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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-770
VAC Chapter title(s)	Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects
Date this document prepared	October 6, 2021

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

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

U.S.- United States

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 or 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.

This regulation has been adopted under the authority of 62.1-44.15 (10) of the Code of Virginia. 62.1-44.15 (5c) of the Code of Virginia states "Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army

Corps of Engineers shall be used to meet this requirement.” This regulation details the financial responsibility requirements.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

This regulation establishes requirements for demonstration of financial responsibility for the completion of compensatory mitigation requirements for dredging projects in tidal waters permitted under the Virginia Water Protection Permit Program and the acceptable mechanisms for demonstration. Section 62.1-44.15 (5c) Code of Virginia allows the board to require financial assurance for the completion of compensatory mitigation requirements. Viable alternatives to providing financial assurance for these projects have already been included in the regulation. These alternatives include proof of mitigation bank credit purchase or in-lieu fee fund donation. Additionally if the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this requirement.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An advisory group was not formed to assist with this periodic review. No public comments were received.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary to protect the Commonwealth from being financially responsible for completing tidal dredging mitigation projects. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

This regulation continues to be needed to protect the Commonwealth from being financially responsible for completing tidal dredging projects and will be retained as is.

Small Business Impact

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.

This regulation continues to be needed. The regulation requires that permittees responsible for dredging activities purchase mitigation bank credits, make an in-lieu fee fund donation or provide financial assurance that the project will be completed without cost to the Commonwealth or the general public. This regulation implements the requirements found in 62.1-44.15 (5c) of the Code of Virginia.

No public comments were received during the periodic review.

This regulation is not complex. The regulation provides projects with multiple options concerning how they are guaranteeing that the project will be completed without cost to the Commonwealth or the general public. The financial assurance mechanisms included in the regulation are consistent with financial mechanisms included in other regulations.

This regulation does not overlap or duplicate federal requirements. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility, then the mechanism and amount approved by the Corps shall be used to meet the required financial assurance requirements.

This regulation was initially adopted as an emergency regulation and a permanent regulation became effective on August 25, 2004. The financial mechanisms for providing financial assurance continue to be appropriate.

Small businesses have the same flexibility concerning options for providing financial assurance as larger businesses. If a small business is required by the U.S. Army Corps of Engineers to demonstrate financial responsibility, then the mechanism and amount approved by the Corps shall be used to meet the required financial assurance requirements.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

The regulation is not expected to have any impact on the institution of the family and family stability.