



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

| | |
|---|---|
| Agency name | State Water Control Board |
| Virginia Administrative Code (VAC) Chapter citation(s) | 9VAC25-900 |
| VAC Chapter title(s) | Certification of Nonpoint Source Nutrient Credits |
| Action title | Submittal of Section 91 of 9VAC25-900 for Publication |
| Date this document prepared | August 26, 2020 |

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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

The Certification of Nonpoint Source Nutrient Credits regulation (9VAC25-900) establishes the process for the certification of nonpoint source nitrogen and phosphorus nutrient credits and assures the generation of those credits. The final regulation, including Section 91 of 9VAC25-900, was adopted by the Board on December 13, 2019. As part of its approval to adopt 9VAC25-900, the Board deferred submittal of 9VAC25-900-91 to the Virginia Register of Regulations (Register) for final publication until such time as (i) the Department receives approval of 9VAC25-900-91 pursuant to Executive Order No. 14 (2018) and (ii) the earlier of the date the guidance is submitted to the Register for publication pursuant to §2.2-4002.1, or September 1, 2020. The deferral was to provide time for the Department to seek input from stakeholders to develop guidance on how to implement the requirements of 9VAC25-900-91.

9VAC25-900, including Section 91, received approval pursuant to Executive Order No. 14 (2018) on May 26, 2020 as part of [Action 3760](#) on the Virginia Regulatory Town Hall. Therefore, as required by the Board, 9VAC25-900-91 is now being submitted to the Register for final publication by this final regulatory action. [NOTE: For the history of and documentation for this section, please see Action 3760 on the Virginia Regulatory Town Hall website and/or publications in The Virginia Register of Regulations: Final in Volume 36, Issue 23 on July 6, 2020; Revised Proposal in Volume 35, Issue 17 on April 15, 2019;

Proposal in Volume 31, Issue 9 on December 29, 2014; and NOIRA in Volume 29, Issue 1 on September 10, 2012.].

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.

"ABD" means the Agency Background Document.

"Board" means the State Water Control Board.

"RAP" means the Regulatory Advisory Panel.

"SWCL" means the State Water Control Law.

"TMDL" means the total maximum daily load of a pollutant that a waterbody can receive without resulting in an impaired status of the waterbody.

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 December 13, 2019, the State Water Control Board took final action and adopted the new regulation, Certification of Nonpoint Source Nutrient Credits, 9 VAC 25-900.

As part of this action, the Board voted unanimously to:

1. Amend the text of 9VAC25-900-90 to move subsection D to a new section – 9VAC25-900-91 and adopt the regulation presented as amended.
2. Defer submittal of the new 9VAC25-900-91 to the Virginia Register of Regulations (Register) for final publication until such time as (i) the Department receives approval of 9VAC25-900-91 pursuant to Executive Order No. 14 (2018) and (ii) the earlier of the date the guidance is submitted to the Register for publication pursuant to §2.2-4002.1, or September 1, 2020.
3. Direct the Department to seek input on the development of guidance to implement 9VAC25-900-91 from a representative of each of the following: (i) private nutrient bank developers, (ii) conservation organizations, (iii) local governments, and (iv) nonpoint nutrient credit users.

Pursuant to the Board's action, the Department is submitting Section 91 of 9VAC25-900 to the Register for final publication.

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 was no change to the mandate and impetus for this regulation since the previous final stage. As required by Subsection A of § 62.1-44.19:20 of the State Water Control Law requires the Board to adopt regulations for the certification of nonpoint source nutrient credits. 9VAC25-900-91 is being submitted with this final action as instructed by the Board's adoption of this 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.

The state authority to promulgate the regulation is pursuant to Chesapeake Bay Watershed Nutrient Credit Program, Article 4.02 of the State Water Control Law. Specifically, the regulatory authority for the Board is contained at § 62.1-44.19:20 of the State Water Control Law which states under Subsection A: "The Board shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source nutrient credits."

Under Subsection B of § 62.1-44.19:20 of the State Water Control Law, the regulatory language may include but not be limited to: (i) establishing procedures for the certification and registration of credits; (ii) establishing credit calculation procedures; (iii) providing certification of credits on a temporal basis; (iv) establishing requirements to reasonably assure the generation of credits; (v) establishing reporting requirements; (vi) providing the Department the ability to audit/inspect for compliance; (vii) providing that the option to acquire nutrient credits for compliance purposes shall not eliminate any requirement to comply with local water quality requirements; (viii) establishing a credit retirement requirement; and, (ix) establishing other requirements as the Board deems necessary and appropriate.

Additionally, § 62.1-44.15 (10) of the State Water Control Law authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth.

This final action submits 9VAC25-900-91 of the regulation for final publication as required by the Board's adoption of the regulation.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Pursuant to § 62.1-44.19:20 of the State Water Control Law, the Board is required to adopt regulations for the certification of nonpoint source nutrient credits. The Board adopted the regulation under 9VAC25-900 on December 13, 2019. As part of the adoption (see Statement of Final Agency Action section), the Board deferred submittal of 9VAC25-900-91 to no later than September 1, 2020. At this time, 9VAC25-900-91 is being submitted with this final regulatory action in accordance with the Board's directive.

In order to be placed on a registry of credits for exchange, the nonpoint source nutrient credits must be certified. These certified credits that are placed on the registry will be part of an enforceable market-based trading program that will involve the exchange of pollution allocations between sources. This regulation is anticipated to make available nonpoint source nutrient credits to further trading avenues such as point source to nonpoint source trades or nonpoint to nonpoint trades. These trades will be part of the overall goal of meeting the reductions assigned by the Chesapeake Bay Watershed Implementation Plan and the Chesapeake Bay TMDL. As part of the regulation, 9VAC25-900-91 provides requirements for exchange of credits and to insure local water quality is not contravened when these exchanges occur.

To assist in understanding of the development process for this regulation, the following timeline is provided as background information:

- On September 9, 2012, the Department of Conservation and Recreation had the [NOIRA \(https://www.townhall.virginia.gov/L/ViewStage.cfm?stageid=6273\)](https://www.townhall.virginia.gov/L/ViewStage.cfm?stageid=6273) for this regulatory action published in the Virginia Register.
- DCR convened a RAP to assist with the development of this regulation in November 2012. On July 1, 2013, the authorities for this regulation were transferred from DCR to the Board. The original RAP process was completed in October 2013. During this RAP process and development of the proposed regulation, there were a number of non-consensus issues that were highlighted in the agency background document for the proposed regulation, TH-02 (found at: https://www.townhall.virginia.gov/L/GetFile.cfm?File=103\3760\6556\AgencyStatement_DEQ_6556_v1.pdf).
- The Board approved the proposed regulation for public comment on December 17, 2013. The proposed regulation was published in the Virginia Register on December 29, 2014 and the comment period for the proposed regulation closed on March 16, 2015 with 295 people submitting comments. A summary of those comments is provided in the agency background document for the revised proposed regulation, TH-10 (found at: https://townhall.virginia.gov/L/GetFile.cfm?File=103\3760\8001\AgencyStatement_DEQ_8001_v4.pdf).
- Based on the public comments on the proposed regulation, it was decided to reconvene the RAP to focus on particular issues requiring substantive changes to the regulation. These issues included adding requirements for stream or wetland restoration projects, innovative projects, limits for term credits and changes necessary for permanent credits. A revised proposed regulation was developed. As before, there were a number of non-consensus issues that were highlighted in the agency background document for the revised proposed regulation, TH-10 (found at: https://www.townhall.virginia.gov/L/GetFile.cfm?File=103\3760\8001\AgencyStatement_DEQ_8001_v4.pdf).
- The Board approved the revised proposed for public comment on July 19, 2017. The revised proposed regulation was published on April 15, 2019 and the comment period closed for this action on May 30, 2019. Twelve commenters submitted over 50 comments ranging from support for the regulation or aspects of the regulation to requests to either eliminate the regulation or reconvene the RAP for further deliberations. The revised proposed regulations summary of public comments were provided in the agency background document for the final regulation, TH-03 (found at: https://townhall.virginia.gov/L/GetFile.cfm?File=103\3760\8871\AgencyStatement_DEQ_8871_v1.pdf).
- The Board adopted the final regulation at their meeting on December 13, 2019. As part of this adoption, the Board moved the requirements for the exchange of credits and local water quality in Section 90 to a new Section 91. The Board then deferred submittal of this new 9VAC25-900-91 to the Virginia Register of Regulations (Register) for final publication until such time as (i) the Department receives approval of 9VAC25-900-91 pursuant to Executive Order No. 14 (2018) and (ii) the earlier of the date the guidance is submitted to the Register for publication pursuant to §2.2-4002.1, or September 1, 2020. The Board also directed the Department to seek input on the development of guidance to implement 9VAC25-900-91 from a representative of each of the following: (i) private nutrient bank developers, (ii) conservation organizations, (iii) local governments, and (iv) nonpoint nutrient credit users. See the ABD for the previous final action at: https://townhall.virginia.gov/L/GetFile.cfm?File=103\3760\8871\AgencyStatement_DEQ_8871_v1.pdf.
- The Department received approval for the regulation, including 9VAC25-900-91, pursuant to Executive Order No. 14 (2018) on May 26, 2020.
- The Department is still working with the representatives for development of the guidance to implement 9VAC25-900-91. However, as the Board's action requires submittal by September 1, 2020, 9VAC25-900-91 is being submitted for final publication with this final regulatory action.
- 9VAC25-900, except for 9VAC25-900-91, was submitted to the Register for final publication on June 9, 2020 and was published on July 6, 2020. 9VAC25-900-91 was listed as reserved in this final action (see <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8871>).
- The final regulation, with 9VAC25-900-91 as reserved, became effective on September 1, 2020.

- On September 1, 2020 and in accordance with the Board’s adoption action, the Department is submitting 9VAC25-900-91 to the Register for final publication with this regulatory action.

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.

In accordance with § 62.1-44.19:20 of the State Water Control Law, the Board was directed to adopt regulations for the purpose of establishing the certification of nonpoint source nutrient credits. The Board approved a proposed regulation for public comment. Based on the public comment received, the RAP was reconvened to provide input on topics that required additional consideration. The final regulation has been developed based on: (i) two different RAP processes (one used to assist in the development of the proposed regulation and a second RAP used to assist in the development of a revised proposed regulation); (ii) public comment received on the proposed and revised proposed regulations; (iii) statutory changes; and, (iv) the Department’s programmatic experience. The final regulation was adopted on December 13, 2020. The Department received approval for the regulation, including 9VAC25-900-91, pursuant to Executive Order No. 14 (2018) on May 26, 2020. The final 9VAC25-900 regulation was submitted to the Register, published on July 6, 2020 and became effective on September 1, 2020; however, in accordance with the Board’s action, submittal of 9VAC25-900-91 was deferred.

With this final regulatory action, 9VAC25-900-91, which provides requirements for exchange of credits and to insure local water quality is not contravened when these exchanges occur, is being submitted to the Register for final publication. There were no substantive changes to the requirements contained in 9VAC25-900-91 from the revised proposed regulation.

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.

The primary advantage of this regulatory action is that the regulation provides clarity and certainty for the nutrient trading market by establishing appropriate procedures for the certification of nonpoint source credits. 9VAC25-900-91 is an important component of the regulation as it provides clarity and certainty regarding the exchange of credits and protection of local water quality regarding those exchanges.

The regulation provides clarity and certainty for those persons that voluntarily choose to certify nonpoint source nutrient credits. This regulation should pose no disadvantages to the public or to the Commonwealth and, it is hoped that the nonpoint source trading program will help the Commonwealth with reaching its goals under the Chesapeake Bay Watershed Implementation Plan.

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 applicable federal regulations.

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.

Other State Agencies Particularly Affected:

This final regulation is a voluntary regulation. There are no requirements that any other state agency is mandated to meet.

Localities Particularly Affected:

This final regulation is a voluntary regulation. There are no requirements that a locality is mandated to meet unless the locality itself chooses to certify nutrient credits. In that case, the locality will need to adhere to the regulation and the provisions of the Article 4.02 of the SWCL. As the requirements apply to all localities, no localities are particularly affected by the final regulation.

Other Entities Particularly Affected:

This regulation is a voluntary regulation. There are no requirements that any other entity is mandated to meet unless the entity chooses to certify nutrient credits and place those credits on the registry for exchange. Existing nutrient banks and credit purchasing entities are potentially affected by new provisions governing the exchange of credits in watersheds with local water quality impairments that are contained in 9VAC25-900-91. These provisions of 9VAC25-900-91 are designed to ensure protect local water quality in accordance with § 62.1-44.19:20 B 7 of the State Water Control Law.

Periodic Review and Small Business Impact Review Report of Findings

Indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), 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, include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.

As part of the NOIRA’s and the proposed regulation’s comment period, comments on the impacts on small businesses were requested to include information on: 1) projected reporting, recordkeeping and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and, 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation. No

comments were submitted regarding impacts to small businesses during either the NOIRA's or proposed regulation's public comment period.

The agency developed the regulation as required pursuant to § 62.1-44.19:20 of the State Water Control Law, including provisions to insure protections of local water quality requirements. 9VAC25-900-91 has been drafted pursuant to the requirements of § 62.1-44.19:20 B 7 of the SWCL and in a manner that is protective of public health, safety, and welfare, and is clearly written and easily understandable.

Subsection A of § 62.1-44.19:20 of the State Water Control Law requires that the Board shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source nutrient credits. There are no duplicate requirements for the regulation of the certification of nutrient credits under either state or federal laws.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency 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.

A detailed list of the summarized comments along with the Department's response to the comments was provided in the previous final regulatory action under the agency's background document, TH-03 (see https://townhall.virginia.gov/L/GetFile.cfm?File=103\3760\8871\AgencyStatement_DEQ_8871_v1.pdf).

Please note, the following is an excerpt from the previous final regulatory action's agency background document (available at the link provided above). This excerpt provides a summary and response of the comments received on 9VAC25-900-91 provisions.

Local Water Quality (9VAC25-900-91)

Comment Summary: During the revised proposed regulation's comment period, comments regarding the local water quality provisions (previously contained in Subsection C of Section 90) were received. The comments focused mainly on the exchange of a released credit and ranged from a request to eliminate all provisions regarding the exchange of credits to requests for further restriction of the exchange of credits in areas with certain local water quality impairments.

Response: The Department has considered the comments. No requirements were changed based on comments received; however, clarifying format edits were made to the provisions for the exchange of credits. Additionally, in the agency background document (TH-10) for the revised proposed regulation, comment on adding chlorophyll-a to the list of impairments was requested. No comment was submitted regarding this addition and; therefore, chlorophyll-a has been added to the list of impairment types subject to the hierarchy established in 9VAC25-900-91 in the final regulation.

The Department believes that the treatment of local water quality in the regulations is consistent with the provisions in the State Water Control Law. In drafting the local water quality provisions, the Department has balanced the need to protect local water as required by § 62.1-44.19:20 B 7 and § 62.1-44.15:35 C of the statute and other provisions of the State Water Control Law allowing for the use of water quality trading. In order to meet the statutory requirements of protecting water quality, the requirements for exchanges of credits now contained in 9VAC25-900-91 of the regulation includes restrictions on the exchange of nutrient credits upstream of locally impaired waters.

VA Code § 62.1-44.19:20 B establishes minimum requirements for the contents of the proposed regulation. Specifically, § 62.1-44.19:20 B 7 requires that the regulation "Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any requirements to comply with local water quality requirements". § 62.1-44.19:20 B requires that the proposed regulations shall "Provide such other requirements as the Board deems necessary and appropriate."

VA Code § 62.1-44.15:35.C establishes limits on the use of nutrient credits to meet post development water quality design criteria under the Virginia Stormwater Management Program. It states that “...No applicant shall use nutrient credits or other offsite options in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted pursuant to § 62.1-44.15:33 or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the Board....”

It should be noted that local water quality requirements or limitations can be established in response to water quality impairments. A water quality impairment means that a particular stream does not support its applicable designated use. There are six designated uses that may be applied to surface waters: aquatic life, fish consumption, shellfishing, recreation, public water supply and wildlife. In addition to the designated uses, Virginia’s water quality standards include numeric criteria for physical and chemical water quality that are used to assess whether the designated uses are supported. If a waterbody contains more of a pollutant than is allowed by the numeric water quality criteria, or is below a specified threshold for the aquatic life use assessment, it will not support one or more of its designated uses. Such waters are considered to have impaired quality.

In considering provision of 9VAC25-900-91 of the regulation it is important to note that this provision is intended to further protect local water quality for trades involving nonpoint source nutrient credits. In addition to trades under the Virginia Stormwater Management Program, § 62.1-44.19:21 also authorizes the use of nonpoint source credits by Municipal Separate Storm Sewer Systems (MS4s), confined animal feeding operations subject to a VPDES permit and facilities registered under the industrial stormwater general permit. However, the vast majority of nonpoint source nutrient credits purchased in Virginia are used to meet the post development water quality design criteria for new development or redevelopment.

The design criteria in 9VAC25-870-63 are most often administered by local Virginia Stormwater Management Program authorities and these authorities often seek interpretation of the local water quality provisions included in § 62.1-44.15:35.C. The existing code and regulatory provisions lack specificity as to how to interpret the local water quality provisions.

The decision of how to protect water quality upstream of existing impaired waters usually has to be made without the benefit of an intensive, site-specific stream study. The post development water quality design criteria for new development or redevelopment included in 9VAC25-870-63 are intended to protect local water quality yet they were not developed on a site-specific basis. Furthermore, § 62.1-44.15:35 provides for the use of nutrient credits to meet the criteria under certain conditions. However the use of nutrient credits upstream of local water quality impairments that may be due to nutrients (or are due to nutrients but for which a TMDL has not been developed) creates the risk of additional degradation of an already impaired stream.

The provisions in both the State Water Control Law and the Virginia Stormwater Management Program Regulation (9VAC25-870) have been considered during the development of the exchange of credit requirements of 9VAC25-900-91 of the regulation to consistently interpret and apply the local water quality provisions in the Code. The Board’s authority to adopt such requirements is provided in § 62.1-44.19:20.B.9 and § 62.1-44.15:35.C of the State Water Control Law.

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.*

In accordance with the Board’s action on the adoption of 9VAC25-900 and the deferral of submittal of 9VAC25-900-91 section of that regulation, the previous final stage had the requirements of 9VAC25-900-91 “reserved”. With this final regulatory action, the requirements of 9VAC25-900-91 are being submitted for final publication.

The revised proposed regulation’s agency background document included a request for comment on additional revisions being considered for local water quality requirements. In the final regulation, the revisions made to 9VAC25-900-91 were detailed in the revised proposed ABD. This revision was to add Chlorophyll-a to the list of impairment types for the local water quality requirements in Subsection B of 9VAC25-900-91.

| Current section number | Revised Proposed Requirement | Final Regulation Requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
|------------------------|------------------------------|------------------------------|--|
| 91 | | Exchange of Credits | 9VAC25-900-91 provides criteria for the exchange of nutrient credits and includes protections for credit exchanges in areas with local water quality requirements. This is a new section in the final regulation. The revised proposed included requirements for the exchange of credits and local water quality considerations under subsection 90. These provisions have been moved to this new section. Please note, the requirements were not changed but clarifying edits were made and the requirements were reformatted into the new section. The addition of Chlorophyll-a was made as was discussed in the revised proposed regulation’s agency background document. |

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.*

The regulation under 9VAC25-900 is a new regulation which became effective on September 1, 2020. The regulatory requirements provide new criteria for those persons that wish to generate and certify nutrient credits for exchange. The requirements will apply to those persons who choose to generate nonpoint source nutrient credits for exchange and include substantive provisions that must be met in order to certify nonpoint source nutrient credits.

The submittal of 9VAC25-900-91 for final publication was deferred by the Board and are being submitted with this final regulatory action. Existing nonpoint source nutrient credit generating projects or banks and credit purchasing entities are potentially affected by provisions of 9VAC25-900-91; however, these existing banks are not subject to the nutrient credit certification requirements but are subject to all other provisions of the regulation including the requirements of 9VAC25-900-91.

| New Chapter section Number | New Requirements | Other regulations and law that apply. | Intent and likely impact of new requirements. |
|----------------------------|------------------------------|--|---|
| 91 | Exchange of nutrient credits | SWCL §§ 62.1-44.19:20, § 62.1-44.15:35, 62.1-44.19:15, 62.1-44.19:21 | 9VAC25-900-91 includes the provisions for exchange of credits and provisions to insure local water quality is not contravened when these exchanges occur. |

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.

Section 62.1-44.19:20 of the State Water Control Law directs the Board to adopt regulations governing the certification of nonpoint source nutrient credits and provides general requirements for the regulations. 9VAC25-900-91 is being submitted with this final regulatory action and provides a framework for the protection of local water quality which is required to be considered per § 62.1-44.19:20 B 7 of the State Water Control Law.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no anticipated adverse impact on the institution of the family and family stability; however, as these projects help with the improvement in overall water quality, that improvement should have a positive impact on the environment which may indirectly impact families.