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## Proposed Regulation Agency Background Document

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| <b>Approving authority name</b>                    | Department of Environmental Quality  |
| <b>Virginia Administrative Code (VAC) citation</b> | 9 VAC 25-260   |
| <b>Regulation title</b>                            | Water Quality Standards  |
| <b>Action title</b>                                | Amendment to the State's Antidegradation Policy (9 VAC 25-260-30) by designating portions of Big Run, Doyles River, East Hawksbill Creek, Jeremys Run, East Branch Naked Creek, Piney River, and North Fork Thornton River as Exceptional State Waters |
| <b>Document preparation date</b>                   | Enter date this form is uploaded on the Town Hall  |

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.cfm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.cfm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.virginia.gov/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.virginia.gov/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The State Water Control Board (Board) is proposing amendments to the Antidegradation Policy section (9 VAC 25-260-30) of the State's Water Quality Standards Regulation to designate seven surface waters for special protection as Exceptional State Waters.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General*

*Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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§ 62.1-44.15(3a) of the Code of Virginia, as amended, mandates and authorizes the Board to establish water quality standards and policies for any State waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend or cancel any such standards or policies established. The federal Clean Water Act at 303(c) mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses and an antidegradation policy. All of the citations mentioned describe mandates for water quality standards.

Web Address sites where citations can be found:

Federal Regulation web site

<http://www.epa.gov/epahome/cfr40.htm>

Clean Water Act web site

<http://www4.law.cornell.edu/uscode/33/1313.html>

State Water Control Law (Code of Virginia) web site

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.2>

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15>

The EPA Water Quality Standards regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish within the antidegradation policy the Exceptional State Waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the election and designation of specific water bodies as Exceptional State Waters.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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These proposed amendments are a necessary revision to the State water quality standards regulation. The State Water Control Board took action on these Department initiated candidates for proposed designation because Department staff had concluded, based on the information available at the time of the preliminary evaluation, that the proposed designation met the eligibility requirements which a water body must meet before it can be afforded the extra point source protection provided by such a designation. The Exceptional State Waters category of the Antidegradation Policy allows the Board to designate waters which display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional State Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the Board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

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The amendments to the Antidegradation Policy of the Water Quality Standards would designate portions of Big Run, Doyles River, East Hawksbill Creek, Jeremys Run, East Branch Naked Creek, Piney River, and North Fork Thornton River for special protection as Exceptional State Waters (9 VAC 25-260-30.A.3.c).

## Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

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Upon permanent regulatory designation of a water body as an Exceptional State Water, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short-term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution would be allowed into waters designated. In addition, no new mixing zones would be allowed in the Exceptional State Water and mixing zones from upstream or tributary waters could not extend into the Exceptional State Water section.

A potential disadvantage to the public may be the prohibition of new or expanded permanent point source discharges imposed within the segment once the regulatory designation is effective that would cause riparian landowners within the designated segment to seek alternatives to discharging to the designated segment and, therefore, to have additional financial expenditures associated with wastewater or storm water treatment. However, the only riparian landowner for each of these waters is a federal agency (National Park Service) and none of these waters contain any permitted point source discharges nor is any anticipated by the federal agency.

The primary advantage to the public is that these waters will be protected at their present high level of quality for the use and enjoyment of current and future generations of Virginians.

The factors to be considered in determining whether a nominated water body meets the eligibility decision criteria of exceptional environmental settings and possessing outstanding recreational opportunities and/or exceptional aquatic communities are described in the Department's revised April 25, 2001 "Guidance for Exceptional Surface Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulation (9 VAC 25-260-30.A.3). Although all of these waters proposed for designation are located on public (federal) land, those localities and businesses located near the designated waters may experience financial benefits through an increase in eco-tourism to the area because of the exceptional nature of the water body that lead to its designation.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

**Requirements More Restrictive Than Federal**

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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The proposed amendments do not exceed applicable federal minimum requirements.

**Locality Particularly Affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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**Counties**  
Albemarle, Page, Rappahannock, Rockingham

**Public Participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest land preservation.*

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In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forestland preservation.

The Board also seeks comment on whether the eligibility decision criteria for Exceptional State Water designation are met for each of these waters and whether the upper and lower boundary designations are appropriately delineated for each water body.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Jean W. Gregory, Office of Water Quality Programs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, (804) 698-4113, by fax to (804) 698-4522, or email [jwgregory@deq.virginia.gov](mailto:jwgregory@deq.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

|   |  |
|---|--|
| <b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>          | The projected cost to implement and enforce the proposed regulatory amendments should not cause any additional financial impact to the state.                                |
| <b>Projected cost of the regulation on localities</b>   | It is not expected that these Exceptional State Waters designations will impose a cost on the localities, as these waters are all located on federal lands.                  |
| <b>Description of the individuals, businesses or other entities likely to be affected by the regulation including specific information on the impact on small businesses as defined in § 2.2-2279</b> | Riparian landowners adjacent to the designated water bodies. For this rulemaking, the National Park Service is the only identified landowner. No small business is impacted. |
| <b>Agency’s best estimate of the number of such entities that will be affected</b>  | 1  |
| <b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>   | None, unless the alternative to discharging to the designated water body requires some additional financial expenditure.   |

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

In compliance with the State Water Control Board’s Public Participation Guidelines (9 VAC 25-10-20 C), the Department will consider all alternatives which are considered to be less burdensome and less intrusive for achieving the essential purpose of the amendment, and any other alternatives presented during the proposed rulemaking.

The primary alternative considered to date was to leave the regulation unchanged. This was not the alternative chosen because these seven water bodies met the eligibility criteria, based on the information available at the time of the preliminary evaluation.

**Public comment**

*Please summarize all public comment received during 30-day period following the publication of the NOIRA, and provide the agency response.*

The comment period for this Notice of Intended Regulatory Action ended on April 9, 2004. Below is a summary of public comments received during that comment period.

| Commenter                                 | Comment  |
|---|--|
| Shane Spitzer, Shenandoah National Park   | Mr. Spitzer attended the public hearing in Luray and advised staff that he was their appointed National Park Service contact on this matter; he was the only participant in the hearing. |
| Stephen Utz, Madison County Administrator | County Administrator Utz wrote on behalf of the Madison County Board of Supervisors that they would like to go on record again opposing the designation of waters in Madison County.     |

**AGENCY RESPONSE:** The agency response to the public comments is that staff have determined that these waters proposed for designation meet the required eligibility criteria necessary for consideration as Exceptional State Waters and, to the best determination of agency staff, are wholly located on publicly owned land. However, in response to public comment regarding the Brokenback Run, Hughes River, Rose River, and White Oak Canyon Run candidate waters, the State Water Control Board directed staff to not move forward to public hearing on these four waters located on Shenandoah National Park land within Madison County.

### Impact on family

*Please assess the 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.*

The development of water quality standards is for the protection of public health and safety, which has only an indirect impact on families.

### Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|------------------------|--|---------------------|-------------------------------|
|                        |  |                     |                               |

|                 |     |  |   |
|-----------------|-----|--|---|
| 9 VAC 25-260-30 | N/A | North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters is designation under 9 VAC 25-260-30.A.3.c as Exceptional State Water. | The addition of seven water bodies to 9 VAC 25-260-30.A.3.c. These waters meet the eligibility criteria necessary to be designated as Exceptional State Waters. |
|-----------------|-----|--|---|

In 9 VAC 25-260-30 the following amendments are proposed under 9 VAC 25-260-30.A.3.c:

Big Run in Rockingham County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of Big Run within the confines of Shenandoah National Park.

Doyles River in Albemarle County from its headwaters to the first crossing with the Shenandoah National Park boundary and Jones Falls Run from its headwaters to its confluence with Doyles River and all tributaries to these segments of Doyles River and Jones Fall Run within the confines of Shenandoah National Park.

East Hawksbill Creek in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of East Hawksbill Creek within the confines of Shenandoah National Park.

Jeremys Run in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of Jeremys Run within the confines of Shenandoah National Park.

East Branch Naked Creek in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of East Branch Naked Creek within the confines of Shenandoah National Park.

Piney River in Rappahannock County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of the Piney River within the confines of Shenandoah National Park.

North Fork Thornton River in Rappahannock County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of the North Fork Thornton River within the confines of Shenandoah National Park.