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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-260
<b>VAC Chapter title(s)</b>	Water Quality Standards
<b>Action title</b>	Triennial Review 2024 Rulemaking to adopt new, update, or cancel existing water quality standards as required by § 62.1-44.15 of the Code of Virginia and the Federal Clean Water Act, 33 U.S.C. §§ 1251
<b>Date this document prepared</b>	December 17, 2024

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

Federal and state mandates in the federal Clean Water Act at Section 303(c), federal regulations at 40 CFR 131 and the Code of Virginia at § 62.1-44.15(3a) require that water quality standards be adopted, modified, or cancelled every three years. This rulemaking is needed because the last triennial review was initiated with publication of a Notice of Intended Regulatory Action in March 2021 and new scientific information is available to update the water quality standards. Changes to the regulation have been identified that are needed to improve permitting, monitoring, and assessment programs. In addition, the State Water Control Board (Board) must fulfill the legal mandates for a three-year review under § 62.1-44.15(3a) of the Code of Virginia and per federal regulations at 40 CFR 131.

The subject matter of the rulemaking will include updated numerical and narrative criteria, use designations, and other policies contained in the Water Quality Standards Regulation (9VAC25-260).

The intent of this rulemaking is to protect designated and beneficial uses of state waters by adopting regulations that are technically correct, necessary, and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the federal Clean Water Act 305(b) report and 303(d) list. Waters not meeting standards pursuant to DEQ’s standard, publicly available evaluation processes will require development of a Total Maximum Daily Load, effluent limitations, or further analysis of use removal under the federal Clean Water Act Section 303(e) and [§ 62.1-44.19:7 of the](#) Code of Virginia.

### Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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BLM	Biotic Ligand Model
Board	State Water Control Board
CAS	Chemical Abstracts Service
Department	Virginia Department of Environmental Quality
DWR	Virginia Department of Wildlife Resources
EPA	U.S. Environmental Protection Agency
PWS	Public Water Supply

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in 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.”*

Federal and state mandates in the federal Clean Water Act at section 303(c), federal regulations at 40 CFR 131, and the Code of Virginia at § 62.1-44.15(3a) require that water quality standards be adopted, modified, or cancelled every three years.

### 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 promulgating entity is the State Water Control Board (Board).

The federal Clean Water Act authorizes restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters. The Clean Water Act Section 303(c) (1) requires that the states hold public hearings at least every three years for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.

The Federal regulations at 40 CFR 131 authorize requirements and procedures for developing, reviewing, revising and approving water quality standards by the States as authorized by Section 303(c) of the federal Clean Water Act. 40 CFR 131 specifically requires the states to adopt criteria to protect designated uses.

The State Water Control Law authorizes protection and restoration of the quality of state waters, safeguarding the clean waters from pollution, prevention and reduction of pollution and promotion of water conservation. The State Water Control Law (§ 62.1-44.15(3a) of the *Code of Virginia*) requires the Board to establish standards of quality and to modify, amend, or cancel any such standards or policies. It also requires the Board to hold public hearings from time to time for the purpose of reviewing the water quality standards, and, as appropriate, adopting, modifying, or canceling such standards.

The authority to adopt standards as provided by the provisions in the previously referenced citations is mandated, although the specific standards to be adopted or modified are discretionary to EPA and the state.

### **Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

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This rulemaking is essential to the protection of health, safety, or welfare of the citizens of the Commonwealth because proper water quality standards protect water quality and living resources of Virginia's waters for the designated uses of aquatic life, wildlife, recreation, public water supply, shellfish consumption, and fish consumption.

The intent of this rulemaking is to protect designated and beneficial uses of state waters by adopting a regulation that is technically correct, necessary, and reasonable. Potential issues that may need to be addressed are listed in the "Substance" section. It should be noted that all sections of the regulation are open for comment during this mandated triennial review and a revision, addition or deletion could potentially occur in any section of the regulation. However, revisions under consideration to date have been listed in the "Substance" section.

### **Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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The existing regulation may be proposed for amendment(s) to reflect new scientific information and to clarify the regulation. Changes may also be proposed to improve implementation of these standards in Virginia Pollutant Discharge Elimination System permits and in monitoring and assessments of surface waters. Some of the changes may be to numerical and narrative criteria, use designations, classifications, site specific or special standards, stream descriptions, antidegradation and implementation procedures such as mixing zones, variances, and assessment procedures.

The following are issues under consideration, but the Department staff will work in conjunction with other state and federal agencies and the public to include other amendments deemed necessary. The Department has not accepted or rejected any of these issues as of yet. Some issues under consideration by the agency now include, but are not limited to, the following:

**Water Quality Standards 9 VAC 25-260 et seq.**

Modify, add, or delete any section, criteria, use designation, standard, and policy to conform to EPA guidance, clarify state intent, implement state programs (e.g., permitting, monitoring, and assessments), and improve water quality or protect beneficial uses. This may include, but is not limited to, the issues identified below.

**Table of Parameters (9VAC25-260-140):**

- a) Amend Section 9VAC25-260-140 to include updated and/or new nationally recommended criteria as deemed necessary. This includes consideration of the 2024 federally recommended aquatic life criteria for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS).
- b) Modify language in Section 9VAC25-260-140.G to provide a performance-based approach for implementing the BLM to derive freshwater copper criteria.
- c) Correction of identified errors:
  - i. Tributyltin CAS number change from E1790678 to E1790679.
  - ii. Any other corrections as identified.

**Criteria to protect designated uses from the impacts of nutrients and suspended sediment in the Chesapeake Bay and its tidal tributaries. (9VAC25-260-185)**

Review and update as appropriate the applicable criteria and implementation language in this section, including the designation of additional areas to the Deep Water use alongside the Open Water use in appropriate portions of Chesapeake Bay segments. This will include clarifying what constitutes “any scientifically defensible assessment methods.”

**Updates to River Basin Section Tables (9VAC25-260-360 through 540):**

- a) Add, modify or delete trout waters as appropriate.
- b) Add, modify or delete public water supplies designations as appropriate.
- c) Add or correct Class designations as appropriate.
- d) Corrections to section descriptions in river basin tables for clarity and/or accuracy.

**Miscellaneous**

Replace old acronym for Department of Game and Inland Fisheries (DGIF) with current acronym for DWR where necessary.

**Alternatives to Regulation**

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

One alternative is to delay the triennial review and keep the current water quality standard regulation unchanged. This was not chosen since the state is mandated to review the water quality standards regulation every three years and another review is due. Also, several issues have been identified by the Department’s monitoring, assessment, and permitting staff that need to be addressed. These issues are included in the ‘Substance’ section above. The Department will consider alternative approaches to address each issue listed to find cost-effective approaches to include in the regulatory changes. The

Department will solicit public input during the review and consider other alternatives and issues presented by the public which also meet the goals of the regulation and of the Department.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

In addition, pursuant to the ORM procedures and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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#### INSERT:

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 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.

In addition, please see the periodic review/small business impact review announcement section above for details on specific comments requested for the periodic review.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email David C. Whitehurst, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218; Phone: 804-774-9180; Email: [degecology@deq.virginia.gov](mailto:degecology@deq.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Public Hearing at Proposed Stage

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### Regulatory Advisory Panel

*Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.*

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The Board is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.