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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Waste Management Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC20-110
<b>VAC Chapter title(s)</b>	Regulations Governing the Transportation of Hazardous Materials
<b>Action title</b>	Annual Update 2024
<b>Final agency action date</b>	October 23, 2024
<b>Date this document prepared</b>	October 1, 2024

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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*.

### 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, 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, 2024. 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 federal regulations.

Each year the U.S. Department of Transportation (U.S. DOT) makes several changes to the federal rules (see Attachments 1 and 2) regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia's 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's 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 the federal changes from October 1 of the previous year through September 30 of the new year (in this case, from October 1, 2022 through September 30, 2024).

## 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). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."*

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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's 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 since the last update.

Conforming state regulations to those of the U.S. DOT is necessary to maintain federally granted authority to implement the national program. The Virginia State Police maintain authority for compliance and enforcement of these regulations and this regulatory amendment.

## 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.*

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CFR- Code of Federal Regulations

DEQ or Department – Department of Environmental Quality

FMCSA – US DOT's Federal Motor Carrier Safety Administration

PHMSA – US DOT's Pipeline and Hazardous Materials Safety Administration

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.*

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The Virginia Waste Management Board adopted this regulatory amendment to 9VAC20-110 on October 23, 2024 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.*

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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. Additionally, Section 2.2-4006 A 4 (c) of the Code of Virginia allows the Board to adopt this regulatory amendment to 9VAC20-110 as a final exempt action as the changes are necessary to conform to changes in the federal regulations.

### 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.*

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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's 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.

Without this regulatory change, the Virginia State Police's authority is limited in enforcing federal regulatory changes between October 1, 2022 and September 30, 2024. This regulatory change enables the Virginia State Police to inspect and enforce the federal requirements for hazardous materials transport.

### 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.*

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Each year the U.S. DOT makes several changes to the federal rules (see Attachments 1 and 2) regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations. Since Virginia's 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's 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 the federal changes from October 1 of the previous year through September 30 of the new year (in this case, from October 1, 2022 through September 30, 2024).

### 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.*

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There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory change. However, without this regulatory change, the Virginia State Police's authority is limited in enforcing federal regulatory changes between October 1, 2022 and September 30, 2024. This regulatory change enables the Virginia State Police to inspect and enforce the federal requirements for hazardous materials transport.

### Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

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The item that must be amended is 9VAC20-110-110, which specifies the date of the federal regulations that are incorporated into Virginia's regulations.

There are no requirements more restrictive than applicable federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

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Other State Agencies Particularly Affected:

The Virginia State Police maintain authority for compliance and enforcement of these regulations and this regulatory amendment.

Localities Particularly Affected

There are no localities particularly affected by this regulatory amendment.

Other Entities Particularly Affected

There are no entities particularly affected by this regulatory amendment.

### Details of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

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The item that must be amended is 9VAC20-110-110, which specifies the date of the federal regulations that are incorporated into Virginia’s regulations.

<b>Current section number</b>	<b>New section number, if applicable</b>	<b>Current requirements in VAC</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
9VAC20-110-110	N/A	Transportation of Hazardous Materials – Compliance with Federal Regulations	Change in date of amendments promulgated by U.S. DOT from October 1, 2022 to October 1, 2024.

**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.*

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Since Virginia’s regulations incorporate the federal regulations, with certain exceptions, this regulatory action is necessary to bring the regulations up-to-date with the federal changes related to transportation of hazardous materials. Without this regulatory change, the Virginia State Police’s authority is limited in enforcing federal regulatory changes between October 1, 2022 and September 30, 2024. This regulatory change enables the Virginia State Police to inspect and enforce the federal requirements for hazardous materials transport.

**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.*

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There is no impact on the institution of the family or family stability.

Attachment 1

Changes to Title 49 of the CFR – October 1, 2022 – September 30, 2024  
 2024US DOT’s Pipeline and Hazardous Materials Safety Administration (PHMSA)

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
1	01/06/2023 3 Docket No. 2022-28580	49 CFR 107; 49 CFR 171	<a href="#">88 FR 1114</a> ; <a href="#">88 FR 1125</a> ; <a href="#">(01/06/2023)</a>	This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law 101-410, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114-74, 129 Stat. 599, codified at 28 U.S.C. 2461 note. The FCPIAA and the 2015 Act require Federal agencies to adjust minimum and maximum civil penalty amounts to preserve their deterrent impact. The 2015 Act amended the formula and frequency of the adjustments. It required an initial catch-up adjustment in the form of an interim final rule, followed by annual adjustments of civil penalty amounts using a statutorily mandated formula.
2	01/20/2023 3 Docket No. PHMSA-2016-0014 (HM-2241)	49 CFR 107; 49 CFR 171; 49 CFR 173	<a href="#">87 FR 77995</a> ; <a href="#">87 FR 78010</a> ; <a href="#">12/21/2022</a>	This final rule revises the Hazardous Materials Regulations for lithium cells and batteries transported by aircraft and is consistent with the previously published Interim Final Rule, which responded to congressional mandates; prohibited the transport of lithium ion cells and batteries as cargo on passenger aircraft; required 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 limited the use of alternative provisions for smaller lithium cell or battery shipments to one package per consignment. In response to comments, this final rule provides editorial amendments and modification of certain provisions including marking requirements, requests for an extension on the compliance date, and exception for lithium cells or batteries used for medical devices with approval by the Associate Administrator.

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
3	01/26/2023 Docket No. PHMSA-2021-0091 (HM-260B)	49 CFR 107 - SUBPART B; SUBPART F; 49 CFR 171; 49 CFR 172; 49 CFR 173; 49 CFR 174; 49 CFR 175; 49 CFR 176; 49 CFR 177; 49 CFR 178; 49 CFR 180	<a href="#">87 FR 79752</a> ; <a href="#">87 FR 79764</a> ; <a href="#">87 FR 79765</a> ; <a href="#">87 FR 79766</a> ; <a href="#">87 FR 79772</a> ; <a href="#">87 FR 79773</a> ; <a href="#">87 FR 79774</a> ; <a href="#">87 FR 79775</a> ; <a href="#">87 FR 79776</a> ; <a href="#">87 FR 79777</a> ; <a href="#">87 FR 79779</a> ; <a href="#">87 FR 79782</a> ; <a href="#">87 FR 79783</a> ; <a href="#">87 FR 79784</a> ; <a href="#">87 FR 79785</a> ; <a href="#">(12/27/2022)</a>	<p>The Pipeline and Hazardous Materials Safety Administration (PHMSA), in this final rule, is amending the Hazardous Materials Regulations (HMR; 49 Code of Federal Regulations (CFR) parts 171-180) to correct typographical errors; fix incorrect regulatory references and citations; remove obsolete references to regulatory provisions, dates, as well as outdated concepts such as other regulated materials-domestic (ORM-D); address misstatements of certain regulatory requirements; and supply information or language that had been inadvertently omitted. Further, within the scope of this rulemaking, PHMSA is revising certain procedural regulations at 49 CFR parts 107 and 110 to make them easier to understand. PHMSA expects the regulatory amendments adopted in this final rule will ensure stakeholders focus their resources on compliance with pertinent safety requirements of the HMR rather than trying to resolve erroneous, ambiguous, or obsolete language within PHMSA's regulations.</p> <p>The amendments contained in this final rule are non-substantive changes that do not impose new requirements that necessitate public comment.</p>
4	4/3/2024 Docket No. PHMSA-2020-0102 (HM-219D)	49 CFR 107 49 CFR 171 49 CFR 172 49 CFR 173 49 CFR 178 49 CFR 180	<a href="#">89 FR 15636</a> <a href="#">89 FR 15662</a> <a href="#">89 FR 15665</a> <a href="#">89 FR 15666</a> <a href="#">89 FR 15667</a> <a href="#">89 FR 15668</a> <a href="#">(3/4/2024)</a>	<p>PHMSA amends the Hazardous Materials Regulations (HMR) to update, clarify, improve the safety of, or streamline various regulatory requirements. Specifically, this rulemaking responds to 18 petitions for rulemaking submitted by the regulated community between May 2018 and October 2020 that requests PHMSA address a variety of provisions, including but not limited to those addressing packaging, hazard communication, and the incorporation by reference of certain documents. These revisions maintain or enhance the existing high level of safety under the HMR while providing clarity and appropriate regulatory flexibility in the transport of hazardous materials.</p>

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
5	5/10/2024 Docket No. PHMSA-2021-0092 (HM-215Q)	49 CFR 171 49 CFR 172 49 CFR 173 49 CFR 175 49 CFR 176 49 CFR 178 49 CFR 180	<a href="#">89 FR 25434</a> <a href="#">89 FR 25476</a> <a href="#">89 FR 25477</a> <a href="#">89 FR 25478</a> <a href="#">89 FR 25480</a> <a href="#">89 FR 25481</a> <a href="#">89 FR 25486</a> <a href="#">89 FR 25487</a> <a href="#">89 FR 25488</a> <a href="#">89 FR 25489</a> <a href="#">89 FR 25490</a> <a href="#">(Cross Referenced) (4/10/24)</a>	<p>PHMSA is amending the Hazardous Materials Regulations (HMR) to maintain alignment with international regulations and standards by adopting various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. PHMSA is also withdrawing the unpublished November 28, 2022, Notice of Enforcement Policy Regarding International Standards on the use of select updated international standards in complying with the HMR during the pendency of this rulemaking.</p>



Attachment 2

Changes to Title 49 of the CFR – October 1, 2022 – September 30, 2024  
 US DOT’s Federal Motor Carrier Safety Administration (FMCSA)

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
1	11/15/2022 Docket No. FMCSA-2020-0188	49 CFR 390	<a href="#">87 FR 68367;</a> <a href="#">87 FR 68372;</a> <a href="#">(11/15/2022)</a>	Federal Motor Carrier Safety Administration (FMCSA) Department of Transportation (DOT): This interpretive rule adds appendices to the Federal Motor Carrier Safety Regulations (FMCSRs) to explain existing statutes and regulations FMCSA administers related to: the applicability of the FMCSRs, including the financial responsibility regulations, to motor carriers of passengers operating in interstate commerce, including limitations on such applicability based on characteristics of the vehicle operated or the scope of operations conducted; and the applicability of commercial operating authority registration based on the Agency's jurisdiction over motor carriers of passengers, regardless of vehicle characteristics, when operating for-hire in interstate commerce. Under certain conditions, motor carriers performing intrastate movements of passengers may still be operating in interstate commerce and, unless otherwise exempt, are subject to applicable FMCSA statutory and regulatory requirements. FMCSA wants motor carriers of passengers and the public to be aware of the applicable regulations and requirements.
2	11/17/2023 Docket No. FMCSA-2023-0174	49 CFR chapter undef	<a href="#">88 FR 80169</a> <a href="#">88 FR 80179</a> <a href="#">88 FR 80183</a> <a href="#">88 FR 80184</a> <a href="#">88 FR 80192</a> <a href="#">88 FR 80193</a> <a href="#">(11/17/2023)</a>	FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations (FMCSRs). 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 a change to its rules of organization, procedures, and practice.

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
3	12/12/2023 Docket No. FMCSA-2022-0028	49 CFR 390	<a href="#">88 FR 70897</a> <a href="#">88 FR 70908</a> <a href="#">88 FR 70909</a> <a href="#">(10/13/2023)</a>	<p>FMCSA revises the emergency exemption rules to narrow the scope of safety regulations from which relief is automatically provided for motor carriers and drivers providing direct assistance when an emergency has been declared. This rule ensures that the relief granted through emergency declarations is appropriate and tailored to the specifics of the circumstances and emergencies being addressed. This rule also revises the process for extending automatic emergency regulatory relief where circumstances warrant and allows for potential reporting requirements when FMCSA issues an extension or modification.</p>
3	11/17/2023 Docket No. FMCSA-2023-0174	49 CFR chapter undef	<a href="#">88 FR 80169</a> <a href="#">88 FR 80179</a> <a href="#">88 FR 80183</a> <a href="#">88 FR 80184</a> <a href="#">88 FR 80192</a> <a href="#">88 FR 80193</a> <a href="#">(11/17/2023)</a>	<p>FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations (FMCSRs). 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 a change to its rules of organization, procedures, and practice.</p>
4	12/28/2023	14 CFR 13 14 CFR 383 14 CFR 406 33 CFR 401 46 CFR 221 46 CFR 307 46 CFR 340 46 CFR 356 49 CFR 107 49 CFR 171 49 CFR 190 49 CFR 209 49 CFR 213 49 CFR 214 49 CFR 215 49 CFR 216 49 CFR 217 49 CFR 218	<a href="#">88 FR 89551</a> <a href="#">88 FR89560</a>	<p>This final rule provides the statutorily prescribed 2024 adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations.</p>

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
		49 CFR 219 49 CFR 220 49 CFR 221 49 CFR 222 49 CFR 223 49 CFR 224 49 CFR 225 49 CFR 227 49 CFR 228 49 CFR 229 49 CFR 230 49 CFR 231 49 CFR 233 49 CFR 234 49 CFR 235 49 CFR 236 49 CFR 237 49 CFR 238 49 CFR 239 49 CFR 240 49 CFR 241 49 CFR 242 49 CFR 243 49 CFR 244 49 CFR 272 49 CFR 386 49 CFR 578		
				FMCSA updates the Medical Advisory Criteria published as an appendix in the Code of Federal Regulations (CFR). The appendix provides guidance for medical examiners listed on FMCSA's National Registry of Certified Medical Examiners (National Registry) on the applicability and interpretation of the physical qualification standards for operators of commercial motor vehicles. The advisory criteria in the appendix are also intended to provide recommendations and information to assist medical examiners in applying the standards, basic information related to testing, and matters to consider when making a qualification determination. The updated Medical Advisory

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
				Criteria replace all previous versions of the criteria.
5	1/19/2024 Docket No. FMCSA-2022-0111	49 CFR 391	<a href="#">89 FR 3577</a> <a href="#">89 FR 3579</a> <a href="#">(1/19/24)</a>	FMCSA updates the Medical Advisory Criteria published as an appendix in the Code of Federal Regulations (CFR). The appendix provides guidance for medical examiners listed on FMCSA's National Registry of Certified Medical Examiners (National Registry) on the applicability and interpretation of the physical qualification standards for operators of commercial motor vehicles. The advisory criteria in the appendix are also intended to provide recommendations and information to assist medical examiners in applying the standards, basic information related to testing, and matters to consider when making a qualification determination. The updated Medical Advisory Criteria replace all previous versions of the criteria.