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Periodic Review and Small Business Impact Review Report of Findings

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| 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 |
| Date this document prepared | February 21, 2023 |

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.

CFR – Code of Federal Regulations

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.

Section 10.1-1450 of the Code of Virginia directs the Waste Management Board to "promulgate regulations designating the manner and method by which hazardous materials shall be loaded,

unloaded, packed, identified, marked, placarded, stored and transported. Such regulations shall be no more restrictive than any applicable federal laws or regulations." The Waste Management Board has adopted this regulation and incorporates federal hazardous materials transportation requirements into this regulation by reference.

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.

This regulation incorporates the federal hazardous materials regulations (49 CFR) into state regulations. This maintains consistency for the regulated community. Transporters of hazardous materials are already required to comply with federal requirements. Implementing Virginia specific requirements for transporters of hazardous materials would lead to confusion and would be duplicative and burdensome on the regulated community. Section 10.1-1450 of the Code of Virginia also prohibits this regulation being more restrictive than federal laws and regulations. No viable alternatives to this regulation were identified.

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.

No comments we received during the public comment period that ran from December 19, 2022, to January 9, 2023. An information advisory group was not formed for the purpose of this periodic review.

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.

This regulation is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable. The regulation incorporates federal transportation regulations into state regulations. The regulations are needed to ensure that hazardous materials are transported safely.

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.

The regulation is being retained. This regulation is needed to ensure that hazardous materials are transported safely. This regulation is periodically updated to maintain consistency with the Code of Federal Regulations (CFR). The most recent amendment to incorporate the applicable CFR sections became effective on January 18, 2023.

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.

This regulation is needed to ensure that hazardous materials are transported safely. No comments were received during the public comment period.

The regulation incorporates applicable CFR sections into the regulation. This minimizes the complexity of the regulation since Virginia's regulation incorporate sections of the CFR by reference; thereby making the federal and state requirements identical. Section 10.1-1454 of the Code of Virginia states: “Any person transporting hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of this article, except when such transportation is excluded from regulation under the laws or regulations of the United States.” The most recent amendment to incorporate applicable CFR sections became effective January 18, 2023.

The regulation has been written to maintain consistency with the federal regulatory requirements pertaining to the transportation of hazardous materials due to the requirements of §10.1-1454 the Code of Virginia.

Small businesses are required to comply with federal requirements concerning the transportation of hazardous materials; therefore, the adoption of less stringent requirements for small businesses in this regulation to minimize the economic impact of the regulation would not be consistent with federal and state law. However, given that this regulation incorporates applicable CFR sections, the regulation is no more restrictive to small businesses than federal regulations and the complexity of the regulations is reduced as the federal and state requirements are identical.

Family Impact

Please assess the potential impact of the regulation’s impact on the institution of the family and family stability.

The regulation generally benefits families by establishing requirements for the transportation of hazardous materials that serve to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous materials in commerce.