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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-101
VAC Chapter title(s)	Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation
Date this document prepared	May 15, 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.

U.S.- United States

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 62.1-44.15 of the Code of Virginia requires operators of tank vessels transporting or transferring oil as cargo upon state waters to develop contingency plans. Section 62.1-44.16 of the Code of Virginia

requires financial responsibility to be provided by an operator of a tank vessel demonstrating the owner’s financial stability to conduct a proper response to a discharge of oil. The State Water Control Board adopted this regulation to implement these statutory requirements.

The federal Oil Pollution Act of 1990 also places requirements on vessels transporting oil and requires vessels to have vessel response plans and to obtain a Certificate of Financial Responsibility from the U.S. Coast Guard. Virginia’s statute recognizes the requirements of the Oil Pollution Control Act of 1990 and deems vessels in compliance with Virginia requirements if they have a vessel response plan approved by the U.S. Coast Guard and/or a Certificate of Financial Responsibility, as applicable.

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.

Based on current statute, there are no alternatives to this regulation that are less burdensome. The statute recognizes that vessels that have a vessel response plan approved by the U.S. Coast Guard and a Certificate of Financial Responsibility as required by the Oil Pollution Control Act of 1990 are in compliance with this regulation. By complying with specific provisions of the Oil Pollution Control Act of 1990, a vessel operator is complying with Virginia’s regulation, and no additional action is required by the vessel operator. The regulation as currently written is the least burdensome alternative to ensuring vessels have response plans to address spills and are financially able to pay for a response to a spill of oil, should one occur.

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.

Commenter	Comment	Agency response
	No comments received	

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 continues to be needed to protect public health, safety, and welfare since it requires operators of tank vessels transporting or transferring oil as cargo upon state waters to develop contingency plans to address spills of oil. The regulation is clearly written and easily 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.

The regulation continues to be needed and is being retained without changes.

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.

The regulation continues to be needed. This requires operators of tank vessels transporting or transferring oil as cargo upon state waters to develop contingency plans.

No comments were received during the periodic review.

This is not a state specific requirement and vessels are required to develop these plans to meet federal requirements found in the Oil Pollution Control Act of 1990. Virginia's regulation has been written to minimize the regulatory burden on the regulated community by maintaining consistency with the requirements of federal regulations. By complying with specific provisions of the Oil Pollution Control Act of 1990, a vessel operator is complying with Virginia's regulation, and no additional action is required by the vessel operator.

This regulation was last amended in 2022. The regulation remains consistent with federal laws, regulation and state statute.

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 ensuring funds and plans are in place to address any oil discharges into Virginia waterways quickly and effectively.