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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>	<b>Annual Update 2022</b>
<b>Final agency action date</b>	October 28, 2022
<b>Date this document prepared</b>	October 1, 2022

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* 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, 2022. 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 A and B) 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, 2019 through September 30, 2022).

**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.”*

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 DOT is necessary to maintain federally granted authority to implement the national program.

**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
- DOT – Department of Transportation
- 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.*

The Virginia Waste Management Board adopted this regulatory amendment to 9VAC20-110 on October 28, 2022 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'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.

### 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 A and B) 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, 2019 through September 30, 2022).

### 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.

### 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.*

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.

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC20-110-110		Transportation of Hazardous Materials – Compliance with Federal Regulations	Change in date of amendments promulgated by U.S. DOT from October 1, 2019 to October 1, 2022, This change incorporates the federal changes from October 1 of the previous year through September 30 of the new year (in this case, from October 1, 2019 through September 30, 2022).

**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.*

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.

**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.

**Attachment A**

Changes to Title 49 of the CFR – October 1, 2019 – September 30, 2022  
 US DOT’s Pipeline and Hazardous Materials Safety Administration (PHMSA)

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
1	05/11/2020 Docket No. PHMSA-2017-0108 (HM2150)	49 CFR 171; 49 CFR 172; 49 CFR 173; 49 CFR 174; 49 CFR 175; 49 CFR 176; 49 CFR 178; 49 CFR 180	<a href="#">85 FR 27810 (05/11/2020)</a>	PHMSA is issuing this final rule to amend the Hazardous Materials Regulations (HMR) to maintain alignment 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 would allow for increased alignment with the Transport Canada, Transportation of Dangerous Goods Regulations.
2	08/24/2020 Docket No. PHMSA-2018-0025 (HM-264)	49 CFR 172; 49 CFR 173; 49 CFR 174; 49 CFR 179; 49 CFR 180	<a href="#">85 FR 44994 (07/24/2020)</a>	PHMSA, in coordination with the Federal Railroad Administration (FRA), is amending the Hazardous Materials Regulations (HMR) to allow for the bulk transport of “Methane, refrigerated liquid,” commonly known as liquefied natural gas (LNG), in rail tank cars. This rulemaking authorizes the transportation of LNG by rail in DOT-113C120W specification rail tank cars with enhanced outer tank requirements, subject to all applicable requirements and certain additional operational controls. The enhancements to the outer tank are indicated by the new specification suffix “9” (DOT-113C120W9).

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
3	11/30/2020 Docket No. PHMSA-2017-0083 (HM-219B)	49 CFR 180	<a href="#">85 FR 68790 (10/30/2020)</a>	The Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the requirements of the requalification periods for certain Department of Transportation (DOT) 4-series specification cylinders in non-corrosive gas service in response to a petition for rulemaking submitted by the National Propane Gas Association (NPGA).
4	12/03/2020 Docket No. PHMSA-2017-0108 (HM-2150)	49 CFR 171; 49 CFR 172; 49 CFR 173; 49 CFR 174; 49 CFR 175; 49 CFR 176; 49 CFR 178; 49 CFR 180	<a href="#">85 FR 78029 (12/03/2020)</a>	Making a correction in Rule Document 2020-06205 appearing on pages 27810 through 27852 in the issue of Monday, May 11, 2020.
5	12/28/2020 Docket No. PHMSA-2017-0120 (HM-219C)	49 CFR 107; 49 CFR 171; 49 CFR 172; 49 CFR 173; 49 CFR 178; 49 CFR 179; 49 CFR 180	<a href="#">85 FR 75680 (11/25/2020)</a>	The Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations in response to 24 petitions for rulemaking submitted by the regulated community between February 2015 and March 2018. This final rule updates, clarifies, or provides relief from various regulatory requirements without adversely affecting safety. PHMSA also, as of the effective date of this final rule, withdraws its September 28, 2017 enforcement discretion regarding the phase-out of mobile refrigeration systems.

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
6	1/21/2021 Docket No. PHMSA-2018-0082 (HM-260A)	49 CFR 107; 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 179; 49 CFR 180	<a href="#">85 FR 83366 (12/21/2020)</a>	This final rule corrects editorial errors and improves the clarity of certain provisions in the Hazardous Materials Regulations and PHMSA program and procedural regulations. The intended effect of this rulemaking is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this final rule are non-substantive changes and do not impose new requirements.
7	1/21/2021 Docket No. PHMSA-2018-0082 (HM-260A)	49 CFR 107; 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 179; 49 CFR 180	<a href="#">86 FR 2564 (01/13/2021)</a>	Making a correction In Rule Document 2020-23353 appearing on pages 83366 through 83403 in the issue of Monday, December 21, 2020.

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
8	01/27/2021 Docket No. PHMSA-2011-0140 (HM-234)	49 CFR 107; 49 CFR 171; 49 CFR 173; 49 CFR 178; 49 CFR 180	<a href="#">85 FR 85380 (12/28/2020)</a>	PHMSA is amending the Hazardous Materials Regulations (HMR) to revise certain requirements applicable to the manufacture, use, and requalification of DOT-specification cylinders. PHMSA is taking this action in response to petitions for rulemaking submitted by stakeholders and agency review of compressed gas cylinder regulations. Specifically, PHMSA is incorporating by reference or updating the references to several Compressed Gas Association publications, amending the filling requirements for compressed and liquefied gases, expanding the use of salvage cylinders, and revising and clarifying the manufacture and requalification requirements for cylinders.
9	5/3/2021	49 CFR 107; 49 CFR 171	<a href="#">86 FR 23241 (05/03/2021)</a>	In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2021 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. In addition, this rule amends the Federal Aviation Administration regulations to set forth the new civil penalties established in Division V, Title I of the Consolidated Appropriations Act, 2021. The rule also corrects a rounding error in an FAA penalty.
10	3/21/2022	49 CFR 107; 49 CFR 170	<a href="#">87 FR 15839 (03/21/2022)</a>	This final rule provides the statutorily-prescribed 2022 adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. In addition, this rule notes new DOT civil penalties authority provided in the Bipartisan Infrastructure Law (BIL, enacted as the Infrastructure Investment and Jobs Act).



Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
11	08/25/2022 Docket No. PHMSA-2019-0030 (HM-215P)	49 CFR 171; 49 CFR 172; 49 CFR 173; 29 CFR 175; 49 CFR 176; 49 CFR 178; 49 CFR 180	<a href="#">87 FR 44944 (07/26/2022)</a>	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. Additionally, PHMSA is amending the HMR to allow for better alignment with Transport Canada's Transportation of Dangerous Goods Regulations. PHMSA is also withdrawing the unpublished October 1, 2020, Notice of Enforcement Policy Regarding International Standards on use of select updated international standards in complying with the HMR during the pendency of this rulemaking.

**Attachment B**

Changes to Title 49 of the CFR – October 1, 2019 – September 30, 2022  
 US DOT's Federal Motor Carrier Safety Administration (FMCSA)

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
1	09/29/2020 Docket No. FMCSA-2018-0248	49 CFR 395	<a href="#">85 FR 33396 (06/01/2020)</a>	FMCSA revises the hours of service (HOS) regulations to provide greater flexibility for drivers subject to those rules without adversely affecting safety. The Agency expands the short-haul exception to 150 air-miles and allows a 14-hour work shift to take place as part of the exception; expands the driving window during adverse driving conditions by up to an additional 2 hours; requires a 30-minute break after 8 hours of driving time (instead of on-duty time) and allows an on-duty/not driving period to qualify as the required break; and modifies the sleeper berth exception to allow a driver to meet the 10-hour minimum off-duty requirement by spending at least 7, rather than at least 8 hours of that period in the berth and a minimum off-duty period of at least 2 hours spent inside or outside of the berth, provided the two periods total at least 10 hours, and that neither qualifying period counts against the 14-hour driving window.
2	07/07/2021 Docket No. FMCSA-2020-0135	49 CFR 390; 49 CFR 391	<a href="#">86 FR 35633 (07/07/2021)</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 nondiscretionary, ministerial changes that are statutorily mandated and changes that merely align regulatory requirements with the underlying statutory authority. Finally, this rule contains two minor changes to FMCSA's rules of agency procedure or practice that relate to separation of functions and allowing FMCSA and State personnel to conduct off-site compliance reviews of motor carriers following the same safety fitness determination criteria used in on-site compliance reviews.

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
3	10/14/2021 Docket No. PMCSA-2021-0132	49 CFR 390; 49 CFR 391; 49 CFR 393; 49 CFR 395; 49 CFR 396	<a href="#">86 FR 57060 (10/14/2021)</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 nondiscretionary, ministerial changes that merely align regulatory requirements with the underlying statutory authority. Finally, FMCSA adds two new provisions for transparency relating to agency management and to FMCSA's rules of organization, procedures, or practice, and makes corresponding changes to definitions, addresses, and employee titles throughout the FMCSRs.
4	12/09/2021 Docket No. FMCSA-2019-0211	49 CFR 393; 49 CFR 396	<a href="#">86 FR 62105 (11/09/2021)</a>	FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to include rear impact guards on the list of items that must be examined as part of the required annual inspection for each commercial motor vehicle (CMV). In addition, FMCSA amends the labeling requirements for rear impact guards, and excludes road construction controlled (RCC) horizontal discharge trailers from the rear impact guard requirements, consistent with changes made by the National Highway Traffic Safety Administration (NHTSA) to the corresponding Federal Motor Vehicle Safety Standards (FMVSS). This final rule responds to rulemaking petitions, as well as a recommendation from the Government Accountability Office (GAO).

Item	Effective Date	Affected 9VAC20-110 49 CFR Part	Federal Register (Publication Date)	Summary
5	09/29/2022 Docket No. FMCSA-2022-0149	49 CFR 391; 49 CFR 395; 49 CFR 396; 49 CFR 397	<a href="#">87 FR 59030 (09/29/2022)</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 nondiscretionary, ministerial changes that merely align regulatory requirements with the underlying statutory authority, including the Infrastructure Improvement and Jobs Act (IIJA), sometimes referred to as the Bipartisan Infrastructure Law, requirements. Additionally, the Agency makes changes relating to agency management and to FMCSA's rules of organization, procedures, or practice.