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Exempt Action - Final Regulation Agency Background Document

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| Agency name | Virginia Waste Management Board |
| Virginia Administrative Code (VAC) citation(s) | 9VAC20-110 |
| Regulation title(s) | Regulations Governing the Transportation of Hazardous Materials |
| Action title | Annual Update 2018 |
| Final agency action date | June 10, 2019 |
| Date this document prepared | May 8, 2019 |

While 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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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, 2018. Section 2.2-4006.A.4 (c) of the Administrative Process Act 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 incorporated year through September 30 of the newly specified year.

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
Department – Department of Environmental Quality
U.S. DOT – United States Department of Transportation

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.

The Virginia Waste Management Board adopted this amendment on June 10, 2019 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. This amendment revises 9VAC20-110-110.

Mandate and Impetus

Please 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, board decision, etc.). "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.

Legal Basis

Please 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.

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 to 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.

Detail of All Changes Made in this Regulatory Action

*Please 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.*

[For changes to existing regulation(s), please use the following chart otherwise delete:]

| 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, 2018. Additionally, added Subsection B to incorporate the compliance extension for certain motor carriers. 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.

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 Federal Motor Carrier Safety Administration (FMCSA)
October 1, 2016 through September 30, 2018**

| Item | Effective Date | Affected 9VAC20-110 49 CFR Part | Federal Register | Summary |
|------|--|--|---------------------|---|
| 1 | 03/30/17 (except for instruction 22, which is effective 1/2/19) Docket No. PHMSA-2015- 0273 (HM-215N) | 49 CFR 107 49 CFR 171 49 CFR 172 49 CFR 173 49 CFR 175 49 CFR 176 49 CFR 178 49 CFR 180 | 82 FR 15796 | USDOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) is issuing a final rule to amend the Hazardous Materials Regulations (HMR) to maintain consistency with international regulations and standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the HMR with recent changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations. Additionally, PHMSA is adopting several amendments to the HMR that result from coordination with Canada under the U.S.-Canada Regulatory Cooperation Council. |
| 2 | 04/19/2017 Docket No. PHMSA-2016- 0041 (HM-258D) | 49 CFR 107 49 CFR 171 | 82 FR 18397 | PHMSA is revising the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990, required Agencies to update their civil monetary penalties in August 2016 through an interim final rulemaking. PHMSA has elected to do the 2017 update in a final rulemaking. Per this final rule, the maximum civil penalty for a knowing violation is now \$78,376, except for violations that result in death, serious illness, or severe injury to any person or substantial destruction of property, for which the maximum civil penalty is \$182,877. In addition, the minimum civil penalty amount for a violation relating to training is now \$471. |
| 3 | 07/18/2018 Docket No. PHMSA-2013- 0225 (HM-218H) | 49 CFR 172 49 CFR 173 49 CFR 180 | 83 FR 28162 | PHMSA issues this rulemaking in response to appeals submitted to a previously-published final rule. On June 2, 2016, PHMSA published a final rule that made miscellaneous amendments to the Hazardous Materials Regulations. This final rule specifically responds to appeals to extend the effective date of certain nitric acid packaging and emergency response telephone number amendments as previously adopted. This final rule also clarifies amendments associated with the trigger date of the 10-year test period for certain MC 331 cargo tanks in dedicated propane service and corrects editorial errors. |
| 4 | 09/25/2018 Docket No. PHMSA-2017- 0102 (HM-251F) | 49 CFR 174 49 CFR 179 | 83 FR 48393 | PHMSA, in coordination with the Federal Railroad Administration, is issuing this final rule to remove requirements pertaining to electronically controlled pneumatic brake systems on high-hazard flammable unit trains. This final action is based on the Department of Transportation's determination that the requirements are not economically justified. |

**Changes to Title 49 of the CFR by
US DOT's Federal Motor Carrier Safety Administration (FMCSA)
October 1, 2016 through September 30, 2018**

| Item | Effective Date | Affected 9VAC20-110 49 CFR Part | Federal Register | Summary |
|------|---|--|---------------------|--|
| 1 | 01/04/2017 Docket No. FMCSA-2011- 0031 | 49 CFR 382 49 CFR 383 49 CFR 384 49 CFR 391 | 81 FR 87686 | USDOT's Federal Motor Carrier Safety Administration (FMCSA) amends the Federal Motor Carrier Safety Regulations to establish requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse), a database under the Agency's administration that will contain information about violations of FMCSA's drug and alcohol testing program for the holders of commercial driver's licenses (CDLs). This rule is mandated by the Moving Ahead for Progress in the 21st Century Act (MAP-21). It will improve roadway safety by identifying commercial motor vehicle (CMV) drivers who have committed drug and alcohol violations that render them ineligible to operate a CMV. |
| 2 | 06/15/2018 Docket No. FMCSA-2012- 0376 | 49 CFR 390 49 CFR 391 49 CFR 395 49 CFR 396 | 83 FR 16210 | FMCSA amends its regulations to allow the use of electronic records and signatures to satisfy FMCSA's regulatory requirements. These amendments permit the use of electronic methods to generate, certify, sign, maintain, or exchange records so long as the documents accurately reflect the required information and can be used for their intended purpose. This rule applies only to those documents that FMCSA's regulations obligate entities or individuals to retain; it does not apply to forms or other documents that must be submitted directly to FMCSA unless there are already procedures in place in the regulations for electronic submission to FMCSA. This rule partially implements the Government Paperwork Elimination Act (GPEA) and the Electronic Signatures in Global and National Commerce Act (E-SIGN). |
| 3 | 06/15/2018 Docket No. FMCSA-2012- 0376 | 49 CFR 390 49 CFR 391 49 CFR 395 49 CFR 396 | 83 FR 24228 | FMCSA corrects the electronic documents and signatures final rule published on April 16, 2018 that amended FMCSA regulations to allow the use of electronic records and signatures to satisfy FMCSA's regulatory requirements. This document corrects an amendatory instruction, removes two extra commas at the end of two phrases, and adds "of this section" to a cross reference in a paragraph. Finally, FMCSA rescinds its January 4, 2011, interpretations and regulatory guidance. |
| 4 | 06/18/2018 Docket No. FMCSA-2013- 0161 | 49 CFR 390 49 CFR 393 49 CFR 395 49 CFR 396 49 CFR 397 | 83 FR 22865 | 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, ensure conformity with Office of the Federal Register style guidelines, and improve the clarity and consistency of certain regulatory provisions. |
| 5 | 06/21/2018 Docket No. FMCSA-2018- 0152 | 49 CFR 391 | 83 FR 28774 | FMCSA amends its regulations to delay the compliance date from June 22, 2018, to June 22, 2021, for several provisions of its April 23, 2015 Medical Examiner's Certification Integration final rule. This action is being taken to provide FMCSA additional time to complete certain information technology (IT) system development tasks for its National Registry of Certified Medical Examiners (National Registry) and provide the State Driver's Licensing Agencies (SDLAs) sufficient time to make the necessary IT programming changes after upgrades to the National Registry. |

**Changes to Title 49 of the CFR by
US DOT's Federal Motor Carrier Safety Administration (FMCSA)
October 1, 2016 through September 30, 2018**

| Item | Effective Date | Affected 9VAC20-110 49 CFR Part | Federal Register | Summary |
|------|---|--|---------------------|---|
| 6 | 08/10/2018 Docket No. FMCSA-2016- 0333 | 49 CFR 390 49 CFR 391 | 83 FR 26846 | FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to establish an alternative process for qualified advanced practice nurses, doctors of chiropractic, doctors of medicine, doctors of osteopathy, physician assistants, and other medical professionals who are employed in the VA and are licensed, certified, or registered in a State to perform physical examinations (qualified VA examiners) to be listed on the Agency's National Registry of Certified Medical Examiners, as required by the Fixing America's Surface Transportation (FAST) Act and the Jobs for Our Heroes Act. After successful completion of online training and testing developed by FMCSA, these qualified VA examiners will become certified VA medical examiners who can perform medical examinations of, and issue Medical Examiner's Certificates to, commercial motor vehicle operators who are military veterans enrolled in the VA healthcare system. This rule will reduce the costs for qualified VA examiners to be listed on the National Registry. |
| 7 | 09/27/2018 Docket No. FMCSA-2013- 0161 | 49 CFR 390 49 CFR 391 49 CFR 395 49 CFR 396 49 CFR 397 | 83 FR 48721 | 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. |

**Changes to Title 49 of the CFR by
US DOT's Federal Motor Carrier Safety Administration (FMCSA)
Lease and Interchange of Vehicles; Motor Carriers of Passengers; Extension of Compliance Date**

| Item | Effective Date | Affected 9VAC20-110 49 CFR Part | Federal Register | Summary |
|------|---|---------------------------------------|---------------------|--|
| 1 | 12/04/2018 Docket No. FMCSA-2012- 0103 | 49 CFR 390 | 83 FR 62505 | FMCSA extends the compliance date of the May 27, 2015, final rule titled "Lease and Interchange of Vehicles; Motor Carriers of Passengers," from January 1, 2019, to January 1, 2021. The final rule received 37 petitions for reconsideration. To address the concerns in the petitions, FMCSA initiated a new notice of proposed rulemaking (NPRM) that also included a proposal to extend the compliance date of the 2015 final rule from January 1, 2019, to January 1, 2021. This extension of the compliance date is necessary to provide time to consider all the issues raised in comments to the NPRM and to publish a final rule, while giving motor carriers sufficient time to comply with the revised requirements. |