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Exempt Action: Final Regulation Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC20-110
VAC Chapter title(s)	Regulations Governing the Transportation of Hazardous Materials
Action title	Annual Update 2019
Final agency action date	September 21, 2020
Date this document prepared	August 3, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

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 (CFR). This amendment will bring these regulations up to date with the latest update to Title 49 of the CFR as published on October 1, 2019. The Administrative Process Act's Subsection A 4 c of § 2.2-4006 allows the Board to adopt this regulatory amendment as a final exempt action as the changes are necessary to conform to changes in the federal regulations.

Each year the U.S. Department of Transportation (U.S. DOT) makes several changes to the federal rules (see attachment) regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia regulations incorporate the federal regulations, with certain exceptions, it is only necessary to change one item to bring Virginia's regulations up-to-date with the federal changes. The item that must be amended is 9VAC20-110-110, which specifies the date of the federal regulations that are incorporated into Virginia regulations. For the ease of use by the regulated community, this date is always October 1; however, the text is amended to change the year, thus incorporating federal changes

from October 1 of the previously year through September 30 of the new year (in this case, from October 1, 2018 through September 30, 2019).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Each year, the U.S. DOT makes several changes to the federal rules regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia regulations for transportation of hazardous materials (9VAC20-110) incorporate certain parts of the federal regulations, it is necessary to update 9VAC20-110-110 in order to incorporate U.S. DOT's most recent rulemakings.

Acronyms and Definitions

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

CFR - Code of Federal Regulations
Department – Department of Environmental Quality
U.S. DOT – United States Department of Transportation

Statement of Final Agency Action

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.

The Virginia Waste Management Board adopted this regulatory amendment to 9VAC20-110 on September 21, 2020 as a final regulation and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

Legal Basis

Identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

These regulations are issued under authority of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Transportation of Hazardous Materials.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this regulatory action is to amend 9VAC20-110 to incorporate several changes to the federal rules regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia regulations incorporate the federal regulations, with certain exceptions, it is only necessary to change one item to bring Virginia's regulations up-to-date with the federal changes.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Each year the U.S. Department of Transportation (U.S. DOT) makes several changes to the federal rules (see attachment) regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia regulations incorporate the federal regulations, with certain exceptions, it is only necessary to change one item to bring Virginia's regulations up-to-date with the federal changes. The item that must be amended is 9VAC20-110-110, which specifies the date of the federal regulations that are incorporated into Virginia regulations. For the ease of use by the regulated community, this date is always October 1; however, the text is amended to change the year, thus incorporating federal changes from October 1 of the previously year through September 30 of the new year (in this case, from October 1, 2018 through September 30, 2019).

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory changes.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC20-110-100		Incorporates U.S. DOT's regulations under Title 49 of the CFR by reference.	Updated to the most recent annual edition, October 1, 2019. The changes are needed to ensure that the most recent and accurate federal rules are adopted and enforceable by Virginia.

A summary of the changes to Title 49 of the CFR, which will be incorporated under this amendment, is attached.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

The regulations under 9VAC20-110 apply to all persons, including small business owners, who transport or offer for transportation hazardous materials within or through Virginia. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance and reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the regulation; or (5) exemption of small businesses from all or any part of the requirements contained in this regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations.

Conforming state regulations to those of the U.S. DOT is necessary to maintain authority for compliance and enforcement of these regulations by the Virginia State Police. Additionally, facilities benefit from state implementation of the program as they have easier access to decision makers with a clearer understanding of state-specific issues and needs.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential 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.

**Changes to Title 49 of the CFR by
US DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA)
October 1, 2018 through September 30, 2019**

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
1	10/18/2018 Docket No. PHMSA-2015- 0100 (HM-259)	49 CFR 172 49 CFR 175	83 FR 52878 (10/18/2018)	PHMSA, in consultation with the Federal Aviation Administration, issues this final rule to align the U.S. Hazardous Materials Regulations with current international standards for the air transportation of hazardous materials. These amendments revise certain special provisions, packaging requirements, information to the pilot-in-command requirements, and exceptions for passengers and crewmembers. In addition to facilitating harmonization with international standards, several of the amendments in this rule are responsive to petitions for rulemaking submitted by the regulated community.
2	10/31/2018	49 CFR 172 49 CFR 175	83 FR 54683 (10/31/2018)	Making a correction to a rule appearing on pages 52878 through 52900 in the issue of Thursday, October 18, 2017.
3	12/07/2018 Docket No. PHMSA-2015- 0102 (HM-219A)	49 CFR 171 49 CFR 172 49 CFR 173 49 CFR 176 49 CFR 178 49 CFR 180	83 FR 55792 (11/07/2018)	In this rulemaking, PHMSA is amending the Hazardous Materials Regulations in response to 19 petitions for rulemaking submitted by the regulated community to update, clarify, streamline, or provide relief from miscellaneous regulatory requirements. By adopting these deregulatory amendments, PHMSA is allowing more efficient and effective ways of transporting hazardous materials in commerce while maintaining an equivalent level of safety.
4	03/18/2019 Docket No. PHMSA-2015- 0272 (HM-209A)	49 CFR 107	84 FR 3993 (02/14/2019)	PHMSA is revising the Hazardous Materials Regulations pertaining to the Hazardous Materials Grants Program and the Hazardous Materials Emergency Preparedness Grant. This final rule aligns with the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance") and implements new requirements set forth by the Fixing America's Surface Transportation (FAST) Act of 2015.
5	04/01/2019 Docket No. PHMSA-2014- 0105 (HM-251B)	49 CFR 107 49 CFR 171 49 CFR 173 49 CFR 174	84 FR 6910 (02/28/2019)	PHMSA, in consultation with the Federal Railroad Administration and pursuant to the Fixing America's Surface Transportation Act (FAST Act) of 2015, issues this final rule to revise and clarify requirements for comprehensive oil spill response plans (COSRPs) and to expand their applicability based on petroleum oil thresholds that apply to an entire train consist. Specifically, this final rule: Expands the applicability for COSRPs; modernizes the requirements for COSRPs; requires railroads to share information about high-hazard flammable train (HHFT) operations with State and tribal emergency response commissions to improve community preparedness; and incorporates by reference a voluntary standard. The amendments in this final rule will provide regulatory flexibility and improve response readiness to mitigate effects of rail accidents and incidents involving petroleum oil and HHFTs.
6	03/06/2019 Docket No. PHMSA-2016- 0014 (HM-224I)	49 CFR 172 49 CFR 173	84 FR 8006 (03/06/2019)	PHMSA issues this interim final rule (IFR) to revise the Hazardous Materials Regulations for lithium cells and batteries transported by aircraft. This IFR prohibits the transport of lithium ion cells and batteries as cargo on passenger aircraft; requires lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge aboard cargo-only aircraft when not packed with or contained in equipment; and limits the use of alternative provisions for small lithium cell or battery shipments to one package per consignment. This IFR does not restrict passengers or crew members from bringing personal items or electronic devices containing lithium cells or batteries aboard aircraft, or restrict cargo-only aircraft from transporting lithium ion cells or batteries at a state of charge exceeding 30 percent when packed with or contained in equipment or devices.
7	07/31/2019	49 CFR 171	84 FR 37059 (07/31/2019)	In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2019 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations.

**Changes to Title 49 of the CFR by
US DOT's Federal Motor Carrier Safety Administration (FMCSA)
October 1, 2018 through September 30, 2019**

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register	Summary
1	10/15/2019 Docket No. FMCSA-2012- 0103	49 CFR 390	84 FR 40272 (08/14/2019)	FMCSA amends its May 27, 2015, final rule on Lease and Interchange of Vehicles; Motor Carriers of Passengers (2015 final rule) in response to petitions for rulemaking. This final rule narrows the applicability of the 2015 final rule by excluding certain contracts and other agreements between motor carriers of passengers that have active passenger carrier operating authority registrations with FMCSA from the definition of lease and the associated regulatory requirements. For passenger carriers that remain subject to the leasing and interchange requirements, FMCSA returns the bus marking requirement to its July 1, 2015, state with slight modifications to add references to leased vehicles; revises the exception for the delayed writing of a lease during certain emergencies; and removes the 24-hour lease notification requirement.
2	09/12/2019 Docket No. FMCSA-2004- 19608	49 CFR 395	84 FR 48077 (09/12/2019)	FMCSA amends its hours-of-service (HOS) requirements applicable to drivers of property-carrying commercial motor vehicles (CMVs) to remove provisions requiring that a 34-hour restart include two periods between 1 a.m. and 5 a.m. and limiting use of a restart to once every 168 hours—provisions that were promulgated in December 2011. In a series of Appropriations Acts, Congress suspended these provisions, pending completion of a naturalistic study comparing the effects of the restart provisions in effect under the 2011 rule versus provisions in effect prior to the 2011 rule's compliance date. The 2017 naturalistic study found no statistically significant benefits from the restart rule. Pursuant to a 2017 Appropriations Act, the 2011 restart rules are therefore void by operation of law. Although not in effect, the provisions remain in the Code of Federal Regulations (CFR), which could cause confusion for some stakeholders.
3	09/30/2019	49 CFR 391 49 CFR 392 49 CFR 395 49 CFR 396	84 FR 51427 (09/30/2019)	FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations. The Agency makes minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The Agency also makes nondiscretionary, ministerial changes that are statutorily mandated.