



Fast Track Proposed Regulation Agency Background Document

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| Agency name | Virginia Waste Management Board |
| Virginia Administrative Code (VAC) citation | 9VAC20-110 |
| Regulation title | Regulations Governing the Transportation of Hazardous Materials |
| Action title | Amend to add requirements for Subpart F of 49 CFR 107 |
| Date this document prepared | June 2, 2014 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Virginia's *Regulations Governing the Transportation of Hazardous Materials* under 9VAC20-110, incorporate by reference certain federal regulations from Title 49 of the Code of Federal Regulations (49 CFR). Regulatory compliance is performed by the Virginia State Police. Additionally, the State Police are provided grant funds through the federal government's Motor Carrier Safety Assistance Program (MCSAP) for their hazardous materials program. An audit by the US DOT's Federal Motor Carrier Safety Administration noted that 9VAC20-110 did not include the requirements of Subpart F of 49 CFR 107. Subpart F includes registration and recordkeeping requirements for persons engaged in the manufacture, assembly, inspection and testing or repair of cargo tank or a cargo tank motor vehicle manufactured in accordance with US DOT specifications. Inclusion of Subpart F is a condition for the MCSAP grant. Therefore, an amendment to 9VAC20-110-110 to add 49 CFR 107 Subpart F to the list of federal regulations incorporated by reference is necessary.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At its meeting on June 24, 2014, the Virginia Waste Management Board approved the following:

- The Board authorized the Department to promulgate the proposed amendment of 9VAC20-110 for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial.

- The Board's authorization also constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more members of the public, or any member of the applicable standing committee of either house of the General Assembly or the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
- The Board authorized the Department to set an effective date 15 days after close of the public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. The identification should include a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary

This regulation is promulgated under the authorities of § 10.1-1450 of the Code of Virginia which required the Board to promulgate regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported. There is no discretion. Additionally, the Board's overall authority is provided in § 10.1-1402 of the Virginia Waste Management Act, Chapter 14 of Title 10.1 of the Code of Virginia, which authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law. Written assurance from the Office of the Attorney General that the Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Virginia State Police are provided grant funds through the federal government's MCSAP. A program audit noted that 9VAC20-110 did not include the requirements of Subpart F of 49 CFR 107 which is a condition for the grant. Therefore, an amendment to 9VAC20-110-110 to add Subpart F to the list of federal regulations incorporated by reference is necessary.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If either an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the Department shall (i) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This amendment is not expected to be controversial as it is necessary to revise the regulation to meet the MCSAP grant conditions and provide the Virginia State Police with the ability to ensure hazardous material transport cargo tanks' registration and records are in accordance with federal requirements.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. Note, more detail about all provisions or changes is provided in the "Detail of changes" section. Please be sure to define any acronyms.

The changes to the regulations have been made to include the requirements for Subpart F of 49CFR107.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

There are no disadvantages to the public or the Commonwealth associated with this regulatory action.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulation amendments are not more restrictive than the federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will be particularly affected by this regulatory amendment.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1.B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Section § 10.1-1450 of the Code of Virginia directs the Board to promulgate regulations for the transportation of hazardous materials. This regulation is required by statutory law and the amendment proposed does not require any conditions more stringent than the federal requirements and is necessary to meet grant conditions. The regulation is applicable statewide, including small businesses that may meet the conditions under Subpart F of 49 CFR 107. The regulation is necessary for public safety as it provides provisions for the cargo tanks that transport hazardous materials.

Public Participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

All comments requested by this document must be submitted to the agency contact: Debra Harris, Policy & Planning Specialist, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email debra.harris@deq.virginia.gov, fax 804-698-4019).

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

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| <p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p> | <p>Those affected would be individuals, businesses or other entities that manufacture or maintain cargo tanks for the transport of hazardous materials.</p> |
| <p>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p> | <p>On an annual basis, approximately 33,000 trucks hauling cargo tanks for transporting hazardous materials are inspected for safety and compliance with the regulations. It is not known how many of these are small businesses.</p> |
| <p>Benefits expected as a result of this regulatory proposal.</p> | <p>This amendment will provide the Virginia State Police with the ability to ensure cargo tanks used to transport hazardous material are properly registered in accordance with federal requirements and will also meet the conditions for the MCSAP grant.</p> |

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| Projected cost to the state to implement and enforce this regulatory proposal. | There is no additional projected cost as those affected are all ready required to meet the conditions of the federal regulations. |
| Projected cost to localities to implement and enforce this regulatory proposal. | There is no projected cost to localities to implement or enforce the regulatory amendment. It should be noted that as part of the MSCAP grant, the State Police provides training to 75-80 localities. |
| All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development. | There is no additional projected cost as those affected are all ready required to meet the conditions of the federal regulations. This amendment will provide the Virginia State Police with the ability to ensure cargo tanks used to transport hazardous material are properly registered in accordance with federal requirements and will also meet the conditions for the MCSAP grant. |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation

There are no viable alternatives as the statutory provision under § 10.1-1450 of the Code of Virginia requires that the Board adopt regulations for hazardous materials transportation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

| Current section number | Current requirement | Proposed change and rationale |
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| 9VAC20-110-110 | Compliance. | Incorporates the requirements of Subpart F of 49 CFR 107. |

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CFR - Code of Federal Regulations

DEQ – Department of Environmental Quality

US DOT – United States Department of Transportation

MCSAP – Motor Carrier Safety Assistance Program