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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Board for Waste Management Facility Operators
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC155-20
<b>VAC Chapter title(s)</b>	Waste Management Facility Operators Regulations
<b>Date this document prepared</b>	January 19, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

There are no acronyms or technical terms used in this Report.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

The promulgating agency is the Board for Waste Management Facility Operators ("the Board").

Code of Virginia § 54.1-201(A)(1) gives the Board the power and duty to “establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.”

Code of Virginia § 54.1-201(A)(5) gives authority to the Board to promulgate regulations. It states, in part, that the Board has the power and duty “[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.”

**Alternatives to Regulation**

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

No alternatives were considered as part of this periodic review. The regulation enables the Board to fulfill the statutory requirements established in Chapters 2 and 22.1 of Title 54.1 of the Code of Virginia. Further, the regulation is necessary to ensure that the Board’s statutory requirements are executed in the least burdensome and most efficient and cost-effective manner possible while protecting the health, safety, and welfare of the citizens of Virginia.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Ryan Smith, Virginia Waste Management Association	The commenter suggested clarifying 18VAC155-20-140 regarding the Board’s closed book examinations. Specifically, the commenter suggested the Board review the pass/fail rate and consider that when determining if the examination should remain closed book.	The Board thanks the commenter.  The Board elects to retain the regulation in its current form without amendment at this time. The decision to retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future.
John W. Ruffin	The commenter supports leaving the regulation in its current form; however, the commenter suggests the Board return to an open book examination stating that an open book examination encourages a broader knowledge base over committing specific details to memory.	The Board thanks the commenter.  The Board elects to retain the regulation in its current form without amendment at this time. The decision to retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future.

### Effectiveness

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

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The regulation meets the criteria set forth in the Office of Regulatory Management procedures. The regulation contains the requirements for obtaining a license or training course approval, renewal and reinstatement of licenses, standards of practice and conduct, and prelicense and continuing education to ensure competence and integrity of all licensees and to administer the regulatory program in accordance with Chapters 2 and 22.1 of Title 54.1 of the Code of Virginia. The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

### Decision

*Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

*If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.*

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On October 26, 2023, the Board voted to retain the regulation “as is” without any change, as explained further in the “Small Business Impact” section. In accordance with the Governor’s Executive Directive Number One (2022), the Board is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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Code of Virginia §§ 54.1-201(A)(1) and 54.1-201(A)(5) mandate the Board promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a waste management facility operator license. The Board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

Both comments received during the public comment period were related to the Board’s requirement that examinations are given in a closed book format. One commenter suggested that if the examinations were offered in an open book format there may be an increase in the pass rate while the other suggested that an open book format allows for broader subject knowledge as it discourages applicants from committing specific facts to memory. The Board elected to retain the regulation in its current form with the acknowledgement that such decision does not prevent the Board from initiating action to review or amend the regulation in the future.

The Board for Waste Management Facility Operators Regulations are clearly written, easily understandable, and do not overlap, duplicate, or conflict with federal or state law or regulation.

The most recent periodic review occurred in 2022. The Board is currently conducting a comprehensive review of the regulation in accordance with Executive Directive Number One (2022).

