356 and 365 and 49 CFR s. 392.9a, or beyond the scope of its Federal Motor Carrier Safety Administration registration.


g. The superintendent shall enforce the implementation of programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of CMVs, pursuant to 49 CFR Part 382, and the implementation of federal procedures for transportation workplace drug and alcohol testing programs, pursuant to 49 CFR Part 40.

Source: 39:5B-32.
COMMENT
This section contains the substance of the original.

Subsection (a) was eliminated since the deadline for adoption of regulations has already expired and it is anticipated that the regulations have already been adopted. If this is not the case, the language will be reinserted.