



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-900
<b>VAC Chapter title(s)</b>	Certification of Nonpoint Source Nutrient Credits
<b>Action title</b>	Amendment to change the Certification of Nonpoint Source Nutrient Credits (9VAC25-900 et seq.) in response to Chapter 723 of the 2023 Virginia Acts of Assembly
<b>Final agency action date</b>	June 22, 2023
<b>Date this document prepared</b>	May 17, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This final exempt regulatory action is necessary to implement Chapter 723 of the 2023 Acts of Assembly, which provides that in the certification and recertification of credits under this subsection, the Department may substitute a delivery factor that is deemed by the Director to be based on the best available scientific and technical information appropriate for the tributaries located outside of the Chesapeake Bay watershed as an alternative to any delivery factor derived from the application of the Chesapeake Bay Program watershed model. This action will amend 9VAC25-900, Certification of Nonpoint source Nutrient Credits, to include this new statutory provision.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia).

### **Mandate and Impetus**

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

---

SB959 passed during the 2023 Session of the General Assembly. This bill provides that in the certification and recertification of credits under this subsection, the Department may substitute a delivery factor that is deemed by the Director to be based on the best available scientific and technical information appropriate for the tributaries located outside of the Chesapeake Bay watershed as an alternative to any delivery factor derived from the application of the Chesapeake Bay Program watershed model. The Governor signed this bill into law on March 27, 2023 (SB959 – Chapter 723 of the 2023 Acts of Assembly) and these changes will become effective July 1, 2023. This regulatory action is required to conform the existing regulation to changes in Code.

### **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 June 22, 2023, the State Water Control Board approved final amendments to the Certification of Nonpoint Source Nutrient Credits (9VAC25-990 et seq.) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.