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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Virginia Soil and Water Conservation Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	4VAC50-20
<b>VAC Chapter title(s)</b>	Impounding Structure Regulation
<b>Action title</b>	Requiring use of Dam Safety Inventory System (DSIS)
<b>Date this document prepared</b>	September 23, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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.*

This regulatory action revises the Impounding Structure regulations to require a dam owner to ensure that all information required to be submitted by the regulations is provided to the Department via the Dam Safety Inventory System (DSIS), unless prior approval for an alternative method of submission is granted by the Department.

Many dam owners currently utilize DSIS to submit the required information to the Department; this regulatory amendment will ensure consistency in the application of DSIS across the Commonwealth.

Having the required information in DSIS will dramatically increase the Department's ability to respond effectively and accurately to requests for information or to take emergency actions during emergency situations such as hurricanes or dam failures. Additionally, requiring the dam owner to ensure that all information is provided in DSIS will enable the regional engineers to focus on completing comprehensive reviews of the information submitted by the dam owner to ensure statutory and regulatory requirements

are met; to ensure engineering analysis were completed using accepted best engineering practices; and to provide opportunity for the regional engineers to be more effective resources for dam owners.

### 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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DSIS means the Dam Safety Inventory System. It is an electronic method of accessing information about dams in Virginia. It also allows dam owners and their professional engineers to submit required documents and information regarding their dam to the Department.

### 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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This action to amend and adopt final regulations was approved by the Virginia Soil and Water Conservation Board on September 23, 2020.

### 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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "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."*

*As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

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While there is not a mandate or impetus that specifically prompted this regulatory change, there is an increased need for the Department to have access to accurate and complete information for each dam regulated under the Dam Safety Act. The Dam Safety Inventory System (DSIS) provides a mechanism for the Department to have access to all pertinent information about dams across the state. During weather related emergencies, such as hurricanes or prolonged storms, or in case of a dam failure, the Department is utilized as a resource by emergency management officials. Ensuring that all information is entered accurately and completely into DSIS allows the Department to effectively and accurately provide information to emergency managers or in the case of an imminent dam failure, to take actions to protect public safety.

As many dam owners currently utilize DSIS to submit the required information to the Department this rulemaking is expected to be noncontroversial. The regulatory amendment will ensure consistency in the application of DSIS across the Commonwealth.

### 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 and 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.*

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The Virginia Dam Safety Act (§10.1-604 through §10.1-613 of the Code of Virginia) ensures public safety through the proper and safe design, construction, operation, and maintenance of impounding structures in the Commonwealth. This is accomplished through the effective administration of the Virginia Dam Safety Program (Program). Authority for the Program rests with the Virginia Soil and Water Conservation Board (Board) and it is administered on behalf of the Board by the Department of Conservation and Recreation’s Division of Dam Safety and Floodplain Management. The Program focuses on enhancing public safety through bringing all impounding structures of regulated size under Regular Operation and Maintenance Certificates.

Pursuant to §10.1-605, the Board is directed to promulgate regulations for impounding structures:  
*§10.1-605 The Board shall promulgate regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated.*

Further, the Board reserves the sole right to promulgate regulations:

*§10.1-605.1. Delegation of powers and duties. - The Board may delegate to the Director or his designee any of the powers and duties vested in the Board by this article, except the adoption and promulgation of regulations or the issuance of certificates. Delegation shall not remove from the Board authority to enforce the provisions of this article.*

### 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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This regulatory change will require dam owners to ensure that all information that is required to be submitted under this regulation to be submitted through DSIS. Utilizing DSIS is the most efficient, cost-effective, and thorough method for the submission of the required information. While the initial entries into DSIS may require time, there should be less time required over time to update and revise information to reflect inspections and current dam conditions. Having the required information in DSIS will dramatically increase the Department’s ability to effectively and accurately provide information to emergency managers or in the case of an imminent dam failure to take actions to protect public safety.

Requiring the dam owner to ensure that all information is provided in DSIS will enable the regional engineers to focus on completing comprehensive reviews of the information submitted by the dam owner to ensure statutory and regulatory requirements are met; to ensure engineering analysis were completed using accepted best engineering practices; and to provide opportunity for the regional engineers to be more effective resources for dam owners.

Additionally, the regulatory change will remove a conflict between the regional engineer’s regulatory review of information and the need for information to be entered into DSIS. Currently, the regional engineers are entering data into DSIS in order to assist dam owners and to ensure the information is available if needed. The regional engineers are entering data, reviewing the data entered by them, and then approving the data. As the regulator, the regional engineers should only be approving the information entered after careful review of the information to ensure it meets professional standards.

### 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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This regulatory action revises the Impounding Structure regulations to require a dam owner to ensure that all information required to be submitted by the regulations is provided to the Department via the Dam Safety Inventory System (DSIS), unless prior approval for an alternative method of submission is granted by the Department.

Many dam owners currently utilize DSIS to submit the required information to the Department; this regulatory amendment will allow for a more streamlined and consistent submittal and reporting process through DSIS.

### **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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This regulatory action will increase public safety. This regulatory action will ensure the most accurate and comprehensive data is entered into DSIS, dramatically increasing the Department’s ability to effectively and accurately provide information to emergency managers or in the case of an imminent dam failure to take actions to protect public safety. In addition to emergency managers, the public will be able to make more accurate determinations about whether they live, work, or drive through a dam break inundation zone. Increasing public awareness of dam break inundation zones and the locations of those zones will be a benefit to having the data in DSIS. There are no disadvantages to the public with this regulatory change.

The regional engineers are responsible for approximately 420 dams each. This existing workload limits the amount of outreach and assistance the regional engineers are able to provide to dam owners. One of the benefits to this regulatory change is the ability for the regional engineers to be a more effective resource for dam owners. Having additional time to discuss potential funding options for needed repairs, to discuss engineering requirements or expectations, or to complete site visits all are potential educational outreach opportunities that would benefit the regulated community and the Dam Safety Program.

For dam owners, whether they are state agencies, soil and water conservation districts, local governments, or private entities, the primary disadvantage to this regulatory action is the initial time and financial impacts. Currently, there is a cost in time to dam owners and their engineers to fill out paper forms required by the regulations. This current cost will offset a portion of the costs associated with DSIS entry. After the initial impacts, there should be significantly less time required over time to update and revise information to reflect inspections and current dam conditions.

### **Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which 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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There are no applicable federal requirements; impounding structures that are owned or licensed by the federal government are exempt from the Dam Safety Act and its regulations pursuant to § 10.1-604 of the Code of Virginia.

**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.*

Over 2,100 dams in Virginia are regulated under the Dam Safety Act and these regulations. State agencies, Soil and Water Conservation Districts, local governments, public utilities, and private entities own or maintain dams. Under this regulatory change, all dam owners will be required to ensure the information required to be submitted to the Department under this regulations is provided through DSIS. Currently, there is a cost in time to dam owners and their engineers to fill out paper forms required by the regulations. This current cost will offset a portion of the costs associated with DSIS entry. After the initial data entry and required submissions are completed, there should be significantly less time required over time to update and revise information to reflect inspections and current dam conditions, reducing the fiscal impact to the owner. Many dam owners and their professional engineers are already utilizing DSIS and will not be financially impacted by this regulatory change.

No state agency, locality, or private entity will bear a disproportionate cost per impounding structure.

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>This regulatory action will significantly reduce the amount of time the Department's regional engineers are inputting data, rather than conducting reviews of the information provided by the owner's engineer.</p> <p>Approximately 2,100 dams are expected to meet the criteria to be regulated by the Dam Safety Act. There are currently 5 regional engineers with an average salary of \$90,000. In an average year, 2,080 hours are worked for an average hourly wage of \$43.27 per each engineers.</p>
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	<p>There are 6 types of regulatory documents that are required to be submitted to the Department; those types include record reports, dam break inundation zone studies and maps, emergency action plans, inspection reports, permits, and applications. An average of 2.5 hours is needed to enter the information contained in each of these documents into DSIS. Therefore, for each dam, the estimated amount of time needed to provide all information into DSIS is approximately 15 hours at an estimated cost of \$649.05 (15 x \$43.27).</p> <p>It is anticipated there will be cost savings to the Department's dam safety program of \$1,363,005 over time as dams become compliant with the Dam Safety Act and these regulations. There will be ongoing savings to the Department yearly, but the savings may decrease over time. After the initial data entry and required submissions are completed, there should be significantly less time required over time to update and revise information to reflect inspections and current dam conditions, leading to a decreased cost savings for the Department.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>Of the 2,100 dams regulated by the Dam Safety Act (Act), approximately 3.5 percent are owned by state agencies including Virginia Department of Wildlife Resources, the Virginia Department of Conservation and Recreation, and the Virginia Department of Corrections.</p> <p>Additionally, 104 dams are maintained by 12 of Virginia's Soil and Water Conservation Districts (Districts). This accounts for nearly 5 percent of the dams regulated by the Act.</p> <p>Currently, there is a cost in time to dam owners and their engineers to fill out paper forms required by the regulations. This current cost will offset a portion of the costs associated with DSIS entry.</p> <p>The same cost assumptions used to determine the fiscal impact to the Department are being used to determine the impact to other state agencies. Therefore, \$649.05 per dam is the anticipated cost to input all data into DSIS, regardless of the type of entity owning or maintaining the dam. No state agency will bear a disproportionate cost per impounding structure.</p> <p>The Department of Conservation and Recreation has an engineering services section which serves as the professional engineer of record for both dams owned by the Department and the dams</p>

	<p>maintained by the Districts. Under this regulatory action, this engineering section will be responsible for submitting all data related to the dams owned by the Department (12 dams) and the dams maintained by the Districts (104 dams). The cost to the Department for these dams to have all information provided through DSIS is anticipated to be \$75,290 over time.</p> <p>After the initial data entry and required submissions are completed, there should be significantly less time required over time to update and revise information to reflect inspections and current dam conditions, reducing the fiscal impact to the agency.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Ensuring that all information is entered accurately and completely into DSIS allows the Department to effectively and accurately provide information to emergency managers or in the case of an imminent dam failure to take actions to protect public safety. Additionally, requiring the dam owner to ensure that all information is provided in DSIS will enable the regional engineers to focus on completing comprehensive reviews of the information submitted by the dam owner to ensure statutory and regulatory requirements are met; to ensure engineering analysis were completed using accepted best engineering practices; and to provide opportunity for the regional engineers to be more effective resources for dam owners.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>Approximately 9 percent of the dams regulated by the Act are owned or maintained by local governments including Fairfax County, Patrick County, City of Newport News and Stafford County.</p> <p>Currently, there is a cost in time to dam owners and their engineers to fill out paper forms required by the regulations. This current cost will offset a portion of the costs associated with DSIS entry.</p> <p>The same cost assumptions used to determine the fiscal impact to the Department are being used to determine the impact to other state agencies. Therefore, \$649.05 per dam is the anticipated cost to input all data into DSIS, regardless of the type of entity owning or maintaining the dam. No locality will bear a disproportionate cost per impounding structure.</p>
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	<p>After the initial data entry and required submissions are completed, there should be significantly less time required over time to update and revise information to reflect inspections and current dam conditions, reducing the fiscal impact to the locality.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Ensuring that all information is entered accurately and completely into DSIS allows the Department to effectively and accurately provide information to emergency managers or in the case of an imminent dam failure to take actions to protect public safety. Additionally, requiring the dam owner to ensure that all information is provided in DSIS will enable the regional engineers to focus on completing comprehensive reviews of the information submitted by the dam owner to ensure statutory and regulatory requirements are met; to ensure engineering analysis were completed using accepted best engineering practices; and to provide opportunity for the regional engineers to be more effective resources for dam owners.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Over 1,100 of the dams regulated by the Act, or nearly 53 percent, are owned and maintained by private owners including homeowners associations or private individuals. Each of these owners will be responsible for ensuring all information required to be provided to the Department is submitted utilizing DSIS.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:  a) is independently owned and operated and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are currently more than 1,100 dams are owned by private owners, such as single individuals or homeowners associations. Under this regulatory action, all private dam owners will be required to ensure the information required to be submitted to the Department under this regulations is provided through DSIS. Currently, there is a cost in time to dam owners and their engineers to fill out paper forms required by the regulations. This current cost will offset a portion of the costs associated with DSIS entry. However, many of the dam owners and their professional engineers are already utilizing DSIS and will not be financially impacted by this regulatory change.</p> <p>There are small firms that specialize in dam safety engineering work, although many of the larger engineering firms also have individuals focused on dam safety work. This regulatory action may increase the amount of work available to engineering firms and an increase of billable</p>



	<p>hours to complete the initial data entry and submissions to the Department.</p> <p>After the initial data entry and required submissions are completed, there should be significantly less time required over time to update and revise information to reflect inspections and current dam conditions, reducing the fiscal impact to the owner and the engineering firms.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>Under this regulatory action, all private dam owners will be required to ensure the information required to be submitted to the Department under this regulations is provided through DSIS. However, many of the dam owners and their professional engineers are already utilizing DSIS and will not be financially impacted by this regulatory change.</p> <p>Currently, there is a cost in time to dam owners and their engineers to fill out paper forms required by the regulations. This current cost will offset a portion of the costs associated with DSIS entry.</p> <p>The estimated cost for these submittals is \$649.05 per dam. The estimated cost for all privately owned dams to be in compliance with this regulatory action is \$713,955. No single individual or homeowners association will bear a disproportionate cost per impounding structure.</p> <p>After the initial data entry and required submissions are completed, there should be significantly less time required over time to update and revise information to reflect inspections and current dam conditions, reducing the fiscal impact to the owner and the engineering firms.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Ensuring that all information is entered accurately and completely into DSIS allows the Department to effectively and accurately provide information to emergency managers or in the case of an imminent dam failure to take actions to protect public safety. Additionally, requiring the dam owner to ensure that all information is provided in DSIS will enable the regional engineers to focus on completing comprehensive reviews of the information submitted by the dam owner to ensure statutory and regulatory requirements are met; to ensure engineering analysis were completed using accepted best engineering practices; and to provide opportunity for the regional engineers to be more effective resources for dam owners.</p>

### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

There are no functional alternative to amending these regulations. This regulatory change will ensure the most equitable and consistent approach for the submission of information to the Department by dam owners. Amending the regulations will strengthen the Dam Safety Program and ensure the safety of both the regulated impounding structure and the public.

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.*

This regulatory change is not anticipated to have an adverse impact on small businesses; thus, no alternative regulatory methods are believed to be applicable to the current action. Some engineering and contracting enterprises that perform dam safety engineering work may be small businesses. The use of an electronic method to submit information to the Department should allow for easier and more efficient submissions and updating to promote clarity and ease of use.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Soil and Water Conservation Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and

any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to: Christine Watlington, 600 East Main Street, 24<sup>th</sup> Floor, Richmond, Virginia 23219; phone: 804.786.3319; fax: 804.371.2630; and [christine.watlington@dcr.virginia.gov](mailto:christine.watlington@dcr.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
4VAC50-20-20 (General Provisions)		F. The forms noted in this chapter are available from the department at the department's website.	<p>The currently language in F. will be stricken.</p> <p>The following language will be added: <i>The owner shall ensure all information required to be submitted under this regulation (4VAC50-20 et seq) be provided to the Department via the electronic Dam Safety Inventory System (DSIS), unless prior approval for an alternative method of submission is granted by the Department.</i></p> <p>The new language will require all dam owners to ensure the information required to be submitted to the Department under this regulations is provided through DSIS. Utilizing DSIS will allow for a more streamlined and consistent submittal and reporting process. Additionally, ensuring that all information is entered accurately and completely into DSIS allows the</p>

			Department to effectively and accurately provide information to emergency managers or in the case of an imminent dam failure to take actions to protect public safety.
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