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Final Regulation Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC25-780
VAC Chapter title(s)	Local and Regional Water Supply Planning
Action title	Amendments pursuant to Chapter 1105 of the 2020 Acts of Assembly
Date this document prepared	October 4, 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*.

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.

The Local and Regional Water Supply Regulation (9VAC25-780) was promulgated in 2005 in accordance with section 62.1-44.38:1. A of the Code of Virginia, which required the State Water Control Board (Board) to establish a comprehensive water supply planning process for the development of local, regional and state water supply plans (plan). This legislative action and subsequent regulation were in response to the 2001-2002 drought during which many water supplies within the Commonwealth experienced inadequate supply to meet demands.

Under the current regulation, localities could choose to develop a plan independently (local plan) or to plan regionally with other localities (regional plan). In total, 48 water supply plans were submitted in 2008, of which 10 were local plans and 38 were regional plans. The majority

of the regional plans consisted of one county and one or more cities or incorporated towns located within the boundaries of the county. Planning regions were not specifically determined based on river basin or with respect to shared sources of water supply.

Amendments to §§ 62.1-44.36, 62.1-44.38, and 62.1-44.38:1 of the Code of Virginia pursuant to Chapter 1105 of the 2020 Acts of Assembly (HB 542) requires localities to plan regionally with other localities (regional plans) and directs the Board to encourage the development of cross-jurisdictional water supply projects and to adopt regulations designating regional planning areas based primarily on river basin. The amendments mandate that each locality in a particular regional planning area shall participate in cross-jurisdictional, coordinated water resource planning, and all localities in each area shall together develop and submit a single regional plan. As amended, § 62.1-44.38 directs the Department of Environmental Quality (Department) to facilitate the creation of regional water plans by ensuring sufficient coordination among localities, providing planning and other assistance, and ensuring that each regional plan identifies risks and proposes cost-effective strategies to address those risks. Further amendments to § 62.1-44.38:1 pursuant to Chapter 331 of the 2022 Acts of Assembly (HB 1297), now require the regulation to provide a mechanism for localities to request a change of its designated regional planning area to an adjoining planning area that is based on water supply source, river basin, or existing or planned cross-jurisdictional relationship. In addition, Chapter 356 of the 2022 Acts of Assembly (SB 657) mandated revision of the term “board” to “department” where appropriate in the regulation. Additional amendments were made to § 62.1-44.38 pursuant to Chapter 36 of the 2023 Acts of Assembly (HB 2095) and Chapter 37 of the 2023 Acts of Assembly (SB 1149) to require the recognition of localities using the Potomac River as a water supply source as a distinct drought evaluation region to incorporate the provisions of the Metropolitan Washington Water Supply and Drought Awareness Response Plan: Potomac River System (Metropolitan Washington Council of Governments, 2000).

This regulatory proposal is required to amend the existing Local and Regional Water Supply Plan Regulation to reflect the amendments made to the Code of Virginia and to conform the existing regulation to changes in Code.

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.

Board – State Water Control Board

Department – Department of Environmental Quality

NOIRA – Notice of Intended Regulatory Action

PDC – Planning District Commission

PFAS – Per- and polyfluoroalkyl Substances

Plan – Regional Water Supply Plan

RAP- Regulatory Advisory Panel

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.

On November 30, 2023, the State Water Control Board approved the amendments to the Local and Regional Water Supply Regulation (9VAC25-780) as final regulations.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There is no change to the information previously reported. This regulatory action is in response to the directives created by Chapter 1105 of the 2020 Acts of Assembly (HB 542), Chapter 331 of the 2022 Acts of Assembly (HB 1297), and Chapters 36 and 37 of the 2023 Acts of Assembly (HB 2095 & SB 1149) that requires the Board to adopt regulations designating regional planning areas based primarily on river basin; provide a mechanism for localities to request a change in regional planning areas; and recognize localities using the Potomac River as a water supply source as a distinct drought evaluation region respectively. In addition, changes have been made to the regulation in response to Chapter 356 of the 2022 Acts of Assembly (SB 657), revising the term “board” to “department” where appropriate in the regulation.

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.

Amendments to section 62.1-44.38:1 of the Code of Virginia (Chapter 1105 of the 2020 Acts of Assembly) direct the Board to adopt regulations designating regional planning areas based primarily on river basins, and state that the regulations shall identify the particular regional planning area in which each locality shall participate, and which local stakeholder groups shall or may participate in coordinated water resource planning. The amendments also require each locality to participate in cross-jurisdictional, coordinated water resources planning, and that each regional planning area submit a singly jointly produced regional water supply plan, which shall clearly identify the region’s water supply risks, propose cost-effective regional strategies to address these risks, and comply with all other applicable criteria and guidelines developed by the Board. Amendments to section 62.1-44.38 direct the Board to predict the risk that each locality and region will experience water supply shortfalls and require the Board to direct the Department in its facilitation of regional planning efforts.

Amendments to § 62.1-44.38:1 (Chapter 331 of the 2022 Acts of Assembly) require the regulation to provide a mechanism for localities to request a change of its designated regional planning area to an adjoining planning area that is based on water supply source, river basin, or existing or planned cross-jurisdictional relationship.

Amendments to § 62.1-44.38 and § 62.1 -44.38:1 (Chapters 36 and 37 of the 2023 Acts of Assembly) requires the regulation to recognize localities that use the Potomac River as a water supply source as a distinct drought evaluation region. Plans for those areas are required to incorporate the provisions of the Metropolitan Washington Water Supply and Drought Awareness Response Plan: Potomac River System (2000).

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 is intended to solve.

The purpose of the proposed amendments is to designate regional planning areas based primarily on river basins and to provide a framework to facilitate improved cross-jurisdictional regional planning as directed by Chapter 1105 of the 2020 Acts of Assembly. Under the current regulation, localities can choose to develop a water supply plan independently (local plan) or may choose to plan regionally with other localities (regional plans). Regional planning enables localities and other water users to assess water sources in the context of their shared use with others in their watershed or region. This approach will promote a more accurate assessment of water sources to meet demands into the future and promotes cost-effective regional projects and strategies to address water supply shortfalls and risks to water supply, such as drought, while also improving the capability of localities to more efficiently pursue new economic development opportunities that often require significant water capacity.

Additionally, the statute requires localities to invite stakeholders including economic development organizations, industrial, commercial, and agricultural water users, among others to participate in plan development. While the previous regulation required a public involvement process, the proposed regulation will allow interested parties to participate more directly.

The goals of the proposed amendments are to require identification of river-basin based regional planning areas within which localities plan regionally, facilitate a process for localities to request a change in planning area, require identification of water supply risks and regional strategies to address those risks, and revision of water supply plan development, submission, and review procedures to align with the new requirements including clarifying the roles and responsibilities for localities, stakeholders, and the Department.

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.

The proposed regulation establishes regional planning areas, identifies the particular regional planning area in which each locality shall participate, identifies a procedure for localities to

request a change to its planning area, and requires localities to invite stakeholder groups to participate in coordinated resource planning. The amendments also incorporate language to address new statutory requirements that the Department facilitate regional water planning efforts, ensure localities coordinate in the development of water supply plans, prioritize allocation of funding to localities that participate in regional planning. The amendments also require that each regional water supply plan clearly identify the regional planning area's water supply risks and propose regional strategies to address those risks. The proposed amendments also revise the existing water supply plan development, submission, and review procedures to accommodate regional plans and other new requirements discussed above, and clarifies the roles of localities, stakeholders, and the Department in the regional planning process. The amendments also revise the term "board" to "department" where appropriate in response to Chapter 356 of the 2022 Acts of Assembly.

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.

Advantages from the proposed regulatory change for the public, including private citizens and businesses include a regional water supply plan scope that addresses sources within a basin that cross jurisdictional boundaries, increased opportunities to participate in the water supply planning process, the potential for more resilient and efficient water supply systems that include regional projects in any evaluation of future infrastructure development, and more consideration of potential risks to water supply beyond deficits. Planning that includes coordinated evaluation of common regional water sources at the regional scale allows for improved optimization of the use of these resources and may increase water availability for future water needs.

Advantages for the agency and Commonwealth include the potential for water supply systems to be more resilient to drought and other water supply risks, requiring fewer emergency related permit modifications or variances. Planning that considers cumulative demands, water supply risks, and promotes regional strategies to addressing water supply deficits and risks establishes local certainty, allowing faster response to economic development opportunities. Effects of this could include smoother and more efficient permit application processes for water supply projects, fewer variances or emergency actions due to drought or other acute conditions, and more efficient and cost-effective use of state and local resources with respect to water supply infrastructure. The proposed amendments will reduce the number of plan submittals from 48 under the current framework to 26, potentially reducing the staff time required for certain administrative tasks related to plan development and review.

Advantages to the regulated community including local governments, water authorities, self-supplied water users, and other stakeholders that elect to participate in the planning process, include a more robust water supply plan that addresses shared water resources that cross local government boundaries, that considers water supply risks and strategies. Clarifications to the plan development, submittal, and review process will address areas of concern or confusion identified during implementation of the existing regulation. Stakeholders that choose to

participate in the plan development have more opportunities to ensure their needs and concerns are considered. Planning regionally may also assist localities in identifying or strengthening regional partnerships to better manage new water use demands associated with growth or unexpected increases in water use demand from new economic development opportunities. Potential disadvantages to this group include eliminating the ability to plan locally for localities that prefer that approach and the potential for additional administrative complexity in plan development as a result of planning with a greater number of localities and stakeholders.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information. There is no federal statute or regulation for water supply planning and therefore the proposed regulation does not introduce requirements more restrictive than federal requirements. Federal law reserves water supply planning and allocation decisions to the states.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

Other State Agencies Particularly Affected

No state agencies are expected to be particularly affected.

Localities Particularly Affected

All counties, cities, and incorporated towns will be affected by this regulatory change but none are expected to be particularly affected.

Other Entities Particularly Affected

No other entities particularly affected.

For purposes of "Locality Particularly Affected" under the Board's statutes

There is no locality particularly affected under the Board's statutes.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate

whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, 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.

No periodic review was announced during the NOIRA.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Ten comment letters were received during the public comment period held May 22 – July 21, 2023. One comment was submitted through the Town Hall portal and nine were submitted directly to the department. Commenting organizations represented local governments, member associations, nonprofit organizations, and other stakeholder groups. Comments were received from the following organizations: (1) Friends of the North Fork of the Shenandoah River (FNFSR) – David H. Kaeuper & David V. Brotman; (2) Mission H2O – Andrea W. Wortzel; (3) The City of Norfolk – Robert Carteris; (4) Fairfax Water – Jamie Bain Hedges; (5) Virginia Municipal Drinking Water Association (VMDWA) – Tim Mitchell; (6) Shenandoah Riverkeeper – Mark J. Frondorf; (7) James River Association (JRA) – James Riverkeeper – Tom Dunlap; (8) Virginia Manufacturers Association (VMA) – Andrea W. Wortzel; (9) City of Richmond – Robert Steidel; (10) Friends of the Rappahannock (FOR) – Brent Hunsinger. The Public Comment Summaries and the Agency Responses have been grouped by subject area in the table provided below and the commenters are noted by commenter numbers listed above.

9VAC25-780: Exceeds Directive in Statute
Comment Summaries
The scope of the Proposed Regulation exceeds the directive in statute and many of the changes have significant policy implications that were not thoroughly vetted during the Regulatory Advisory Panel (RAP) process. (2) (9)
Concerned that some of the proposed amendments go beyond the scope of the statutory directive and the scope of the Notice of Intended Regulatory Action (NOIRA). (3)
Concerned that the proposed language is overly prescriptive, particularly the language requiring consistency with the State Water Resources and Supply Plan. In a few instances, the proposed regulation extends well-beyond the changes advertised in the Notice of Intended Regulatory Action (NOIRA). (4)
Agency Response
The scope of the mandate HB542/Chapter 1105 (2020 General Assembly) and NOIRA were discussed within the RAP. The proposed amendments are necessary to fully meet the

<p>directives under HB542, which are to ensure local coordination in development of a regional water supply plan, provide technical assistance, ensure the identification of water supply risks and propose strategies to address those risks. Where commenters identified specific areas thought to exceed statutory directives, the Department addresses those directly in the following comment responses.</p>
<p>9VAC25-780: Guidance</p>
<p>Comment Summaries</p>
<p>During the RAP process, DEQ noted that the plans need only “consider” the risks listed in 9VAC25-780 125 B, and that it would develop guidance to further explain how these items were to be addressed. Also, uncomfortable having the regulation finalized before such guidance is available for review and comment. (2) (9)</p>
<p>Additional guidance from the department would be very useful as we commence the process of preparing new regional water supply plans. (5)</p>
<p>Agency Response</p>
<p>Any guidance published by the Department will follow all established public review processes. DEQ will seek feedback from stakeholders for any guidance developed to aid in development of water supply plans.</p>
<p>9VAC25-780: Resources/Funding</p>
<p>Comment Summaries</p>
<p>Concerned over possible funding limitations for DEQ, Local Governments, and PDCs participating in the Regional Water Supply Planning Process. (7)</p>
<p>The fiscal capacity of DEQ, local governments and Planning Districts are already strained. Additional funding should be authorized and allocated to help cover facilitation costs for the development of these plans and to combine plans into a comprehensive dynamic basin wide plan. (10)</p>
<p>Agency Response</p>
<p>The department acknowledges the fiscal capacity of the agency, local governments, and Planning Districts are limited. A total of \$462,000 in funding has been budgeted for planning activities associated with the regionalization of the 26 regional planning areas upon final adoption of the regulation.</p>
<p>9VAC25-780: Support for the Process and the Proposed Amendments</p>
<p>Comment Summaries</p>
<p>Support for the vital need for a comprehensive water supply planning process, and for local, regional, and state water supply plans to begin employing the river basin approach. Regional plans must be consistent with Virginia’s goals and proposed regulations. (1)</p>
<p>Support for the changes related to administration of the water supply planning process (formation of regional planning areas, submission of the plans, assistance for smaller localities, and the approval process for plans). (2) (9)</p>
<p>Supports revising the Regulation to update the water supply planning process in accordance with the statutory directive to DEQ pursuant to Chapter 1105 of the 2020 Acts of Assembly (HB542). (3)</p>
<p>Support for the Department’s efforts to facilitate collaborative and productive regional water supply planning among localities and other stakeholders. Overall, the proposed planning</p>

<p>regulation represents a significant improvement over the version that is presently codified. Expressed general support for the proposed regulation. (5)</p> <p>Support moving to a river basin approach in developing a comprehensive water supply planning process. (6)</p> <p>Supports the goal of basin-wide water supply planning. This transition from a single county/locality planning framework to one of regional water supply planning areas will better assist the state in identifying and preparing for water supply issues at a scale more reflective of a river system and connected watershed. (7)</p> <p>These amendments are a positive step towards comprehensive water supply planning. We are glad to see that public participation will be encouraged in the development of these plans. It is imperative that we take into account all beneficial uses, including aquatic habitat, when planning for water supply needs. (10)</p>
<p>Agency Response</p>
<p>The department acknowledges the comments and the statements of support for the progress toward a more comprehensive water supply planning process, facilitation of collaborative and productive regional water supply plans, a basin-wide approach, and a consistent water supply planning process with enhanced public participation, and an increased focus on consideration of all beneficial uses.</p> <p>The department also acknowledges support for implementation of the statutory requirements pursuant to Chapter 1105 of the 2020 Virginia Acts of Assembly.</p>
<p>9VAC25-780-45: Regional Water Supply Plan Areas/Units Designation</p>
<p>Comment Summaries</p>
<p>Concerned that designating two (in lieu of one) regional water supply planning areas in 9VAC25-780-45 for the North Fork of the Shenandoah River (and for the South Fork) may not be appropriate, efficient, or pragmatic, and does not take advantage of the available science, nor recognize the opportunities to leverage resources across current jurisdictions – and therefore falls short in securing the public interest. Also concerned about the resources required to coordinate between regional planning areas. (1)</p> <p>Divvying up the Shenandoah watershed into two distinct regional planning areas (9VAC25-780-45) based upon political boundaries runs counter to developing a comprehensive plan. The Shenandoah watershed is considered a single hydrological unit in other water resources planning. Developing two separate planning documents could lead to duplicative efforts and increased financial burden. A more unified approach may produce a better planning document for fewer dollars and reduced impact upon staff. Separating the planning for the Shenandoah watershed creates the risk that planning approaches may not be properly coordinated and integrated. If the department moves forward with its proposal to divide the watershed into two parts, we request that DEQ allow the Shenandoah Riverkeeper to join both stakeholder groups responsible for developing the local and regional water supply plans for the Shenandoah watershed. (6)</p> <p>Concerned with amendments subdividing the James River watershed into 7 regional water supply planning areas (9VAC25-780-45). This dissection of the watershed ignores the natural continuity of the James River system and leaves high potential for incongruity in planning deliverables, such as emphasis on beneficial uses like aquatic habitat or considerations for</p>

anadromous fish species that call the James home. Questions remain as to how the resultant plans for sister regional water supply planning areas in the James River watershed will address water demand projections, water conservation initiatives, and supply projects, which do not resolve neatly at county lines and district boundaries. (7)

Strongly objects to Louisa County's inclusion in the 9VAC25-780-45 B 6 "Middle James River 1 planning area" or in any James River Basin regional planning area. Louisa County is almost wholly within the York River Basin. Louisa County and Fluvanna County formed the James River Water Authority (JRWA) which proposed an interbasin transfer project to divert water from a point on the James River in Fluvanna County to serve Louisa County and address its projected water supply shortfalls. It is easy to foresee conflicts between the City's water rights, the proposed interbasin transfer, and Middle James River instream flows. Including Louisa County in any James River regional planning area to enable the proposed interbasin transfer is contrary to law and sound regional water supply planning. (9)

Concerned that the amendments divide the Rappahannock Basin (9VAC25-780-45) into 5 regional water supply planning areas. This ignores the fact that river basins are interconnected systems where decisions made in one region can have a profound effect on other regions. A whole basin approach would be beneficial to ensure that future water needs are accounted for. The regional water supply plans should be combined into a dynamic plan that is adjusted as conditions in the watershed change. (10)

Agency Response

The proposed delineation of regional water supply planning areas was created based on existing drought management areas and presented to the Regulatory Advisory Panel (RAP) members for discussion. The regions were then identified by the RAP to optimize the coordination among localities and to create manageable sized planning areas, and to enhance the manageability of planning within the basins.

In addition to scale, and shared water sources, manageability included consideration of existing political, economic, historic, water planning, or other relationships across localities. Planning areas were thereby designed to maximize planning around shared sources and risks, while minimizing the impact of planning area changes on localities.

The department acknowledges the concerns and realizes that there may need to be coordination and collaboration across the proposed delineated areas to develop a working water supply plan for an area.

As included in 9VAC25-780-50 B, regional planning units shall develop a process for other stakeholder participation in the preparation of a regional water supply plan. Stakeholders are defined in 9VAC25-780-30 as industrial and agricultural water users, public water authorities, private water suppliers, developers and economic development organizations, and conservation and environmental organizations.

9VAC25-780-45 C provides a mechanism for a local government to request that the department change its designated regional planning area, upon review and approval. The allowance for a request was mandated directly by HB1297/Chapter 331 (2022 General Assembly).

No changes are being made to the regulation in response to these comments.

9VAC25-780-45 C: Regional Planning Area Redesignation

Comment Summaries
The Board should revise 9VAC25-780-45 C to provide more transparency for administrative DEQ regional planning area redesignation. Administrative redesignations should only be approved after DEQ provides notice and opportunity to comment to other regional planning areas adjoining the “two affected planning areas”. Request for notice and an opportunity to comment if Louisa County seeks to be administratively redesignated into a James River Basin planning area. Also respectfully requests that downstream localities in adjoining regional planning area should be provided notice and opportunity to comment on proposed administrative redesignation. (9)
Agency Response
9VAC25-780-45 C provides a mechanism for a local government to request that the department change its designated regional planning area, upon review and approval. The allowance for a request was mandated directly by HB1297/Chapter 331 (2022 General Assembly). No changes are being made to the regulation in response to this comment.
9VAC25-780-50: Innovative Projects
Comment Summaries
The proposed regulation should encourage the exchange of information regarding innovative water resource management projects such as the Hampton Roads Sanitation District’s Sustainable Water Initiative for Tomorrow (SWIFT). (8)
Agency Response
The department acknowledges the comment and supports the inclusion of local project specific information in the regional water supply plan. No changes are being made to the regulation in response to this comment.
9VAC25-780-50 H: Supporting Documents
Comment Summaries
Concerned about language in 9VAC25-780-50 H 1 requiring supporting documents which requires “A copy of supporting documents including any revisions to comprehensive plans, water supply plans, water and sewer plans, and other local ordinances necessary to implement the regional water supply plan.” (4) 9VAC25-780-50 H provides a list of “documents and supporting materials” that must be appended to regional water supply plans. Subsection 50 H 2 through 50 H 5 refer to documents or information that are reflected in other sections of the proposed regulation as substantive or procedural requirements of the plans. 9VAC25-780-50 H 1 requires the submission of a broad category of “supporting documents” with a list of examples, including comprehensive plans, sewer plans, and local ordinances. The examples referenced in the subsection are all public documents. There is no objection to providing supporting information and documents with regional water supply plans for reference purposes. It is foreseeable that the proposed regulation, as written, could be misconstrued as subjecting these “supporting documents” to the same manner of review and approval as the substantive elements of regional water supply plans. Requests that “supporting documents” referenced in this subsection do not become subject to review and approval by the Department or Board by virtue of the fact that they are appended to a regional water supply plan. (5)
Agency Response
The proposed language was developed as part of the RAP process.

The balance of the documents identified in this section are all representative of substantive or procedural requirements of the plans. The items identified in 50 H 1 are “supporting” materials to further document the local process and procedures to implement the regional water supply plans.

The regulatory language has been revised to clarify that the document to be submitted are reference documents appended to and submitted with the plan and are not approved by the board but are used to verify compliance with the plan content and are for reference only.

Proposed change to regulation in response to this comment:

9VAC25-780-50 H. The following documents and supporting materials shall be appended to and submitted with the regional water supply plan [for reference].

9VAC25-780-60 8: Beneficial Use and Water Use Conflicts

Comment Summaries

9VAC25-780-60 8 as proposed includes a reference to “beneficial use” conflicts. The existing regulatory provision speaks to conflicts between water supply uses, consistent with the intent of § 62.1-44.37, which address the Board’s role in resolving conflicts between water uses, whereas the proposed language would open the door to consideration of additional uses, which change is inconsistent with such statutory intent and fails to consider the statutory preference for human consumptive use. Suggest removing language related to beneficial uses and reverting to the original regulatory language. (3)

9VAC25-780-60 8 adds the term “beneficial use” to modify conflicts and adds a reference to the State Water Resources and Supply Plan (Plan). These changes do not address any particular directive of the changes required by HB542. This should be removed, and item #8 remain as it is currently in the regulation. (4)

9VAC25-780-60 lists actions the Department will take to assist local governments in developing regional water supply plans. In the existing version of the regulation Section 60 7 states that the Department will provide local governments with “any information regarding known conflicts relating to the development of alternatives.” The proposed revision modifies this subsection by adding additional qualifying language, as follows: “any information regarding known beneficial use conflicts relating to the development of alternatives as identified in the most recent State Water Resources and Supply Plan.” Also recommends that the current regulatory text be reinstated. By amending the text to include “conflicts” with all potential: beneficial uses”, the proposed revision materially alters the meaning of the subsection and departs from the intent of the statute. (5)

Agency Response

DEQ is mandated by § 62.1-44.38:1 to establish a comprehensive water supply planning process that is designed to ensure that adequate and safe drinking water is available to all citizens of the Commonwealth, and encourage, promote, and protect all other beneficial uses of the Commonwealth’s water resources. Section 62.1-44.3 defines “Beneficial Use” as meaning both instream and off stream uses. Instream beneficial uses include but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and critical and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia’s waters. Off stream beneficial uses include, but are not

<p>limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial and industrial uses.</p> <p>Inclusion of the term “beneficial use” defines the scope of “conflicts” to be considered as they are previously defined in 9VAC25-780-60 8.</p> <p>No changes are being made to the regulation in response to these comments.</p>
<p>9VAC25-780-70: Design Capacity versus Designed</p>
<p>Comment Summaries</p>
<p>9VAC25-780-70 as proposed changes the term “design capacity” to “designed”. Why was this term changed? (3)</p> <p>9VAC25-780-70 describes existing water source information to be included in regional water supply plans. Throughout the section, the term “design capacity” was replaced by “designed” in the proposed regulation. Request that the Department confirm this understanding, as discussed during the RAP, of the term “designed” is intended only to clarify and not alter longstanding meaning of this section. (5)</p>
<p>Agency Response</p>
<p>The department confirms that the change in the term from “design capacity” to “designed” is a stylistic change that is not intended to alter the meaning. During the development of the proposed regulation, DEQ received feedback stating that the original language was unclear.</p> <p>No changes are being made to the regulation in response to these comments.</p>
<p>9VAC25-780-70: Self-Supplied Users</p>
<p>Comment Summaries</p>
<p>The way 9 VAC 25-780-70 is drafted, localities provide the information about their own water sources, but information for industrial and agricultural self-supplied users is provided by DEQ. Localities are to review this information and provide information regarding any withdrawals not included in the DEQ dataset. However, the regulation does not recognize the need for localities to confirm the information with the self-supplied users within their jurisdiction. This is critical to ensure that accurate information is used, and that input from municipal and agricultural water users is included in the planning process. (2) (9)</p> <p>Concerned about the uncertainty in the identification and accounting of unpermitted self-supplied users of more than 300,000 gallons of water in any month, including the agricultural community. (7)</p> <p>Concerned about how water usage by manufactures will be documented and protected in the water supply planning process. Pursuant to 9VAC25-780-70 E of the proposed regulation, localities will receive information from DEQ regarding “self-supplied users of more than 300,000 gallons of surface water in any one month”. Localities are to add any additional known self-supplied users. The provision does not require the locality to confirm DEQ’s information with the identified self-supplied users. It is important that the water usage information is verified with the specific industrial users. (8)</p>
<p>Agency Response</p>
<p>The DEQ dataset includes water users who report through existing permitting or annual water withdrawal reporting regulation requirements, including industrial and agricultural self-supplied users as required by statute. The DEQ dataset described in 9VAC25-780-70 also includes data</p>

collected through water supply plan submission. Local government’s review of the values provided in the DEQ dataset is provided for by 9VAC25-780-70 F. Localities, regions, and other water users are encouraged to provide updated information to DEQ to confirm accuracy of data.

To assist the development of regional water supply plans, each local government shall review data provided by the department for self-supplied users of more than 300,000 gallons in one month. Local governments shall review and provide information for any locally known withdrawals of more than 300,000 gallons in any one month not identified in the dataset provided as per 9VAC25-780-70.

No changes are being made to the regulation in response to these comments.

9VAC25-780-70 & 9VAC25-780-90: Exempt Withdrawals

Comment Summaries

Section 9VAC25-780-70 requires the identification of “existing water source information.” Additionally, 9VAC25-780-90 outlines the information to be provided for “existing water resource information.” Grandfathered withdrawals should be included in one of these sections. Documentation of such grandfathered withdrawals is important to ensure that existing water withdrawals are preserved and protected, that the planning process adequately accounts for these protected water withdrawal amounts, and to aid localities and DEQ in assessing the viability of proposed alternative sources of water or future water withdrawal requests in light of these protected withdrawals. The Proposed Regulation should specifically recognize the inclusion of such information in the regional plans, including both the current volume of withdrawals and the maximum intake capacity associated with the withdrawal, which is the amount protected by Va. Code § 62.1-44.38:22. B (2) (9)

Include a reference to grandfathered withdrawals either in 9VAC25-780-70 or 9VAC25-780-90. The Regulation should call for the inclusion in regional plans of information pertaining to the location of grandfathered withdrawals, and the current volume and maximum intake capacity of such withdrawals. Without the inclusion of information on grandfathered withdrawals, the water supply planning process will be incomplete, and the resulting regional plans will be inaccurate, as they will not adequately account for such withdrawal rights. (3)

The provision does not address the fact that many self-supplied manufacturers are grandfathered from the DEQ water withdrawal permitting process. Documentation of such grandfathered withdrawals is important to ensure that existing water rights are preserved and protected, that the planning process adequately accounts for these protected water withdrawal amounts, and to aid localities and DEQ in assessing the viability of proposed alternative sources of water or future water withdrawal requests in light of these protected water withdrawal amounts. The Proposed Regulation should specifically recognize the inclusion of such information in the regional plans. (8)

Agency Response

The purpose of 9VAC25-780 is to establish a comprehensive water supply planning process for the collection of certain data by localities and the development of regional and state water supply plans. The process does not and is not intended to validate or invalidate any specific exempt claim amount or other water rights claims exempt from Virginia Water Protection (VWP) permit requirements as defined within Va. Code § 62.1-44.15:22 B, and 9VAC25-210-310. A.

<p>DEQ acknowledged this concern within the RAP, stating that exempt amounts or demands would be a form of information reporting requirements and not any sort of claim or adjudication.</p> <p>DEQ believes that information collected and developed as part of the water supply planning process, including but not limited to, 9VAC25-780-70, 9VAC25-780-80 and 9VAC25-780-100 offers an opportunity for local governments and water users to provide relevant information on existing water source capacity, future water withdrawals and exempt withdrawals.</p> <p>No changes are being made to the regulation in response to these comments.</p>
<p>9VAC25-780-70: Land Uses</p>
<p>Comment Summaries</p>
<p>Regional water supply plans need to take into account new land uses and industries that will use large amounts of water. (10)</p>
<p>Agency Response</p>
<p>Existing and proposed water uses are incorporated into water supply plans through 9VAC25-780-70, 9VAC25-780-80 and 9VAC25-780-100.</p> <p>No changes are being made to the regulation in response to this comment.</p>
<p>9VAC25-780-90: Water Availability</p>
<p>Comment Summaries</p>
<p>References to “water availability” determinations in regional water supply plans and the State Water Resources and Supply Plan should be removed. The Proposed Regulation outlines the list of “existing water resource information” that localities must include in their regional plans. 9 VAC 25-780-90. Subsection 11 of this provision references “water availability based on in-stream flow necessary to support aquatic life provided by the department as identified in the most recent version of the State Water Resources and Supply Plan.” This provision should be struck from the regulation. Use of such information is entirely inappropriate. The State Water Resources and Supply Plan itself acknowledges that this information is not sufficiently developed to be used in the water supply planning context. Accordingly, the requirement to use this information in regional water supply plans is not appropriate and should be stricken from the Proposed Regulation. (2) (9)</p> <p>The language proposed in 9VAC25-780-90 B is inappropriate and should be removed. It requires inclusion of information on “water availability” based on in-stream flow necessary to support “aquatic life” from the State Water Resources and Supply Plan that was first included in the 2020 version of the Plan (finalized in 2022) and has not been vetted or substantiated. (3)</p> <p>9VAC25-780-90 B 11, regarding in-stream flow to support aquatic life as identified in the most recent State Water Resources and Supply Plan should be removed. This introduces a new term, “water availability”, reducing the clarity of the regulations for those entities subject to the regulation. The term “water availability” is not defined in the regulation and interpretation of these requirements could be problematic. The quantity of water “available” in the context of regional water supply planning must be made in consideration of, among other things, the statutory priorities for “human consumption” (62.1-44.36(2)) and “domestic and other existing beneficial uses” (62.1-44.15:22(A)), as well as the existence of withdrawals that are not subject to VWP permitting (62.1-44.15:22(B)).(4)</p>

9VAC25-780-90 B provides a list of informational elements required to be included in the “existing water resource” sections of regional water supply plans. The first ten elements of the list pertain to existing factual information, such as the presence of sensitive species and the locations of point source discharges. 9VAC25-780-90 B 11 is unlike the first ten elements, however. This subsection requires a discussion of “water availability based on in-stream flow necessary to support aquatic life...” The quantity of water “available” for use by localities is a regulatory determination that must be made in consideration of, among other things, the statutory priorities for “human consumption” and “domestic and other existing beneficial uses” as well as the existence of withdrawals that are not subject to VWP permitting and existing water rights. Suggest deleting 9VAC25-780-90 B 11. (5)

Agency Response

DEQ is mandated by § 62.1-44.38:1 to establish a comprehensive water supply planning process that is designed to ensure that adequate and safe drinking water is available to all citizens of the Commonwealth, and encourage, promote, and protect all other beneficial uses of the Commonwealth’s water resources. Section 62.1-44.3 defines “Beneficial Use” as meaning both instream and off stream uses. Instream beneficial uses include but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and critical and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia’s waters. Off stream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial and industrial uses.

Data related to instream flow to support aquatic life provided within the State Water Resources and Supply Plan have been peer-reviewed and published. Publications include Kleiner et al. (2020) which can be accessed at <https://doi.org/10.1111/1752-1688.12876>, Rapp et al. (2020) which can be accessed at <https://doi.org/10.1111/1752-1688.12877>, and other supporting information from the Department of Wildlife Resources can be found here <https://dwr.virginia.gov/wp-content/uploads/media/Surface-Water-Intake-Design-Operation-Standards.pdf>. Use of this information is to inform water supply plan development and adds to the State’s role within 9VAC25-780-60 to provide planning, policy, and technical assistance to each regional planning area.

Water availability, as included in the State Water Resources and Supply Plan, includes consideration of human consumption, domestic and other beneficial uses, and the existence of withdrawals not subject to VWP surface water withdrawal permitting.

In response to this comment the language within 9VAC25-780-90 is being revised from “aquatic life” to read “fish and wildlife resources and habitat” to be consistent with the definition of instream beneficial use at § 62.1-44.3. In addition, the department will provide regional planning units with information related to fish and wildlife and habitat included within the most recent State Water Resources and Supply Plan as required by 9VAC25-780-60, for consideration by local governments.

Proposed change in regulation in response to this comment:

9VAC25-780-90 B 11: ~~Potential threats to the existing water quantity and quality, other than those from above~~ Water availability based on in-stream flow necessary to support ~~aquatic life~~

<p>provided by the department as identified in the most recent version of the State Water Resources and Supply Plan fish and wildlife resources and habitat].</p>
<p>9VAC25-780-90: Water Availability - Tidal Tributaries and Estuarine Systems</p>
<p>Comment Summaries</p>
<p>Concerned about the use of water availability as identified in the State Water Resources and Supply Plan for attributing in-stream flow levels necessary to support aquatic life for tidal tributaries and estuarine systems. (7)</p>
<p>Agency Response</p>
<p>The department acknowledges the comment and concern. The most recent State Water Resources Plan does not include modeling of in-stream flows in tidal tributaries or estuaries. Additionally, language referencing the State Water Resources Plan has been removed from Section 90 B 11, as outlined in the comment response above for 9VAC25-780-90: Water Availability.</p>
<p>9VAC25-780-100 A: References</p>
<p>Comment Summaries</p>
<p>Reinsert the reference to the American Water Works Association (AWWA) manual in 9VAC25-780-100. While additional methodologies may be appropriate, without a reference to an industry-recognized and accepted publication as an example of an acceptable methodology, the Regulation lacks clarity that local governments need to ensure that they can prepare demand projections in compliance with the requirements of this regulatory provision. (3)</p> <p>9VAC25-780-100 A of the proposed regulation states that regional water supply plans should incorporate 30-year demand projections using “methodologies outlined by the department consistent with 9VAC25-780-60.” Section 100 A of the existing regulation states that demand projections should be consistent with the methodology developed by the American Water Works Association (AWWA). The AWWA’s demand projections guidance remains useful, authoritative, and appropriate. Suggestion that the reference be retained in the revised regulation. (5)</p>
<p>Agency Response</p>
<p>The department acknowledges the comment and concern. This revision was discussed during the RAP process and the department has removed the reference to allow for other methodologies, as approved by the department. The American Water Works Association (AWWA) manual continues to be an available methodology.</p> <p>No changes are being made to the regulation in response to these comments.</p>
<p>9VAC25-780-100 I 3: Alternatives Analysis – Water Availability</p>
<p>Comment Summaries</p>
<p>Recommend that 9VAC25-780-100 I 3 be deleted. Water availability is a regulatory determination governed by other regulations and is not appropriately included in regional water supply plans or the Regulation governing same. (3)</p> <p>The new language added to 9VAC25-780-100 in I 3 related to alternatives should be removed. This language includes requirements to include “water availability” and a more detailed assessment of alternatives. (4)</p>

<p>9VAC25-780-100 I 3 can be deleted to eliminate the problematic reference to water “availability” without undermining the intent of the alternative analysis process. The preceding subsection (100 I 2) provides that the alternatives analysis should evaluate options that “may satisfy” the shortfall, including an estimated quantity of water that could be derived from each. That provision renders subsection 100 I 3 unnecessary. (5)</p>
<p>Agency Response</p>
<p>Water availability, as included in the State Water Resources and Supply Plan, includes consideration of human consumption, domestic and other beneficial uses, and the existence of withdrawals not subject to VWP surface water withdrawal permitting.</p> <p>Water availability as discussed in 9VAC25-780-100 I 3 is relevant to the practicability of an alternative, and the capacity of a water source to meet current or projected demands.</p> <p>No changes are being made to the regulation in response to these comments.</p>
<p>9VAC25-780-100 I 4: Available Alternative</p>
<p>Comment Summaries</p>
<p>Requests department confirm understanding of 9VAC25-780-100 I 4 (i). Understanding includes that the reference to an “available” alternative in 9VAC25-780-100 I 4 (i) refers to whether an alternative is available. (5)</p> <p>Additionally, because “availability” and “practicability” are closely related concepts commonly used in other alternative analysis regulations (e.g., 9VAC25-210-360 3 c), a minor change to the structure of the subsection would be useful to clarify its meaning. (5)</p> <p>Suggested revision: <i>“An assessment of whether the identified alternatives are (i) available and practicable in terms of cost, logistics, and existing technology; (ii) avoid and minimize the need for water to the extent practicable; and (iii) are sufficient to satisfy the need alone or in combination with other short-term or long-term alternatives.”</i> (5)</p>
<p>Agency Response</p>
<p>The department agrees and has revised the regulation to clarify the language included in this section.</p> <p>Proposed change in regulation in response to this comment:</p> <p><u>9VAC25-780-100 I 4: An assessment of whether the identified alternatives are (i) available [;(ii) and] practicable in terms of cost, logistics, and existing technology; [(iii) (ii)] avoid and minimize the need for water to the extent practicable; and [(iv) (iii)] are sufficient to satisfy the need alone or in combination with other short-term or long-term alternatives.</u></p>
<p>9VAC25-780-100 J: Projected Water Demand – Cumulative Demand</p>
<p>Comment Summaries</p>
<p>Delete the word “address” in 9VAC25-780-100 J and replace with either “include a discussion of” or “discuss”. The proposed word “address” is ambiguous and could be construed to require that regional plans be prepared assuming the veracity of, and in reliance upon, the information provided by DEQ. (3)</p> <p>9VAC25-780-100 J requires that regional water supply plans “address”, if available, any cumulative demand, use conflict, on in-stream flow information identified by the board in the most recent review of the regional water supply plan or most recent version of the State Water Resources and Supply Plan. This is problematic because it extends well-beyond “identifying”</p>

<p>conflicts, to potentially requiring the regional planning entity to accept the DEQ Staff developed information on conflicts when such a conflict is disputable. (4)</p> <p>9VAC25-780-100 J requires that regional water supply plans “address”, if available, any cumulative demand, use conflict, or in-stream flow information identified by the board in the most recent review of the regional water supply plan or most recent version of the State Water Resources and Supply Plan...”. The verb “address” is ambiguous in this context. To preserve the autonomy and judgement of regional planning units, this section should be clarified by changing “address” to “discuss”. (5)</p>
<p>Agency Response</p>
<p>This revision was discussed during the RAP process. DEQ notes that the term “consider” is used in similar requirements in the regulation and is replacing the term “address” with the term “consider”.</p> <p>Proposed change in regulation in response to this comment:</p> <p>9VAC25-780-100 J: A regional water supply plan shall include address <u>consider</u>, if available, any cumulative demand, use conflict, or in-stream flow information developed <u>identified by the board in the most recent review of the regional water supply plan or most recent version of the State Water Resources and Supply Plan</u> pursuant to 9VAC25-780-140 G.</p>
<p>9VAC25-780-110: Water Demand Management Strategies</p>
<p>Comment Summaries</p>
<p>Water reclamation and reuse is an important means of conserving water sources and should be recognized in 9VAC25-780-110 of the proposed regulation as one of the water demand management strategies that should be assessed in the planning process. (8)</p>
<p>Agency Response</p>
<p>Water reclamation and reuse is a recognized means of conserving water and is a water demand management strategy. 9VAC25-780-110 C addresses water conservation practices, techniques and technologies but does not go into detail of what those entail. Specific water conservation practices were not included in the RAP discussions.</p> <p>No changes are being made to the regulation in response to this comment.</p>
<p>9VAC25-780-125: Exempt Withdrawals</p>
<p>Comment Summaries</p>
<p>The risk assessment required in 9VAC25-780-125 has the effect of requiring reviews of existing water sources, all of which should either be permitted (and thus previously subject to these criteria already) or are grandfathered pursuant to VA Code § 62.1-44.15:22 B and thus exempt from that regulatory review. These changes suggest that the analysis required could call into question these existing water resources rather than focusing on future alternative water sources. (2) (9)</p>
<p>Agency Response</p>
<p>The purpose of 9VAC25-780 is to establish a comprehensive water supply planning process for the collection of certain data by localities and the development of regional and state water supply plans. The process does not and is not intended to validate or invalidate any specific exempt claim amount or other water rights claims exempt from VWP surface water withdrawal requirements as defined within Va. Code § 62.1-44.15:22 B, and 9VAC25-210-310. A.</p>

DEQ acknowledged this concern within the RAP, stating that exempt amounts or demands would be a form of information reporting requirements and not any sort of claim or adjudication.

DEQ believes that information collected and developed as part of the water supply planning process, including but not limited to, 9VAC25-780-70, 9VAC25-780-80 and 9VAC25-780-100 offers an opportunity for local governments and water users to provide relevant information on existing water source capacity, future water withdrawals and exempt withdrawals.

No changes are being made to the regulation in response to these comments.

9VAC25-780-125: Water Supply Risks

Comment Summaries

The focus of HB 542 (2020 General Assembly) was ensuring that there were consistent methodologies used to calculate supply and demand. It was based on a recommendation to improve the accuracy of predicted supplies and demands to assess the risk of shortage; it was not focused on the creation of new criteria for determining risks (9VAC25-780-125). (2) (9)

The provision contained in 9VAC25-780-125 B outlines “potential water supply risks: that must be “considered”. This provision is inconsistent with HB 542, which clearly is related to the risk of water supply shortfalls in situations where the projected demand cannot be met by the available supply. (2) (9)

The Proposed Regulation also requires that regional plans develop strategies to address the risks identified in 9VAC25-780-125 B. This also goes beyond HB 542 and the original water supply planning legislation, which is focused on identifying alternative sources and promoting water demand management/augmenting existing sources. (2) (9)

The list of risks identified in 9VAC25-780-125 that the regional planning unit must consider remains problematic. The list outlined in the proposed regulatory language is overly broad and goes beyond the purpose and scope of local water supply planning. 9VAC25-780-125 B 3-7 should be removed. (4)

Several parties to the RAP process expressed concern about the list of “water supply risks” that must be evaluated during the planning process (9VAC25-780-125 B). (5)

Agency Response

HB542/Chapter 1105 (2020 General Assembly) specifies that the Board shall “estimate, using a data-driven method that includes multiple reasonable assumptions about supply and demand over varying time frames, the risk that each locality and region will experience water supply shortfalls”. In addition, it states that “Each locality in a regional planning area shall develop and submit a...regional water supply plan...such regional water supply plan shall (i) clearly identify the region’s water supply risks and (ii) propose regional strategies to address those water supply risks.”

The scope of the mandate HB542/Chapter 1105 (2020 General Assembly) and NOIRA were discussed within the RAP. The proposed amendments are necessary to fully meet the directives under HB542, which are to ensure local coordination in development of a regional water supply plan, provide technical assistance, ensure the identification of water supply risks and propose strategies to address those risks.

The department agrees this language should be revised to be consistent with statutory language. Language has been revised, included below, to address concerns and make clear

<p>the requirement that regional water supply plans address, as required in 9VAC25-780-125 only those risks relevant to the regional planning unit.</p> <p>Proposed change in regulation in response to this comment:</p> <p>9VAC25-780-125 A. <u>A regional water supply plan shall identify water supply risks [relevant to the regional planning unit, using readily available information as defined in 9VAC25-780-50 C]. For each water supply risk identified, the likelihood and severity of the impact on water supply in the regional water supply plan shall be evaluated.</u></p> <p>9VAC25-780-125 B. <u>In [evaluating-identifying] potential water supply risks [relevant to the regional planning unit], the regional planning unit shall consider, at a minimum, the following:</u></p>
<p>9VAC25-780-125 B: Beneficial Use</p>
<p>Comment Summaries</p>
<p>Inclusion of item 9VAC25-780-125 B 5 is not appropriate based on the statutory prioritization of human consumption above other uses. (3)</p>
<p>Agency Response</p>
<p>DEQ is mandated by § 62.1-44.38:1 to establish a comprehensive water supply planning process that is designed to ensure that adequate and safe drinking water is available to all citizens of the Commonwealth, and encourage, promote, and protect all other beneficial uses of the Commonwealth’s water resources. § 62.1-44.3 defines “Beneficial Use” as meaning both instream and off stream uses. Instream beneficial uses include but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and critical and aesthetic values.</p>
<p>No changes are being made to the regulation in response to this comment.</p>
<p>9VAC25-780-125 B: Language</p>
<p>Comment Summaries</p>
<p>9VAC25-780-125 B is generally problematic, as it is unclear how the directive to “consider” the enumerated risks will be interpreted and applied by DEQ, and how regional planning units and their constituent localities will be expected to comply with such a directive. (3)</p>
<p>Agency Response</p>
<p>This revision was discussed during the RAP process. DEQ notes that the term “consider” is used in similar requirements in the regulation. Changes to 9VAC25-780-125 A. clarify that only risks relevant to the regional planning unit be identified, and only readily available information as defined in 9VAC25-780-50 C must be considered.</p>
<p>No additional changes are being made to the regulation in response to this comment.</p>
<p>9VAC25-780-125 B: Other Water Supply Risks</p>
<p>Comment Summaries</p>
<p>Regarding the identification of water supply risks and proposed regional strategies in 9VAC25-780-125, we appreciate the inclusion of climate change as a recognized risk. However, we recommend expanding the list of identified water supply risks to include Harmful Algal Blooms, low-water induced bacterial contamination and PFAS. (6)</p>
<p>Agency Response</p>
<p>The recommended expanded list of water supply risks such as harmful algal blooms or PFAS, are examples of those “other” risks listed in 9VAC25-780-125 B 8 that may be identified by the local government for inclusion in a regional water supply plan if applicable.</p>

No changes are being made to the regulation in response to these comments.
9VAC25-780-125 B: Inclusion of Water Supply Risks
Comment Summaries
Agrees with the inclusion of the effects of climate change and the need for climate resiliency as water supply risks (9VAC25-780-125). Also encouraged that these risks will be identified and evaluated in these regional water supply plans. (7)
Agency Response
The department acknowledges the comment and the statement of support for identification and evaluation of water supply risks related to climate.
9VAC25-780-140 C: Compliance Items
Comment Summaries
Modify 9VAC25-780-140 C by deleting all but the first sentence, such that subsection C would read: "C. The board will assess the compliance of submitted regional water supply plans with this chapter." (3)
Our understanding from the RAP was that the Department had no intention of adding implied plan requirements through the review criteria in 9VAC25-780-140. Concern about the potential for confusion, conflicts, and mistakes caused by this section. 9VAC25-780-140 states that the Board will review regional supply plans for "demonstrated compliance" with a list of 14 items. Also suggests that the cross-references are unnecessary. The most concerning item on the list is 140 C 3, which implies a new set of requirements for regional water supply plans that are not expressly stated anywhere in the regulations. (5)
Suggested revision to 9VAC25-780-140 C: <i>"The board will assess the compliance of submitted regional water supply plans with this chapter."</i> (Delete remainder of 140 C) (5)
Agency Response
The list of compliance items as included in the regulation is based on discussions with the RAP. The RAP supported the need for clarity in this section. The current list in Section 140.C clarifies the requirements and the compliance items that the Board shall assess in review of regional water supply plans.
No changes are being made to the regulation in response to these comments.
9VAC25-780-140 C: Compliance – Water Supply Risks
Comment Summaries
Concerned about the provision in 9VAC25-780-140 C 10 which suggests that one of the criteria for determining a regional planning unit's compliance with the regulation will be based on whether "the region's water supply risks have been identified and regional strategies to address those risks have been proposed and comply with 9VAC25-780-125." Does this mean that a plan can be rejected or disapproved if each and every risk is not assessed? Does this mean that a plan can be rejected or disapproved if DEQ disagrees with the regional strategies developed to address identified risks? (2) (9)
Agency Response
The regulation specifies that the Board "shall prepare a tentative statement of findings on whether the regional water supply plan has demonstrated compliance with" the identification of the region's water supply risks and regional strategies to address them have been proposed. Language is being revised in 9VAC25-780-125 B to clarify that the regional planning unit is to

<p>identify potential water supply risks that are relevant to the regional planning unit but should consider, at a minimum, those risks identified in the list in 9VAC25-780-125 B.</p> <p>Proposed change in regulation in response to this comment:</p> <p>9VAC25-780-125 A. <u>A regional water supply plan shall identify water supply risks [relevant to the regional planning unit, using readily available information as defined in 9VAC25-780-50 C]. For each water supply risk identified, the likelihood and severity of the impact on water supply in the regional water supply plan shall be evaluated.</u></p> <p>9VAC25-780-125 B. <u>In [evaluating-identifying] potential water supply risks [relevant to the regional planning unit], the regional planning unit shall consider, at a minimum, the following:</u></p>
<p>9VAC25-780-140 G: Alternative Water Supplies</p>
<p>Comment Summaries</p>
<p>The original planning process was established to ensure that localities were identifying and developing their own alternative water. These were meant to be regional plans that informed the state water supply management process (a bottom-up approach). However, the changes to the regulation convert this process to a top-down approach, with DEQ dictating the information to be included, and then itself developing and providing that information (9VAC25-780-140 G). Moreover, the changes do not reflect the fact that many localities/regions have an ongoing planning process, and in many instances have data and information that is potentially more accurate. Localities are better positioned to have information on their projected withdrawals and projected demands. (2) (9)</p>
<p>Agency Response</p>
<p>The information specified in 9VAC25-780-140 G is developed by the Department using the most recently available data collected through regional water supply plans, permitting processes, or annual water withdrawal reporting. Providing the most recently available data to localities supports a continuous water supply planning process.</p> <p>The Department acknowledges the State Water Resources and Supply Plan is not the only dataset that will be considered by localities when developing regional water supply plans. The Department encourages the augmentation of available data where appropriate and the regulation allows for use of this data.</p> <p>No changes are being made to the regulation in response to these comments.</p>
<p>9VAC25-780-140 G: Aquatic Life</p>
<p>Comment Summaries</p>
<p>The proposed language in 9VAC25-780-140 G 3 related to “aquatic life” should revert back to the original regulation language, such that subsection G.3 would read: “The evaluation of potential use conflicts among projected water demand and estimates of requirements of in-stream flow;” The information pertaining to in-stream flows necessary to support aquatic life is new, not properly vetted, and not appropriate for use in the water supply planning context. (3)</p>
<p>Agency Response</p>
<p>Data related to instream flow to support aquatic life provided within the State Water Resources and Supply Plan have been peer-reviewed and published. Use of this information is to inform water supply plan development and adds to the State’s role within 9VAC25-780-60 to provide planning, policy, and technical assistance to each regional planning area.</p>

In response to comments, revisions are being made to 9VAC25-780-140 G 3, changing “aquatic life” to “fish and wildlife resources and habitat” as included within the definition of instream beneficial use at § 62.1-44.3 of the Code of Virginia. DEQ will provide regional planning units with information related to fish and wildlife and habitat included within the most recent State Water Resources and Supply Plan as required by 9VAC25-780-60.

Proposed change in regulation in response to this comment:

9VAC25-780-140 G 3: ~~The evaluation of potential use conflicts among projected water demand and estimates of requirements for instream flow; and~~ An estimate, for each major river and stream, of the minimum in-stream flows necessary during drought conditions to maintain water quality and avoid permanent damage to [aquatic life fish and wildlife resources and habitat] in streams, bays, and estuaries;

Detail of Changes Made Since the Previous Stage

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations 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.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
9VAC25-780-50 H		<u>H. The following documents and supporting materials shall be appended to and submitted with the regional water supply plan.</u>	<u>H. The following documents and supporting materials shall be appended to and submitted with the regional water supply plan [for reference].</u>	The phrase “for reference” has been added to clarify that the documents identified in this section are reference documents appended to and submitted with the plan, and are not approved by the board but are used to verify compliance with plan content. Change made as the result of public comment.

<p>9VAC25-780-70 F</p>		<p>F. To the extent that information is available, a <u>assist the development of the regional water supply plan, each local government shall review the data provided by the department for sell-supplied users...</u></p>	<p>F. To the extent that information is available, a <u>assist the development of the regional water supply plan, each local government shall review the data provided by the department for [self-suppliedself-supplied] users...</u></p>	<p>Editorial Correction: Spelling</p>
<p>9VAC25-780-90 B 11</p>		<p>11. Potential threats to the existing water quantity and quality, other than those from above <u>Water availability based on in-stream flow necessary to support aquatic life provided by the department as identified in the most recent version of the State Water Resources and Supply.</u></p>	<p>11. Potential threats to the existing water quantity and quality, other than those from above <u>Water availability based on in-stream flow necessary to support [aquatic life provided by the department as identified in the most recent version of the State Water Resources and Supply Plan fish and wildlife resources and habitat] .</u></p>	<p>Change in the regulation language to replace the term “aquatic life” with the phrase “fish and wildlife resources and habitat” as included within the definition of instream beneficial use at § 62.1-44.3. Change made in response to public comment and to be consistent with terminology in state law.</p> <p>Removal of reference to the State Water Resources and Supply Plan (State Plan) in response to comments received. The State Plan remains a resource for regional supply plan development</p>

				and is included elsewhere in the regulation.
9VAC25-780-100 D 4 i		<u>i. Projected water demands with and without water conservation pursuant to 9VAC25-780-110; and</u>	<u>i. Projected water demands with and without water conservation pursuant to [9VAC25-780-110 9VAC25-780-110 C] ; and</u>	Editorial Correction: Correct typo: Revise reference to 9VAC25-780-100 B to read 9VAC25-780-100 C.
9VAC25-780-100 I 2		<u>2. Identification of a reasonable range of alternatives that potentially may satisfy the stated need, including all alternatives identified by a local government under subsection G of this section.</u>	<u>2. Identification of a reasonable range of alternatives that potentially may satisfy the stated need, including all alternatives identified by a local government under subsection [G H] of this section.</u>	Editorial correction: Correct typo: Revise reference to “subsection G” to read “subsection H”.
9VAC25-780-100 I 4		<u>4. An assessment of whether the identified alternatives are (i) available; (ii) practicable in terms of cost, logistics, and existing technology; (iii) avoid and minimize the need for water to the extent practicable; and (iv) are sufficient to satisfy the need alone or in combination with other short-term or long-term alternatives.</u>	<u>4. An assessment of whether the identified alternatives are (i) available [; (ii) and] practicable in terms of cost, logistics, and existing technology; [(iii)(ii)] <u>avoid and minimize the need for water to the extent practicable; and [(iv)(iii)] are sufficient to satisfy the need alone or in combination with other short-term or long-term alternatives.</u></u>	Revised text to group the terms “available” and “practicable” and renumbered assessment steps for identified alternatives to provide clarity in response to comments received.
9VAC25-780-100 J		<u>J. A regional water supply plan shall include</u>	<u>J. A regional water supply plan shall include [address <u>consider</u>], if available, any</u>	Replace the term “address” with the term “consider” to

		<p><u>address</u>, if available, any cumulative demand, use conflict, or in-stream flow information developed <u>identified by the board in the most recent review of the regional water supply plan or most recent version of the State Water Resources and Supply Plan</u> pursuant to 9VAC25-780-140 G.</p>	<p>cumulative demand, use conflict, or in-stream flow information developed <u>identified by the board in the most recent review of the regional water supply plan or most recent version of the State Water Resources and Supply Plan</u> pursuant to 9VAC25-780-140 G.</p>	<p>clarify the intent of the requirement and to be consistent with the use of the term “consider” in other sections of the regulations. Change made based on public comment.</p>
<p>9VAC25-780-120 C</p>		<p>C. Each regional planning area, to the extent practicable, shall evaluate the feasibility of developing a regional drought response and contingency plan as part of the regional water supply plan. If a regional drought contingency and response plan is developed, it shall include all of the elements identified in the subsection A of this section.</p>	<p>C. Each regional planning area, to the extent practicable, shall evaluate the feasibility of developing a regional drought response and contingency plan as part of the regional water supply plan. If a regional drought contingency and response plan is developed, it shall include all of the elements identified in the subsection A of this section. [<u>Any local government that utilizes the Potomac River through any portion of their service area as a water supply source shall incorporate the provisions of the Metropolitan Washington Water Supply and Drought Awareness Response Plan: Potomac River System (2000), including provisions related to triggers, actions, and</u></p>	<p>Addition of language to incorporate the statutory changes in 2023 Virginia Acts of Assembly Chapter 36 (HB 2095) and Chapter 37 (SB1149) related to preparing drought evaluation and response plans and the Metropolitan Washington Water Supply and Drought Awareness Response Plan.</p>

			<u>messages for the Potomac River drought evaluation region.]</u>	
9VAC25-780-125 A		<u>A. A regional water supply plan shall identify water supply risks. For each water supply risk identified the likelihood and severity of the impact on water supply in the regional water supply plan shall be evaluated.</u>	<u>A. A regional water supply plan shall identify water supply risks [relevant to the regional planning unit, using readily available information as defined in 9VAC25-780-50 C] . For each water supply risk identified the likelihood and severity of the impact on water supply in the regional water supply plan shall be evaluated.</u>	Addition of the phrase “relevant to the regional planning unit, using readily available information as defined in 9VAC25-780-50 C” to clarify what water supply risks should be identified in a regional water supply plan. Change made based on public comment.
9VAC25-780-125 B		<u>B. In evaluating potential water supply risks, the regional planning unit shall consider, at a minimum, the following:</u>	<u>B. In [evaluating identifying] potential water supply risks [relevant to the regional planning unit] , the regional planning unit shall consider, at a minimum, the following:</u>	Replaced the term “evaluating” with the term “identifying” and inserted the phrase “relevant to the regional planning unit” to clarify the process for identification of water supply risks by the regional planning unit. Change made based on public comment.
9VAC25-780-140 G 3		<u>3. The evaluation of potential use conflicts among projected water demand and estimates of requirements for in-stream flow; and An estimate, for each major river and stream, of the minimum</u>	<u>3. The evaluation of potential use conflicts among projected water demand and estimates of requirements for in-stream flow; and An estimate, for each major river and stream, of the minimum in-stream flows necessary during drought conditions to maintain water quality and avoid permanent</u>	Replaced the phrase “aquatic life” with the phrase “fish and wildlife resources and habitat” as included within the definition of instream beneficial use at § 62.1-44.3.

		<u>in-stream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries;</u>	<u>damage to [aquatic life fish and wildlife resources and habitat] in streams, bays, and estuaries;</u>	Change made in the response to public comment and to be consistent with statutory language.
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Detail 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.*

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 updated requirements
780-10 A		Application requirements	Clarification of affected entities by deleting the phrase “counties, cities, and towns”, and replacing with “local governments”, identifying the requirement for all localities to participate in regional planning and submit a single jointly produced plan, and addition of language to further clarify participants and their submission requirements. Changes to regulation required by statutory changes.
780-10 C	780-10 B	Application requirements.	Renumbering to reflect shift of language from 780-10 B into 780-10 A. Addition of language to clarify regulation does not alter existing contractual rights related to water supplies.

780-10 D	780-10 C	Application requirements.	Renumbering section.
780-20		Purpose of chapter.	Addition of language to reflect statutory changes with respect to the purpose of the chapter, which is to establish a comprehensive water supply planning process for the collection of certain data by localities and the development of regional and state water supply plans.
780-30		Definitions.	Revised definition of “Beneficial Use” to reference its surface water and its groundwater related definition as found in 9VAC25-210-10 and 9VAC25-610-10, respectively.
780-30		Definitions.	Deletion of term “conservation” – Replaced with more focused definition for “water conservation”.
780-30		Definitions.	Deletion of term “local program” – replaced with “regional water supply plan”. Change necessary to comply with statutory requirement for regional plans.
780-30		Definitions.	Deletion of the term “planning area” – replaced with “regional planning area”. Change necessary to comply with statutory requirement for regional plans.
780-30		Definitions.	Clarification of the term “planning period” to a 30-year time frame and to replace the term “locality” with the phrase “local governments and regional planning units”.
780-30		Definitions	Addition of the term “regional planning area”. Change necessary to comply with statutory requirement for regional plans.
780-30		Definitions.	Clarification of the term “regional planning unit” to include references to “water authorities”; “stakeholders” and “planning district commissions” and to correct reference to the “regional water supply plan”. Change necessary to comply with statutory requirement for regional planning to allow participation of other stakeholders.

			Inclusion of water authorities at recommendation of RAP.
780-30		Definitions.	Revision and clarification of the original term “regional water plan”.
780-30		Definitions.	Revision of definition of “self-supplied user” to remove language stating they receive no water from other systems. In some cases, a self-supplied user may receive water from another system while still operating their own system.
780-30		Definitions.	Addition of the term “stakeholder”.
780-30		Definitions.	Addition of term “State Water Resources and Supply Plan”. This definition clarifies the scope of an existing Department report produced using data collected from water supply plans and other sources.
780-30		Definitions.	Correction of state agency name and inclusion of the term “beneficial” in the definition of “Technical evaluation committee”.
780-30		Definitions.	Revise the term “unaccounted for losses” to “unaccounted for water” to reflect current term of use.
780-30		Definitions.	Addition of term “water authority”.
780-30		Definitions.	Replacement of term “conservation” with “water conservation” to improve clarity.
780-30		Definitions.	Clarification of term “water demand management” to include the concept of water use efficiency and to delete the reference to “a local program.”
780-30		Definitions.	Deletion of the term “water plan” – replaced with the term “regional water supply plan. Change necessary to comply with statutory requirement for regional plans.
780-30		Definitions.	Expansion of the term “water sources” to include “springs” and “aquifers” as they are also sources that should be considered part of this definition.
780.30		Definitions.	Addition of a definition for “water supply risk”.
780-40		Program development.	Section Repealed. Requirements now included in 780-50.

	780-45	<u>Designation of Regional Planning Areas.</u>	Addition of new section entitled: "Designation of Regional Planning Areas" which identifies the regional planning areas and the members off those planning areas for purposes of this regulation and the process for a locality to request a change in the planning area. This new section was added to comply with changes made to the statute.
780-50		<u>Preparation of local information and regional water supply plan; submission of a program requirements for a regional water supply plan.</u>	Title of section revised to indicate the section will address both the local information and regional water supply plan requirements.
780-50 A		<u>Preparation of local information and regional water supply plan; submission of a program requirements for a regional water supply plan.</u>	Clarification of local government responsibilities. Changes throughout this section are intended to clarify which responsibilities shall be completed by local governments and which shall be completed at the regional scale.
780-50 B		<u>Preparation of local information and regional water supply plan; submission of a program requirements for a regional water supply plan.</u>	Removal of language related to submission deadlines that are no longer applicable. Clarification of responsibilities of regional planning units and the department including new requirements to streamline the plan development process including designation of representatives for each local government and convening "kick-off" meetings. These changes were recommended by the RAP to clarify the process. New requirements for increased stakeholder involvement as required by statutory changes also added in this section.
780-50 C		<u>Preparation of local information and regional water supply plan; submission of a program requirements for a regional water supply plan.</u>	Clarification of information collection requirements for local governments and what kinds of information should be considered during plan development.
780-50 C	780-50 D	<u>Preparation of local information and regional water supply plan; submission of a program requirements for a regional water supply plan.</u>	Creation of a new subsection heading for clarification. Revisions to the listed elements required to be in each regional water supply plan. Additional elements and the deletion of several elements to

			reflect changes elsewhere in the regulation.
	780-50 E	Preparation of <u>local information</u> and <u>regional water supply plan</u> ; submission of a program ; <u>requirements for a regional water supply plan.</u>	Added language to clarify that public process requirements must be completed and all local governments must adopt a resolution authorizing the submission of the plan prior to submitting to the Department.
	780-50 F	Preparation of <u>local information</u> and <u>regional water supply plan</u> ; submission of a program ; <u>requirements for a regional water supply plan.</u>	Added language outlining process to be followed by regional planning unit when a local government fails to adopt the resolution.
	780-50 G	Preparation of <u>local information</u> and <u>regional water supply plan</u> ; submission of a program ; <u>requirements for a regional water supply plan.</u>	Added language identifying consensus requirements. These changes are to address how disagreements or lack of consensus should be handled. The changes acknowledge that full consensus may not always be possible in a regional scope.
	780-50 H	Preparation of <u>local information</u> and <u>regional water supply plan</u> ; submission of a program ; <u>requirements for a regional water supply plan.</u>	Added requirements for appending the identified documents and supporting materials to the regional water supply plan “for reference”. These materials were previously considered part of the “local program” which as a concept has been replaced and simplified to a regional water supply plan. Added phrase “for reference” to clarify that the documents were supporting documents for the water supply plan.
780-50 D	780-50 I	Preparation of <u>local information</u> and <u>regional water supply plan</u> ; submission of a program ; <u>requirements for a regional water supply plan.</u>	Revision of numbering to account for inclusion of new subsections and clarification of 5-year review process for a regional water supply plan. Clarification that supplements to regional water supply plans submitted during 5-year review need not be public noticed.
780-50 E	780-50 J	Preparation of <u>local information</u> and <u>regional water supply plan</u> ; submission of a program ; <u>requirements for a regional water supply plan.</u>	Revision of numbering to account for inclusion of new subsections and clarification of 10-year resubmission process for a regional water supply plan. Added requirements for convening a kick-off meeting no later than 180 days

			prior to last compliance determination to be consistent with process for initial submission.
	780-55	<u>Public participation in regional water supply plans.</u>	Addition of new section to clarify public participation requirements previously contained in 780-50. These changes address input received that the existing requirements were unclear and also outlines how the public can participate in plan development to reflect changes in statute that require regional planning units to allow interested parties to participate more directly.
	780-55 A	<u>Public participation in regional water supply plans.</u>	Identification of public notice requirements during plan development. These changes are intended to clarify existing requirements that were unclear according to feedback received by the Department.
	780-55 B	<u>Public participation in regional water supply plans.</u>	Identification of public notice of public informational meeting requirements. These changes are intended to clarify existing requirements that were unclear according to feedback received by the Department.
	780-55 C	<u>Public participation in regional water supply plans.</u>	Public informational meeting requirements. These changes are intended to clarify existing requirements that were unclear according to feedback received by the Department.
	780-55 D	<u>Public participation in regional water supply plans.</u>	Requirements to accept additional written comments. These changes are intended to clarify existing requirements that were unclear according to feedback received by the Department.
	780-55 E	<u>Public participation in regional water supply plans.</u>	Requirements for handling written comments. These changes are intended to provide a process for administering public comments regionally or locally.
	780-55 F	<u>Public participation in regional water supply plans.</u>	New language requiring regional planning units to give due consideration to public comments received and clarification that any

			revisions to the regional water supply plan in response to comments need not be publicly noticed again.
780-60		<u>State role in program regional water supply plan preparation</u>	Replacement of the term “board” with the term “department”.
780-60		State role in program <u>regional water supply plan</u> preparation.	Revision of Section title related to the state role in regional water supply plan preparation.
780-60		State role in program <u>regional water supply plan</u> preparation.	Clarification of the state role in the development of regional water supply plans/requirements for the department and necessary renumbering of subsections. Changes are primarily to address new language in statute identifying Department responsibilities.
780-70 A		Existing water source information.	Changes throughout section 70 are primarily to clarify whether information requirements are local or regional responsibility, and to clarify Department responsibilities. Clarification of local government requirement to provide existing water source information.
780-70 B		Existing water source information.	Clarification of the requirement for local governments to provide existing water source information for community systems using groundwater; replacement of the term “design capacity” with the term “designed related to average daily and maximum daily withdrawals as a result of feedback received by the Department that the original language was unclear.
780-70 C		Existing water source information.	Clarification of need for local governments to provide existing water source information for community water systems using surface water reservoirs and replacement of the phrase “design capacity” with the term “designed” as it relates to average daily and maximum daily withdrawals as a result of feedback received by the Department that the original language was unclear.
780-70 D		Existing water source information.	Clarification of the need for local governments to provide existing

			water source information for community water systems using stream intakes and the replacement of the phrase “design capacity” with the term “designed” as it relates to the average and maximum daily withdrawals from the stream as a result of feedback received by the Department that the original language was unclear.
780-70 E		Existing water source information.	Clarification language added related to local government review of data for self-supplied users of surface water provided by the department. Addition of numbering sequence to clarify requirements. Replacement of the phrase “design capacity” with the term “designed” as a result of feedback received by the Department that the original language was unclear.
780-70 F		Existing water source information.	Clarification language added related to local government review of data for self-supplied users of ground water provided by the department. Addition of numbering sequence to clarify requirements. Replacement of the phrase “design capacity” with the term “designed” as a result of feedback received by the Department that the original language was unclear. Editorial Correction (Spelling): Replaced term “sell-supplied” with “self-supplied”.
780-70 G		Existing water source information.	Clarification language added related to local government review of data for existing contractual agreements provided by the department. Addition of numbering sequence to clarify requirements.
780-70 H		Existing water source information.	Clarification language added related to inclusion of an estimate of the amount of water available to be purchased from outside the regional water supply plan.
780-70 I		Existing water source information.	Clarification language added related to local government review of data for agricultural users provided by the department.

			Addition of numbering sequence to clarify requirements.
780-70 J		Existing water source information.	Clarification language added related to local government providing an estimate of the number of residences and business that are self-supplied by individual wells.
780-70 K		Existing water source information.	Subsection deleted as this requirement has now been included in section 125.
780-80 A		Existing water use information.	Changes throughout section 80 are primarily intended to clarify Department and local government responsibilities. Clarification of requirement for each local government to provide information on existing water use information.
780-80 B		Existing water use information.	Clarification of requirements for a regional water supply plan to include information for each community water system.
780-80 C		Existing water use information.	Clarifying language added related to information to be provided by the department and any additional locally identified data related to water use by self-supplied nonagricultural users of surface and ground water.
780-80 D		Existing water use information.	Clarifying language added related to information to be provided by the department and any additional locally identified data related to water use by self-supplied agricultural users of surface and groundwater.
780-80 E		Existing water use information.	Clarifying language added related to information to be provided by the department and any additional locally identified data related to water use by self-supplied users of groundwater.
780-90		Existing <u>water</u> resource information.	Clarification by addition of the term "water" in title of section.
780-90 A		Existing <u>water</u> resource information.	Addition of clarifying language related to requirements of existing water resource information for local governments within a regional planning area.

780-90 B		Existing <u>water</u> resource information.	Replacement of the term “program” with the phrase “regional water supply plan”. Addition of clarifying language related to information provided by the department. Revision requirement related threats to water quality and quantity to instead focus on “instream flow”. Previous language was too vague and expectation was unclear.
780-90 B11		Existing <u>water</u> resource information...A regional water supply plan shall include the following items: “Water availability based on in-stream flow necessary to support aquatic life...”	11. Potential threats to the existing water quantity and quality, other than those from above <u>Water availability based on in-stream flow necessary to support [aquatic life provided by the department as identified in the most recent version of the State Water Resources and Supply Planfish and wildlife resources and habitat] .</u> Change in the regulation language to replace the term “aquatic life” with the phrase “fish and wildlife resources and habitat” as included within the definition of instream beneficial use at § 62.1-44.3 of the Code of Virginia. Change made in response to public comment.
780-100		Projected water demand information; <u>Statement of need and alternatives.</u>	Revision of section title to reflect addition of content.
780-100 A		Projected water demand information; <u>Statement of need and alternatives.</u>	Changes made in section 100 are largely to clarify local government responsibilities. Addition of clarification of requirement to provide projections of future water demand. Inclusion of the term “regional water supply plan”. Correction of reference.
780-100 B		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term “regional water supply plan”. Revision of the length of water demand estimates to 30 years instead of 30 to 50 years. Recommendations from stakeholders and program staff indicate that 30-year timelines were the most common and feasible and standardization would be appropriate.

780-100 C		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term “regional water supply plan”.
780-100 D		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term “regional water supply plan”. Deletion of the term “proposed” as it relates to service areas. Addition of requirement related to projected water demands.
780-100 D 4 1		Projected water demand information; <u>Statement of need and alternatives.</u>	Editorial Correction: Correct typo: Revise reference to 9VAC25-780-100 B to read 9VAC25-780-100 C.
780-100 E		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term “regional water supply plan” and other minor clarifications.
780-100 F		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term “regional water supply plan”. Clarification of requirements.
780-100 G		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term “regional water supply plan”. Clarification of requirements.
	780-100 H	Projected water demand information; <u>Statement of need and alternatives.</u>	Added language identifying local and regional responsibilities in the preparation of a “statement of need” and the identification of requirement for alternatives analysis for deficits to assess range of potential alternative sources of supply.
	780-100 I	Projected water demand information; <u>Statement of need and alternatives.</u>	Clarifications to requirements for an alternatives analysis and local and regional responsibilities therein. These changes were made based on recommendations by stakeholders to clarify the existing alternative analysis requirements and to reflect a regional scope.
	780-100 I 2	Projected water demand information; <u>Statement of need and alternatives.</u>	Editorial correction: Correct typo: Revise reference to “subsection G” to read “subsection H”.
	780-100 I 4	Projected water demand information; <u>Statement of need and alternatives. 4. An assessment of whether the identified alternatives are (i) available; (ii) practicable...</u>	Revised text to group the terms “available” and “practicable” and renumbered assessment steps for identified alternatives.
780-100 H	780-100 J	Projected water demand information; <u>Statement of need and alternatives.</u> A water plan shall include...	Revised subsection numbering to accommodate addition of new subsections. Inclusion of the term “regional water supply plan”.

			Clarification of requirements. Replaced the phrase “shall include” with the phrase “consider” to clarify the intent of the requirement and to be consistent with the use of the term “consider” in other sections of the regulations. Change made based on public comment.
780-100 I	780-100 K	Projected water demand information; <u>Statement of need and alternatives.</u>	Revised subsection numbering to accommodate addition of new subsections. Inclusion of the term “regional water supply plan”.
	780-110 A	Water demand management information.	Addition of new Subsection A related to local government providing information on existing water demand management plans or practices.
780-110 A	780-110 B	Water demand management information.	Renumbering of subsection to account for addition of new subsection. Inclusion of the term “regional water supply plan”. Clarification of requirements.
780-110 B	780-100 C	Water demand management information.	Renumbering of subsection to account for addition of new subsection. Clarification of requirements.
780-120 A		Drought response and contingency plans.	Addition of subsection numbering to account for addition of new subsections. Clarification of local government responsibility in developing a drought response and contingency plan.
	780-120 B	Drought response and contingency plans.	Addition of language related to conflicts between subsection A requirements and any condition of a permit. This language is intended to address that some permits require drought plans that may already be in existence and must be rectified with any plan developed in response to this chapter.
	780-120 C	Drought response and contingency plans.	Addition of language related to the development of a regional drought response and contingency plan. This language allows regional planning units to evaluate whether a regional drought plan is feasible and develop one if so.

			Addition of language to incorporate the statutory changes in 2023 Virginia Acts of Assembly Chapters 36 (HB 2095) and 37 (SB 1149) related to preparing drought evaluation and response plans and the Metropolitan Washington Water Supply and Drought Awareness Response Plan: Potomac River System (2000).
	780-120 D	Drought response and contingency plans.	Addition of language related to the inclusion of cross-jurisdictional coordination efforts on drought response.
	780-125	<u>Identification of water supply risks and proposed regional strategies.</u>	Addition of new section related to the “identification of water supply risks and proposed regional strategies”. This new section was added to address new statutory requirements for regional plans to identify water supply risks and propose regional strategies to address them. The section includes a list of risks for regional planning units to consider, acknowledging not all risks in the list may be applicable to each regional planning unit. In addition, regional planning units or local governments may identify risks not listed in the regulation.
	780-125 A	<u>Identification of water supply risks and proposed regional strategies. A. a regional water supply shall identify water supply risks.</u>	Addition of the phrase “relevant to the regional planning unit, using readily available information as defined in 9VAC25-780-50 C” to clarify what water supply risks should be identified in a regional water supply plan. Change made based on public comment.
	780-125 B	<u>Identification of water supply risks and proposed regional strategies. B. In evaluating potential water supply risks, the regional planning unit shall consider,</u>	Replaced the term “evaluating” with the term “identifying” and inserted the phrase “relevant to the regional planning unit” to clarify the process for identification of water supply risks by the regional planning unit. Change made in response to public comment.
780-130		<u>Statement of need and alternatives.</u>	Section repealed. Requirements now contained in 780-100.

780-140		Review of local programs <u>regional water supply plans.</u>	Replacement of “local programs” with “regional water supply plans”
780-140 A		Review of local programs <u>regional water supply plans.</u>	Replacement of “local programs” with “regional water supply plans”. Correction of title of “State Plan”.
780-140 B		Review of local programs <u>regional water supply plans.</u>	Replacement of “local programs” with “regional water supply plans”.
780-140 C		Review of local programs <u>regional water supply plans.</u>	Replacement of “local programs” with “regional water supply plans”: Item renumbering to accommodate additional requirements to reflect new requirements such as water supply risks. Correction of reference.
780-140 D		Review of local programs <u>regional water supply plans.</u>	Replacement of “local programs” with “regional water supply plans”
780-140 E		Review of local programs <u>regional water supply plans.</u>	Replacement of “local programs” with “regional water supply plans”
780-140 F		Review of local programs <u>regional water supply plans.</u>	Replacement of “local programs” with “regional water supply plans”
780-140 G		Review of local programs <u>regional water supply plans.</u>	Replacement of “local programs” with “regional water supply plans”. Additions in 9VAC25-780-140 G are clarifications of the information to be developed by the Department.
780-140 G 3		Review of local programs <u>regional water supply plans</u> 3. The evaluation of potential use conflicts among projected water demand and estimates of requirements for in-stream flow; and <u>An estimate, for each major river and stream, of the minimum in-stream flows necessary during drought conditions to maintain water quality and avoid permanent damage to [aquatic life</u> <u>fish and wildlife resources and habitat] in streams, bays, and estuaries;</u>	Changing the language within 9VAC25-780-140 G 3 from “aquatic life” to “fish and wildlife resources and habitat” for consistency with the definition of instream beneficial use at § 62.1-44.3 of the Code of Virginia. DEQ will provide regional planning units with information related to fish and wildlife and habitat included within the most recent State Water Resources and Supply Plan as required by 9VAC25-780-60. Change made in response to public comment.
780-140 H		Review of local programs <u>regional water supply plans</u>	Replacement of the term “board” with the term “department”.
780-140 I		Review of local programs <u>regional water supply plans.</u>	Replacement of “local programs” with “regional water supply plans”. Correction of title of “State Plan”.

780-150 A		Public notice and public comment period.	Replacement of “local programs” with “regional water supply plans”.
780-150 B		Public notice and public comment period.	Replacement of “local programs” with “regional water supply plans”. Correction of title of Department of Game and Inland Fisheries to Department of Wildlife Resources.
780-150 D		Public notice and public comment period.	Replacement of “local programs” with “regional water supply plans”.
780-150 E		Public notice and public comment period.	Replacement of “local programs” with “regional water supply plans”.
780-160 A2		Public meetings.	Replacement of “local plan” with “regional water supply plan”.
780-160 C		Public meetings.	Replacement of “local plan” with “regional water supply plan”.
780-180	780-180 A	Enforcement.	Numbering of subsections added to accommodate addition of new subsection.
780-180	780-180 B	Enforcement.	Numbering of subsections added to accommodate addition of new subsection. Addition of language clarifying that a local government shall not be liable if a local government within their regional planning area does not comply with requirements within this chapter.

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 proposed regulatory amendments are in response to the directive created by Chapter 1105 of the 2020 Acts of Assembly that requires the Board to adopt regulations designating regional planning areas based primarily on river basin. However, during the development of the proposed amendments, DEQ reviewed compliance requirements and the plan development, submission, and review process. While compliance requirements related to the components of a water supply plan were not changed, the process was streamlined in several ways including: 1) clarifying which requirements were to be completed by localities and which by the regional planning unit as a whole, 2) clarifying the extent and type of information that is expected to be collected (readily available information) 3) incorporating new requirements for the Department in convening and facilitating the plan development process, 4) clarifying responsibility for compliance in the event of a single locality refusing to participate, and 5) clarifying public participation processes. In addition, amendments to the regulation were made in response to

Chapter 331 of the 2022 Acts of Assembly which allows local governments to request reassignment to an adjoining regional planning area. Chapters 36 and 37 of the 2023 Acts of Assembly prompted additional amendments to incorporate statutory changes related to the Potomac River regional planning area and consideration of the Metropolitan Washington Water Supply and Drought Awareness Plan: Potomac River (2020).

Changes made in response to Chapter 356 of the 2022 Acts of Assembly are mandated by that statutory change and so no alternative regulatory methods could be considered.

Alternative regulatory methods were considered, and flexibilities were afforded where the statutory mandates allow. Compliance and reporting requirements are mandated by statute. Deadlines for compliance and reporting have been adjusted to allow adequate time for development of regional water supply plans. The Department has revised regulatory language to simplify and clarify requirements. Other alternative regulatory methods mentioned regarding performance standards for small businesses, or exemptions for small businesses do not apply as the Local and Regional Water Supply Planning Regulation (9VAC25-780) does not directly regulate small businesses. The statutory mandates referenced above require the Board to adopt regulations that are consistent with statutory mandates, and further alternatives were not within the scope of the statutory changes.

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.

It is not anticipated that this regulation will have a direct impact on families.