

Resource Management Plan Regulations (4VAC50-70-10 et seq.) Public Comments

March 12, 2013 version

Comments received during the 60-day public comment period (July 16, 2012 through September 14, 2012) organized by regulatory section or concern.

1. 4VAC50-70-10. Definitions.
2. 4VAC50-70-20. Purpose and Authority.
3. 4VAC50-70-30. Applicability of other laws and regulations.
4. 4VAC50-70-40. Minimum standards of a resource management plan.
5. 4VAC50-70-50. Components of a resource management plan.
6. 4VAC50-70-60. Revisions to a resource management plan.
7. 4VAC50-70-70. Review of a resource management plan.
8. 4VAC50-70-80. Issuance of a Certificate of Resource Management Plan Implementation.
9. 4VAC50-70-90. Inspections.
10. 4VAC-50-70-100. Compliance.
11. 4VAC50-70-110. Appeals.
12. 4VAC50-70-120. Reporting.
13. 4VAC50-70-130. Review of duties performed by soil and water conservation districts.
14. 4VAC50-70-140. RMP developer qualifications and certification.
15. Comments concerning SWCDs.
16. Comments concerning Public Meetings and DCR Outreach.
17. Comments concerning omissions from regulations.
18. Comments concerning the Economic Impact Analysis.
19. General Support.
20. General Opposed.

4VAC50-70-10. Definitions.

Item Number	Commenter	Comment	Agency Response
1	Robert Whitescarver; John Blair Reeves Sr. (Rockingham County)	I would suggest that the term "perennial stream" be defined.	A definition has been added. The term is utilized in 4VAC50-70-40 in four locations.
2	Cathy Perry, on behalf of the Board of Directors of the Headwaters SWCD	The term perennial as used as a minimum standard of a resource management plan should be clearly defined. A suggested definition for a perennial stream would be a well-defined channel that contains the flow of water year round during a year of normal rainfall with the aquatic	A definition has been added. The term is utilized in 4VAC50-70-40 in four locations.

		bed located below the water table for most of the year. This would differ from the intermittent stream which would have a well defined channel but water flow during only part of the year and the ephemeral stream which has flow only in response to a precipitation event and whose stream channel is above the water table.	
3	Cathy Perry, on behalf of the Board of Directors of the Headwaters SWCD	“Management Unit” should be defined as a minimum of a USDA Farm Service Agency Tract as constituted as of July 16, 2012, when the regulations were issued for comment. “Management Unit” is presently defined as being one or more fields or USDA FSA tracts. The minimum that should qualify for a RMP is a tract of land. The way it presently reads a farmer could receive a RMP on a crop field that meets the guidelines while a feedlot in the adjacent field contributes animal waste directly to a stream. Picking and choosing your fields does nothing for water quality and will create a workload that cannot be met. A conservation minded technician trying to convince the farmer on the initial on-farm assessment visit that he needs to address another issue that he or she is not interested in correcting while the guidelines clearly state that they can have a RMP on only one field will do little for water quality. By using a set date, landowners will not reconstitute tracts just to isolate bad areas.	Change not made. While recognizing that an RMP developed for a tract may be more inclusive and efficient than that developed for an individual field, we suggest that placing a field under an RMP is still furthering protection of water quality. Additionally, greater farmer participation may occur with the flexibility offered as written.
4	Jason Halbert (Charlottesville)	All streams should be included in the scope of the regulations, not just perennial streams.	Change not made. Section 10.1-104.6 of the Code of Virginia establishes the framework for the criteria that are required to be addressed in the resource management plan regulations. For all cropland, specialty crops, and hayland, the criteria call for “[a] forest or grass buffer between cropland and perennial streams of sufficient width to meet water quality objectives and consistent with Natural Resources Conservation Service standards and specifications”.  It should be noted that BMPs added to protect intermittent streams would be above the baseline and might be eligible for nutrient trading.

4VAC50-70-20. Purpose and Authority.

Item Number	Commenter	Comment	Agency Response
5	Ann Jennings (Chesapeake Bay Foundation) William H. Street (James River Association) Jacob Powell (Virginia Conservation Network)	<p>CBF strongly objects to language in 4VAC 50-70-20, line 59, which calls into question whether or not a RMP must be fully implemented and maintained. The language on line 59 "and maintain the applicable components of should be deleted. Clearly, the underlying statute requires at §10.1-104.7 that an owner or operator "fully implement and maintain" the RMP. The suggestion through insertion of "applicable components" that some or portions of the RMP will be implemented and/or maintained is contrary to state law.</p> <p>JRA also noted that all components of a Resource Management Plan must be implemented in order to ensure that the reductions required within the Chesapeake Bay Watershed Implementation Plan and applicable local TMDL Implementation Plans will be met by the management unit. Accordingly, the phrase "the applicable components" is inappropriate in this section.</p> <p>Similarly, VCN stated that the phrase "the applicable components" is inappropriate in this section and should be removed. All components of a Resource Management Plan must be implemented in order to ensure that water quality goals are met.</p>	<p>Change has not been made. The Purpose and Authority section language in question is not contrary to state law and actually specifically tracks the language in §10.1-104.7 A which states that "[n]otwithstanding any other provision of law, agricultural landowners or operators <b>who fully implement and maintain the applicable components of their resource management plan</b>, in accordance with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment".</p> <p>However, in light of these comments, language was added throughout the regulation to clarify that the intent of the RMP is the implementation of RMP components that achieve the minimum standards set out in 4VAC50-70-40. If a farmer chooses to incorporate additional practices beyond those required, per the law, they should not be held to implementing and maintaining these practices in order to receive the safe harbor provisions. If held to them, there would be no potential latitude left for trading options above the base requirements.</p>

4VAC50-70-30. Applicability of other laws and regulations.

Item Number	Commenter	Comment	Agency Response
6	Thomas W. Simpson (Water Stewardship)	The statutory language (10.104.5.B) says "The presumption of full compliance provided in subsection A <u>shall not prevent or preclude enforcement of provisions pursuant to</u> [underline added] (i) a resource management plan or a nutrient management plan otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System permit, (iii) a Virginia Pollution	<p>The section was updated to include the language found in § 10.1-104.7 B of the Code of Virginia that speaks to the concept that "the presumption of full compliance provided in § 10.1-104.7 A shall not prevent or preclude enforcement of provisions".</p> <p>Additionally, it is not the intent of these regulations to</p>

	<p>Abatement permit, or (iv) requirements of the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.)”. The proposed regulatory language says “Nothing in this chapter shall be construed <u>as limiting the applicability of other laws, regulations, or permits</u> [underline added], including but not limited to, a Virginia Pollutant Discharge Elimination System Permit, a Virginia Pollution Abatement Permit, a nutrient management plan otherwise required by law, any requirements of the Chesapeake Bay Preservation Act, and any requirements of the Agricultural Stewardship Act.”</p> <p>The statute appropriately maintains the enforceability of permits or other required regulatory activity within the voluntary RMP program. The proposed regulations change that language to not limiting the applicability of regulatory programs. While this may appear minor, how it is interpreted is critical. Upon inquiry and discussion regarding what this meant, the consistent initial answer was that if land or animal production areas were under any permit then they would not be eligible to be included in an RMP since the regulatory requirement prevails over the voluntary RMP. The statute protects compliance and enforcement of regulatory programs but does not exclude permitted areas from being part of a RMP. Regulatory programs have specific, limited requirements and have not been written to achieve WIP implementation at this time. While the language applies to all permits, our primary concern is with the Virginia Pollution Abatement (VPA) permit which most poultry and many livestock farms are required to obtain. Clearly a farmer with a VPA permit must comply with the conditions of that permit whether or not he/she has a RMP. However, that permit primarily addresses most production area practices and nutrient management. There is not a requirement for cover crops or erosion control to “T” within a VPA permit. Other field practices may not be required by the VPA permit and there are likely opportunities to reduce losses from the confinement area through practices like dry pack barns, feed management, etc. that exceed VPA requirements.</p> <p>It is very important that additional practices, needed to achieve WIP implementation, be recommended in RMPs</p>	<p>preclude actions required by other permits from being included in a comprehensive resource management plan.</p>
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		on lands and production areas also covered by regulatory programs, particularly VPA permits. This does not diminish the need for compliance and enforcement of permits and regulatory programs but allows farmers to implement practices on permitted lands to achieve WIP implementation.	
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4VAC50-70-40. Minimum standards of a resource management plan.

Item Number	Commenter	Comment	Agency Response
7	Robert Whitescarver; John Blair Reeves Sr. Citizen & engineer in Rockingham County, Va.	I strongly support that cropland, pasture and hay-land meet the "T" value for soil erosion as defined by NRCS.	This remains an element of these regulations.
8	Ann Jennings (Chesapeake Bay Foundation)	CBF suggests that the Department clarify the meaning of "adequate" and "adequacy" which are used in somewhat different ways throughout this regulation. In 4VAC 50-70-40 (C), "adequacy" is used in the first sentence: "The department shall evaluate the minimum standards of this subsection to determine their adequacy when revisions occur. . ." To ensure there is no ambiguity, we suggest the following modification: "The department shall evaluate the minimum standards of this subsection to determine whether they are sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local TMDL water quality requirements of the Commonwealth when revisions occur. . ."	A change has been made to better clarify the use of the term "adequacy" and to set a time by which an evaluation of the minimum criteria shall occur.
9	Ann Jennings (Chesapeake Bay Foundation)	CBF also urges that the Department prepare and publish guidelines describing how it will determine, pursuant to 4VAC 50-70-40 (B), that any BMPs not currently specified in 4VAC 50-70-40 (A) will "achieve the minimum standards of this section." The success of the RMP program in meeting its water quality goals will require careful assessment of proposed new BMPs to ensure they are "sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local TMDL water quality requirements of the Commonwealth." Accordingly, guidance developed in a public process involving interested stakeholders and made available to the	Associated with the additional BMPs to be considered to meet minimum standards in accordance with 4VAC 50-70-40 (B), the language has been clarified to speak to those BMPs that "have been identified by NRCS or included within the Virginia Agricultural Best Management Practices Cost-Share Program and have been approved by the Board or those BMPs identified in the Chesapeake Bay Watershed Model or the Chesapeake Bay TMDL Watershed Implementation Plan. BMPs utilized must be found to achieve the minimum standards of this section.  The Department is committed to annually evaluate such

		public is critical.	new BMPs through decision support tools (VAST and the Chesapeake Bay Watershed Model) to determine whether they achieve the minimum standards and are authorized for use in the RMP program as a component of a RMP.
10	William H. Street (James River Association)	The proposed Resource Management Plan Regulations must meet the statutory requirement of ensuring full compliance with the Virginia Chesapeake Bay TMDL Watershed Implementation Plan (see §10.1-104.5(A)). While JRA appreciates the work that was completed by DCR and the Bay Program to demonstrate that the proposed regulations achieve compliance with the Bay TMDL, it remains unclear whether the regulations as written will ensure that this standard is met. Specifically, the relationship between achieving a soil loss ratio of "T" and the application of prescribed grazing to pastureland and conservation tillage to cropland has not been clearly defined. The analysis that has been completed by the Commonwealth appears to indicate that the application of prescribed grazing and conservation tillage on 95% of applicable lands is necessary, yet neither of these practices is specifically identified as an integral element of the RMP. Additionally, the application of cover crops appears to be vital to meeting the pollution reduction goals, but the current regulatory language does not support this, as discussed below. JRA believes that in order to meet the requirements of §10.1-104.5(A), prescribed grazing, conservation tillage and cover crops should expressly be included within the minimum standards of a RMP. JRA cannot support the minimum standards as they are currently drafted in the proposed regulations.	No changes have been made. Section § 10.1-104.8. B 5 specifies that "the required components of each resource management plan shall be based upon an individual on-farm assessment. Such components shall comply with on-farm water quality objectives as set forth in subdivision B 4, including best management practices identified in this subdivision and any other best management practices approved by the Board or identified in the Chesapeake Bay Watershed Model or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan".  Outlining specific strategies in the regulations would be more restrictive than the Code specifies.
11	William H. Street (James River Association)	JRA believes that the following phrase, included within 4VAC50-70-40.A.1.d should be removed: "when needed to address nutrient management and soil loss requirements." This phrase is inconsistent with the authorizing RMP legislation (§10.1-104.6(B)(5)(a)(4)) and undermines one of the key elements of the RMP to achieve the needed pollution reductions. Virginia's Nutrient Management Plan regulations and handbook do not contain any requirement that cover crops meeting NRCS or Virginia Cost Share specifications be implemented as is specified in the law for required components of an RMP on cropland. Therefore, this additional language will lead to confusion given that no	No changes have been made. Section § 10.1-104.8. B 5 a states that "for all cropland or specialty crops such components shall include the following, <u>as needed</u> and based upon an individual on-farm assessment".

		specific nutrient management compliance standard is provided and will consequently lead to lower levels of implementation than needed.	
12	William H. Street (James River Association)	JRA supports providing flexibility to farmers when they are considering the implementation of a RMP, and the regulations should clearly allow for the development of an RMP with an alternate set of BMPs from those currently listed. If a farmer utilizes alternative BMPs to the ones specified by the regulations, verification that the alternate set of BMPs meets the reductions required within Virginia's Watershed Implementation Plan and the requirements of any local TMDL Implementation Plans must be required as a part of the RMP approval process. The currently proposed Section 4VAC50-70-40.B states that additional BMPs may be used to meet the minimum standards of Subsection A, but the process for ensuring compliance with this standard is not clear.	No changes have been made. It is unreasonable to expect any single farmer to implement sufficient BMPs to achieve the TMDL based on their actions alone. Meeting the TMDL loads will require the collective efforts of all farmers. The overarching intent of the RMP program is to incentivize voluntary adoption of practices at a high level. That level is based on an individual on-farm assessment, the resource management plan. Using the Chesapeake Bay Model or other tools based there-on for farm scale loading calculations is not scientifically defensible.
13	William H. Street (James River Association)	To ensure that the minimum standards within Subsection A continue to comply with the pollution reduction requirements of Virginia's Watershed Implementation Plan and any future revisions, Subsection C should specify a specific timeframe within which the minimum standards shall be revised. JRA recommends a six month timeframe.	Language was added specifying that the Department shall evaluate the minimum standards no later than the end of 2017 as part of the Chesapeake Bay mid-point assessment. The current decision support tools (VAST and the Chesapeake Bay Watershed Model) indicate that the implementation levels estimated based on these regulations would be sufficient to meet the agricultural load allocations in the Chesapeake Bay TMDL. The next appropriate time to re-evaluate the minimum standards would be upon completion and approval of the Phase 6 Chesapeake Bay Watershed Model by the Chesapeake Bay Program partnership. This is anticipated in to occur in 2017. Changes to the minimum standards would only be considered after the supporting BMPs have been evaluated through decision support tools.
14	Jacob Powell (Virginia Conservation Network)	Flexibility for farmers when they are considering the implementation of a RMP is vital to incentivize the program. The regulations should clearly allow for the development of an RMP with an alternate set of requirements from those currently listed. The currently proposed section 4VAC50-70-40.B states that additional BMPs may be used to meet the minimum standards but the process for ensuring they meet water quality goals is not clear. A potential process was discussed during the panel's meetings, but no	No changes have been made. The process is the individual on-farm assessment conducted by a certified plan writer, the resource management plan review process described in 4VAC50-70-70 and the certificate issuance process described in 4VAC50-70-80.

		language was agreed to. Leaving the regulation silent on this matter is not a viable solution for achieving water quality goals or for the farming community.	
	<b>Comments re: Buffers</b>		
15	Wilmer Stoneman (Virginia Farm Bureau Federation)	We remain concerned about the buffer requirements for pastures. The Code that authorizes this program does not require a buffer of any width for pastures; it requires “as needed” “A system that limits or prevents livestock access to perennial streams”. Buffers while they may be part of the plan are not required for pastures. We believe the regulations should mirror the wording of the Code of Virginia for crops, pasture and hayland. This will accurately reflect the intent of the General Assembly and minimize the current confusion among the industry.	The requested change has been made to the regulations that removes the requirement for 35 foot buffers on pastureland in accordance with § 10.1-104.8 B.5.c. of the Code. For pasture, the Code requires “[a] system that limits or prevents livestock access to perennial streams”. The language does not speak to a specific buffering requirement or standard for such as is the case under subdivisions a and b for cropland and hayland.
16	Alyson Sappington (Thomas Jefferson SWCD)	If Virginia’s intention is to implement a resource management plan program which encourages voluntary participation, the program will be more successful if it is economically feasible for more farmers. Flexible criteria and smaller buffers may actually result in more participation and greater environmental benefits than larger buffers and strict, inflexible criteria. Another concern is that the 35-foot buffer for livestock fencing is incompatible with existing cost share programs (NRCS CBI; TMDL-specific funds). It is illogical for government funding to encourage farmers to install fencing 10 feet from streams, require farmers to sign a 10-year contract for that fencing, and then expect them to move that fencing to meet RMP criteria.	Overall, it is believed that a program has been developed that is economically feasible. However, changes have been made to the regulations removing the requirement for 35 foot buffers on pastureland to better reflect what is required in § 10.1-104.6 B.5.c. of the Code. For pasture, the Code requires “[a] system that limits or prevents livestock access to perennial streams”. The language does not speak to a specific buffering requirement or standard for such as is the case under subdivisions a and b for cropland and hayland.
17	Jason Carter (Virginia Cattlemen's Association)	The proposed RMP requires a riparian buffer setback of at least 35' which is NRCS standard. The proposed RMP will provide participating producers "safe harbor" from further regulation over the course of the RMP agreement in the coming years. Our concern is that the 35' buffer is excessive and not scientifically justified as well as vulnerable to being increased due to political pressures for further environmental regulation without scientific reinforcement for effectiveness. There is a tremendous amount of money being spent on conservation programs to meet a still undetermined TMDL nutrient reduction goal for Virginia. Without scientific validation of the minimum necessary riparian buffer width for all environments, we are concerned that the RMP will be exposed to new revisions	Changes have been made to the regulations removing the requirement for 35 foot buffers on pastureland to better reflect what is required in § 10.1-104.6 B.5.c. of the Code. For pasture, the Code requires “[a] system that limits or prevents livestock access to perennial streams”. The language does not speak to a specific buffering requirement or standard for such as is the case under subdivisions a and b for cropland and hayland.  The buffer requirement cropland and hayland is consistent with NRCS standards and is consistent with other state and federal standards. It should be noted that in addition to the 35' NRCS standard, in these situations, the Chesapeake Bay model only credits 35' buffers and state cost-share is



		and possibly costly adjustments in the future and within the terms of existing RMPs where implemented.	only provided for 35' buffers (recognizing that TMDL implementation dollars have allowed for 10' setback).
18	Robert Whitescarver; John Blair Reeves Sr. (Rockingham County)	I strongly support the 35-foot buffers on perennial streams. As a conservationist and farmer I am curious as to why only perennial streams are addressed in the RMP. I have seen many intermittent streams that are more polluted than the perennial streams they flow into. Therefore I would recommend that intermittent streams be addresses at least in pastures. I would rather see both perennial and intermittent streams, as defined by USGS be excluded from livestock with a minimum setback of 10 feet. I think this would be more effective than requiring a minimum of 35 feet on perennial streams alone.	Change not made. Section 10.1-104.6 of the Code of Virginia establishes the framework for the criteria that are required to be addressed in the resource management plan regulations. For all cropland, specialty crops, and hayland, the criteria call for "[a] forest or grass buffer between cropland and perennial streams of sufficient width to meet water quality objectives and consistent with Natural Resources Conservation Service standards and specifications". It should be noted that there is no mention of intermittent streams in the law.  However, there also is no preclusion from a farmer providing for the protection of intermittent streams in their plans as well. It should be noted that BMPs added to protect intermittent streams would be above the baseline and might be eligible for nutrient trading.
19	Greg Wichelns (Culpeper Soil and Water Conservation District)	There exists a discrepancy between stream exclusion buffer widths that are funded by the Virginia Agricultural BMP Program (10') and what is proposed for an RMP (35'). Current programs offer reduced cost share for a 10' setback; an option originally created for use by local TMDL implementation plans, presumably to help meet the proposed reductions for those TMDL's. It is our understanding that those local TMDL's mostly prescribe higher levels of implementation than the BAY WIP does, and if so, why would the 10' setback satisfy those plans and not the BAY WIP? This seems inconsistent and counterintuitive. We advocate for including the 10' setback option into the RMP regulation.	Changes have been made to the regulations removing the requirement for 35 foot buffers on pastureland to better reflect what is required in § 10.1-104.6 B.5.c. of the Code. For pasture, the Code requires "[a] system that limits or prevents livestock access to perennial streams". The language does not speak to a specific buffering requirement or standard for such as is the case under subdivisions a and b for cropland and hayland.  The buffer requirement cropland and hayland is consistent with NRCS standards and is consistent with other state and federal standards. It should be noted that in addition to the 35' NRCS standard, in these situations, the Chesapeake Bay model only credits 35' buffers and state cost-share is only provided for 35' buffers (recognizing that TMDL implementation dollars have allowed for 10' setback).  It should also be noted that the Department considers changes to the agricultural cost share program on an annual basis and may look into these voluntary practices, their different widths, and the benefits provided.
20	Cathy Perry, on behalf of the Board of Directors of the	You cannot ignore intermittent or ephemeral streams. There are some intermittent drainage patterns within a pasture that may not contribute flow directly to a stream	Change not made. Section 10.1-104.6 of the Code of Virginia establishes the framework for the criteria that are required to be addressed in the resource management plan

	Headwaters SWCD	<p>and therefore would not have to have cattle excluded. However, an unprotected intermittent stream or a spring branch with cattle wallowing in it can carry nutrients and bacteria in a defined channel through the 35 foot buffer and deposit it directly into the perennial stream. It is the understanding of the District that the Regulatory Advisory Panel intended the on-farm assessment to determine the need. The present wording addresses perennial streams only. Those livestock producers who already refuse to work with government will use the present word perennial to appeal a field decision that an ephemeral stream needs to be fenced. The definition of "perennial" has already been raised in the August 14 public hearing by a livestock producer. A decision to include an intermittent or ephemeral stream will need to be made on a case-by-case basis. The wording in the regulations needs to emphasize that a determination that an intermittent or ephemeral stream must be included can be made during the initial on-farm assessment.</p>	<p>regulations. For all cropland, specialty crops, and hayland, the criteria call for "[a] forest or grass buffer between cropland and perennial streams of sufficient width to meet water quality objectives and consistent with Natural Resources Conservation Service standards and specifications". It should be noted that there is no mention of intermittent streams in the law.</p> <p>However, there also is no preclusion from a farmer providing for the protection of intermittent streams in their plans as well. It should be noted that BMPs added to protect intermittent streams would be above the baseline and might be eligible for nutrient trading.</p> <p>It should also be noted that section 4VAC50-70-40 of the regulations does provide some additional protection by setting out minimum standards of a resource management plan for cropland, specialty crops, hayland and pasture. All require a soil conservation plan (or pasture management plan) and such BMPs as necessary to address gross erosion when it is present as gullies or other severely eroding conditions to be addressed by a planner based on an on farm assessment.</p>
21	Cathy Perry, on behalf of the Board of Directors of the Headwaters SWCD	<p>A. The requirement for a 35 foot buffer on hay land should be reconsidered. It goes beyond the legislation that authorized Resource Management Plans. The permanent stand of grass will be slowing velocities and filtering the runoff. The nutrient management plan that is required prohibits application of animal manure within 100 feet of a perennial stream if there is no filter strip. That is reduced to 35 feet if there is a minimum 35 foot filter strip. The Virginia Agricultural Cost-Share Program (VACS) allows lime and commercial fertilizer to be applied to the filter strip and for it to be harvested for hay. The NRCS specifications allow hay harvest, but may limit applications of fertilizer to prevent nutrient runoff. Both programs dictate the species that can be planted. The lime, fertilizer and hay guidelines within this buffer should be clearly defined.</p> <p>B. A pasture management plan needs to be fully defined. Presently it states that it must achieve a maximum soil loss</p>	<p>A. The 35 foot buffer requirement is based on the NRCS standard, as required by the law, § 10.1-104.6 B.5.b.(2).</p> <p>The Department will consider revisions to the lime and fertilizer guidelines for hay filterstrips. Because hay is a crop that receives nutrients, it must be clear that no nutrients can be applied to the buffer to get credit in the Chesapeake Bay model.</p> <p>B. No changes have been made. Section 10.1-104.6 B.5.c. requires all pasture land to include, as needed: a nutrient management plan; prevent livestock access to perennial streams; and a pasture management plan OR a soil conservation plan that achieves a maximum soil loss rate of "T". The proposed regulation, lines 116 through 132, allows for a pasture management plan OR a soil conservation plan that achieves a maximum soil loss of "T" as defined by NRCS...There is no mention of a prescribed grazing plan, but the flexibility is there for an on-farm</p>

		<p>of T. It is the understanding of the District that the Regulatory Advisory Panel expected the plan to only address the soil loss. However, since other requirements have to meet NRCS standards the technical staff that read this immediately wonders if this pasture management plan means the NRCS Prescribed Grazing Plan. Very few farmers will want to comply with a Prescribed Grazing Plan. The RAP's intentions that this only addresses soil loss of T and will not be an NRCS Prescribed Grazing Plan needs to be clearly stated as such.</p> <p>C. The requirement for a 35 foot buffer goes beyond the legislation that authorized the Resource Management Plan system. Present State and Federal programs allow a set-back less than 35 feet. Stream monitoring studies show that this still improves water quality. Requiring the 35 foot buffer will limit many farmers from receiving an RMP who have already received cost-share for fencing streams with a lesser set-back. It will also limit the number of livestock producers who would find the RMP an incentive to fence a stream.</p> <p>D. All Resource Management Plans (RMPs) should use USDA FSA Farm, Tract, and Field numbers for consistency. The Nutrient Management Plan (NMP) is supposed to use this system. Since the NMP is a part of the RMP there is no reason for two identifying systems.</p> <p>E. DCR should provide templates for the RMP. DCR should provide these templates, regulations, format, and timetable in an electronic manual easily accessible to all parties.</p>	<p>assessment to decide which plan is appropriate to address the pasture of concern.</p> <p>C. Change has been made for the pasture buffer requirement to reflect § 10.1-104.6 B.5.c.(2), where only a system that limits or prevents livestock access to perennial streams is required.</p> <p>D. Change not made. The Department is in the process of developing software for tracking Resource Management Plans that is compatible with its Agricultural Best Management Practice tracking program. The FSA Farm, Tract, and Field numbers are proprietary to USDA and not accessible by private planners because of the confidentiality of the information.</p> <p>E. The Department will develop templates, guidance documents, and policies and procedures for the Resource Management Plan program.</p>
22	Thomas W. Simpson (Water Stewardship)	<p>There appears to be a typographical error in the reference to the statute in line 76 that refers to "subdivision B5 or Sec 10.1-104.8 of the Code of Virginia". The RMP law ends at 104.7 so there is no 104.8. I believe this should refer to B5 of 10.1-104.6 which requires an on-farm assessment and cites B4 of this section that requires the RMP include practices sufficient to achieve the Chesapeake Bay TMDL Watershed Implementation Plan (WIP). Thus, it is an important reference.</p>	<p>The citation is correct. When the legislation was codified the section numbers were updated as several bills during the Session utilized the same section numbers and passed. Accordingly, Article 1.1 on Resource Management Plans runs from § 10.1-104.7 through § 10.1-104.9.</p>
23	Thomas W. Simpson	<p>As stated above, in 10.1-104.6.B4, the statute requires that</p>	<p>4VAC50-70-40 was amended to address this concern.</p>

	(Water Stewardship)	<p>RMPs include practices sufficient to implement the Chesapeake Bay TMDL WIP. In 10.1-104.6.B5, the statutory language says “... <i>including best management practices identified in this subdivision and any other best management practices approved by the Board or <u>identified in the Chesapeake Bay Watershed Model or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan</u></i>” (underline added). The statute lists several practices each for cropland, hay and pasture as those “identified in this subdivision”. The language in B5 clearly allows <i>any Bay Watershed Model or VA WIP practice</i> to be used to achieve WIP targets and limits the requirement for the listed practices to those “as needed and based upon an individual on-farm assessment”. It does not limit the RMP to listed practices.</p> <p>The proposed regulations appear to take a more prescriptive approach in 4VAC50-70-40.A (lines 72 – 119). This section repeats the list from the statute with some additional language. Lines 120-122 (4VAC50-70-40.B) state that “Other BMPs approved by the department may be applied to achieve the minimum standards of this section beyond those already identified by NRCS or within the Virginia agricultural Best Management Cost-Share Program”. It appears this was included to allow new BMPs in the future but it could, and should, be interpreted to allow all practices referenced by the statute to be used in RMPs or the regulations need to be revised to include all practices “identified in the Chesapeake Bay Watershed Model or included in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan” to help achieve WIP targets as provided in the statute.</p> <p>The prescriptive approach may be simpler to implement from a regulatory perspective. However, it limits the tools/BMPs that can be used to achieve WIP targets compared to the statute, <i>unless a very broad and flexible interpretation of 4VAC50-70-40.B is incorporated into written policy that clearly states that all Watershed Model and WIP BMPs can be part of a RMP to achieve WIP implementation targets</i>. The proposed regulations do not currently appear to be consistent with the statute.</p>	<p>Section 10.1-104.8 B 5 specifies that “the required components of each resource management plan shall be based upon an individual on-farm assessment. Such components shall comply with on-farm water quality objectives as set forth in subdivision B 4, <u>including best management practices identified in this subdivision and any other best management practices approved by the Board or identified in the Chesapeake Bay Watershed Model or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan</u>”.</p> <p>4VAC50-70-40 B has been amended to read that “[o]ther BMPs approved by the board may be applied to achieve the minimum standards of this section once they have been identified by NRCS or included within the Virginia Agricultural Best Management Practices Cost-Share Program. Additionally, BMPs identified in the Chesapeake Bay Watershed Model or the Chesapeake Bay TMDL Watershed Implementation Plan may be utilized where found to achieve the minimum standards of this section. The department shall annually evaluate such BMPs through decision support tools to determine whether they achieve the minimum standards and are authorized for use in the RMP program as a component of a RMP.”</p> <p>It should be noted that the BMPs must still be evaluated as § 10.1-104.8 B 4 specifies that the BMPs must be sufficient “to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality requirements of the Commonwealth”.</p>
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24	Thomas W. Simpson (Water Stewardship)	<p><i>Livestock access restriction:</i> In 10.104.6B5c(2), the statute proposes “A system that limits or prevents livestock access to perennial streams” to address animal access to streams. The proposed regulation expands this by adding specific provisions requiring that:</p> <ol style="list-style-type: none"> <li>(1) “Any fencing or exclusion system provides year-round livestock restriction to perennial streams;</li> <li>(2) A forest or grass buffer between the exclusion system and a perennial stream shall be consistent with NRCS standards and specifications except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the exclusion system to meet water quality objectives; and</li> <li>(3) Provisions which are made for access through stream crossings and livestock watering systems are designed to NRCS standards and specifications and are determined necessary by the RMP developer.”</li> </ol> <p>This is a substantial expansion of the statutory language. It would provide a high level of stream protection but appears to expand the intent of the statute. In (1), year-round restriction to streams is required. While desirable, there are NRCS and Watershed Model BMPs that provide stream protection without total exclusion. If this is allowed in (1) but the language does not make that apparent and the language in (2) suggests that complete exclusion is expected. Further (2) requires a 35 foot buffer between the stream bank and the exclusion system. While this has been a preference of the Department for many years, this width is not required for excluding livestock from streams in Watershed Model or NRCS standards. Stream exclusion from “top of bank” (not preferred or generally recommended) to 10 or 15 feet wide are the standard practice for complete livestock exclusion. A required <i>exclusion area that meets the minimum buffer width of 35 feet would retire substantial acreage of pasture and deter many farmers with pasture along streams from entering the RMP program.</i> The requirements in (1) and particularly in (2) appear to be a substantial expansion of the statutory language that go beyond other stream protection practices (total exclusion and width of excluded area) recognized by the Watershed Model and NRCS. These more intensive stream protection measures may be desirable and could be</p>	<p>Changes have been made to the regulations removing the requirement for 35 foot buffers on pastureland to better reflect what is required in § 10.1-104.6 B.5.c. of the Code. For pasture, the Code requires “[a] system that limits or prevents livestock access to perennial streams”. The language does not speak to a specific buffering requirement or standard for such as is the case under subdivisions a and b for cropland and hayland.</p> <p>It should be noted that the inclusion of buffers under this land use scenario may be above the baseline and might be eligible for nutrient trading.</p>
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		<p>promoted through cost-share and incentive programs. As written, they expand the statutory language and will almost certainly reduce interest by many livestock farmers in participating in the RMP program.</p>	
25	Thomas W. Simpson (Water Stewardship)	<p>Water Stewardship and more recently, other organizations, have been conducting whole farm assessments and developing continuous improvement plans to provide current status assessments and “roadmaps” for farmers to achieve WIP implementation. Water Stewardship has completed about 150 of these Continuous Improvement Plans and is involved in projects to do about 100 more within the next year. These are farm specific plans that look at current conservation, issues, opportunities and the suite of practices that will allow the farmer to achieve WIP targets <i>on his farm</i>. Farmers have been very receptive to this incremental improvement approach tailored to their farm situation. Without extraordinary flexibility in the interpretation of 4VAC50-70-40B (Line 120-122) (the “other BMPs” beyond the list clause) it will not be possible to develop plans specific to the needs of their farms.</p> <p>The statute clearly indicated that all Chesapeake Bay Watershed Model and Virginia WIP practices could be included in RMPs, not just the list. As currently written, the assessment of RMP status becomes a checklist of practices that does not indicate whether that farm has achieved WIP implementation. It is likely that those getting RMPs initially will be those where many of the “listed practices” are not applicable to their operation so they may qualify for a RMP with only a few applicable practices that result in limited reductions. DCR projected that it would take 95% voluntary participation in the RMP program, which is unlikely in a voluntary program, along with existing regulations, to meet WIP targets. If only those with a limited number of “listed practices” participate, RMPs will have a limited impact on progress toward WIP implementation. Allowing tailored RMPs specific to farm conditions that utilize the full array of accepted Watershed Model and WIP BMPs (as proposed in the statute) is essential to getting broader farmer participation and larger reductions per participating RMP farm. If the regulations are not changed to allow this, consistent with the statute,</p>	<p>4VAC50-70-40 was amended to address this concern. Section 10.1-104.8. B 5 specifies that “the required components of each resource management plan shall be based upon an individual on-farm assessment. Such components shall comply with on-farm water quality objectives as set forth in subdivision B 4, <u>including best management practices identified in this subdivision and any other best management practices approved by the Board or identified in the Chesapeake Bay Watershed Model or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan</u>”.</p> <p>4VAC50-70-40 B has been amended to read that “[o]ther BMPs approved by the board may be applied to achieve the minimum standards of this section once they have been identified by NRCS or included within the Virginia Agricultural Best Management Practices Cost-Share Program. Additionally, BMPs identified in the Chesapeake Bay Watershed Model or the Chesapeake Bay TMDL Watershed Implementation Plan may be utilized where found to achieve the minimum standards of this section. The department shall annually evaluate such BMPs through decision support tools to determine whether they achieve the minimum standards and are authorized for use in the RMP program as a component of a RMP.”</p> <p>It should be noted that the BMPs must still be evaluated as § 10.1-104.8 B 4 specifies that the BMPs must be sufficient “to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality requirements of the Commonwealth”.</p> <p>It should also be noted that it is unreasonable to expect any single farmer to implement all potential BMPs on their farm. They will be held to implementing the applicable components to meet the minimum standards applicable to their operations and field conditions. However, it is also</p>

		then a clear, detailed policy is critically needed that expands the applicability and flexibility allowed under 4VAC50-70-40.B.	recognized that meeting the TMDL loads will require the collective efforts of all farmers. However, those participating in the program would have done their fair and necessary share through achieving the minimum standards. The assumption of 95% participation was made as part of the assessment of the sufficiency of the RMP level of treatment in meeting the TMDL. Additionally, re-evaluations of the VAST scenarios developed to evaluate the sufficiency of the RMP level of treatment in meeting the TMDL suggest that the TMDL could still be met with significantly lower participation in the cover crop and conservation tillage practices.
26	David Bernard (Richmond)	The need to protect non-perennial streams is not addressed.	Change not made. Section 10.1-104.6 of the Code of Virginia establishes the framework for the criteria that are required to be addressed in the resource management plan regulations. For all cropland, specialty crops, and hayland, the criteria call for "[a] forest or grass buffer between cropland and perennial streams of sufficient width to meet water quality objectives and consistent with Natural Resources Conservation Service standards and specifications". It should be noted that there is no mention of intermittent streams in the law.  However, there also is no preclusion from a farmer providing for the protection of intermittent streams in their plans as well. It should be noted that BMPs added to protect intermittent streams would be above the baseline and might be eligible for nutrient trading.
27	David Bernard (Richmond)	Allowing a grass 35-foot buffer with possible use of herbicides in this zone would negate the erosion protection and filtration benefits of the buffer, and allow not just nutrient but herbicide runoff in the water.	The legislation that created this program does not address herbicides; however, if a locality is within the Chesapeake Bay Preservation Act, then those regulations do require a herbicide and pesticide application plan to protect water quality.
28	Ann Jennings (Chesapeake Bay Foundation)	CBF supports deletion of "as determined necessary by" in section 4VAC 50-70-40 as this language appeared to weaken the intent of the RMP program requiring implementation of the best management practices listed in this section.	This remains an element of these regulations; however, the language was amended to clarify that the RMP developer is determining whether limited access to the stream is necessary.
29	Ann Jennings (Chesapeake Bay Foundation)	CBF supports the revisions to the RMP program regulations that specify that the Department periodically review and revise, as necessary, section 4VAC 50-70-40 of the RMP program regulations to ensure its compliance with	This remains an element of these regulations and a date by which such review shall be conducted was added.

		a new or modified TMDL implementation plan for the Chesapeake Bay or other local TMDL water quality requirements as specified in §10.1-104.8 (B)(4).	
30	Ann Jennings (Chesapeake Bay Foundation)	Modification to the language in 4VAC 50-70-40 (A)(1)(d) in reference to the cover crop requirement calls into question whether or not this practice will be utilized on 50 percent of cropland, as assumed in DCR's VAST analysis. Lines 92 and 93 specify that cover crops are required only "when needed to address nutrient management and soil loss requirements" [emphasis added], yet the statute at §10.1-104.8 (5)(a) clearly specifies implementation of cover crops for cropland and specialty crops. CBF recommends modifying 4VAC 50-70-40 (A)(1)(d) so that it is consistent with the statute, by deleting the above referenced language.	Change not made. Re-evaluations of the VAST scenarios developed to evaluate the sufficiency of the RMP level of treatment in meeting the TMDL suggest that the TMDL could still be met with significantly lower participation in the cover crop practice. Section 10.1-104.8. B 5 a states that "for all cropland or specialty crops such components shall include the following, <u>as needed</u> and based upon an individual on-farm assessment".
31	Ann Jennings (Chesapeake Bay Foundation)	CBF would support the addition of clear language to 4VAC 50-70-40 requiring the implementation of conservation tillage and cover crops on cropland and prescribed grazing on pastureland.  Additionally, CBF continues to recommend that the RMP program regulations allow for the optional use of a nutrient tracking tool or tools, approved by the Soil and Water Conservation Board, to afford farmers an opportunity, working with a DCR certified, third-party RMP developer, to conduct a whole farm assessment and identify alternative approaches to reach their nutrient and sediment reduction goals and remain in compliance with § 10.1-104.7 (A) and § 10.1-104.8 (B)(4) and (B)(5).	The request goes beyond the required components of a resource management plan according to § 10.1-104.8. B.5. Section 10.1-104.8. B 5 a states that "for all cropland or specialty crops such components shall include the following, <u>as needed</u> and based upon an individual on-farm assessment" and §10.1-104.8. B 5 c states that "for all pasture, such components shall include the following, <u>as needed</u> and based upon an individual on-farm assessment".  Additionally, while appreciative of the request for the development of tracking tools, it is important to note that nutrient and sediment reduction goals are not assigned at the farm level. The Chesapeake Bay model does not have the capacity to assign load allocations to individual farms. It is not feasible, as the science of the model is not applicable at the acre level or farm scale. This type of allocation is not being done in any other nonpoint source sector and it would not be fair to target farms with this type of approach.
32	Katie Frazier (Virginia Agribusiness Council)	The minimum standards of a resource management plan (RMP) were the subject of much discussion and debate during the RAP, and based upon questions and comments raised during the public comment period, they continue to be a source of concern and confusion for many parties. To clarify the legislative intent, we suggest that DCR amend the proposed regulations to specifically reference the	Changes have been made to the regulations removing the requirement for 35 foot buffers on pastureland to better reflect what is required in § 10.1-104.6 B.5.c. of the Code. For pasture, the Code requires "[a] system that limits or prevents livestock access to perennial streams". The language does not speak to a specific buffering requirement or standard for such as is the case under



		legislation that outlines of a RMP, found in § 10.1-104.8 5.a-c. The sections of the proposed regulation that are specifically not reflective of the legislative language are references to a 35' minimum buffer width for forest or grass buffers, and a requiring that cover crops "provide for reportable practices". By clearly allowing flexibility for a RMP developer to work with the producer to identify the buffer width, for instance, while continuing to meet the overall water quality goals for the management unit, the RMP regulations continue to provide both flexibility for producers and environmental protection.	subdivisions a and b for cropland and hayland. It should be noted that the inclusion of buffers under this land use scenario may be above the baseline and might be eligible for nutrient trading.  The 35 foot buffer required for cropland and hayland is consistent with NRCS standards as required in § 10.1-104.6 B.5.a and b. This is also the minimum buffer width that is provided with credit in the Chesapeake Bay model and what is necessary to receive cost-share. Reportable practices must meet these basic standards to achieve the water quality objectives set out in the legislation in § 10.1-104.6 B.4 that requires the regulations to include agricultural best management practices "sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality requirements of the Commonwealth".
33	Jason Halbert (Charlottesville)	The 35 ft. buffer rule is great where it is applicable. In many cases it is impossible or impractical and that should not inhibit a farmer's ability to implement best management practices. I think a variable width buffer/streamside exclusion rule down to 10 feet should be combined with a variable safe harbor or duration of RMP for farmers. In other words, don't punish the good for not being perfect.	These regulations establish a voluntary program that farmers may choose to participate in. The requirement for buffers in pasture has been changed to better reflect what was prescribed in § 10.1-104.6 B.5.c.(2). The new language would require a system to prevent livestock access to perennial streams and not prescribe a 35 foot buffer.

4VAC50-70-50. Components of a resource management plan.

Item Number	Commenter	Comment	Agency Response
34	Richard P. Chaffin (VASWCD Area V Chairman)	I see nothing in the regulations that imposes a penalty for non-compliance with the provisions of the RMP. There certainly should be reimbursement of BMP cost share funds, and any on-going payments received in conjunction with the maintenance of these practices if the RMP is discontinued. Will other regulations, applicable to cost share, supersede the RMP?	Section 4VAC50-70-100 of the RMP regulations titled, Compliance, lays out the process for deficiencies and non-compliance with a plan. The ultimate penalty would be revocation of the Certificate of Resource Management Plan Implementation. The agricultural cost-share program works independently of the RMP regulations. The cost-share program has provisions for compliance with implementation and maintenance for BMPs, which are subject to pro-rated reimbursement for failure or destruction of the BMP.

4VAC50-70-60. Revisions to a resource management plan.

Item Number	Commenter	Comment	Agency Response
35	Richard Chaffin (VASWCD Area V Chairman)	The provisions of the RMP, certified under the new certificate, should not be less stringent than those under the original certificate. Again, there should be some penalty to reimburse BMP funding provided by the Commonwealth in the event an RMP should be discontinued.	<p>A RMP developer is required to meet the existing standards for implementation of the TMDL based on the stringency set by those loads and established with the Code's minimum standards. Changing circumstances in a farm operation or the requirements of a TMDL could potentially change over time resulting in less stringent requirements for a RMP.</p> <p>Virginia's agricultural cost-share program acts independently from the RMP regulations and has provisions that require pro-rated reimbursement upon failure or destruction of BMPs.</p>
36	Ann Jennings (Chesapeake Bay Foundation)	CBF maintains strong opposition to the proposed subsection 4VAC 50-70-60 (D). First, the subsection is unneeded, as it states nothing that is not also stated later, in 4VAC 50-70-80 (G). Worse, subsection D appears, in context, to suggest the improper result that a Certificate of RMP Implementation would remain in force even after a material change in a farm operation. Thus, subsection 4VAC 40-50-70 (D) specifically indicates that the owner or operator holding a Certificate of RMP Implementation that has not expired may continue operation of the RMP without revision. As "material changes" include, among other definitions, conversion from one type of agricultural operation to another, an existing RMP may not include the BMPs necessary to address the requirements of § 10.1-104.7. Therefore, CBF urges the Department to delete 4VAC 50-70-60 (D) and to revise the proposed RMP program regulations to clarify that an owner or operator must implement a revised RMP when there is a material change in the farm operation.	<p>Change not made. Subsection D of 4VAC50-70-60, Revisions to a resource management plan, provides a farmer who has a Certificate of RMP Implementation that has not expired, and who is deemed to be fully implementing the RMP with safe harbor. That farmer who is in compliance with his RMP does not have to revise his RMP because of a new or modified TMDL for the lifespan of the RMP. This subsection is needed and reinforces that a farmer would not have to revise their RMP if a new or modified TMDL is issued during the lifespan of their RMP (safe harbor). There is no mention of a material change in farm operations in this subsection- that is addressed earlier in subsection B. This safe harbor provision is later reinforced in subsection G of 4VAC50-70-80, Issuance of a Certificate of Resource Management Plan Implementation.</p> <p>Material changes in farm operations and revisions to RMPs are addressed in: 4VAC50-70-50, Components of a resource management plan, subdivision C.2., where the owner or operator must affirm that he will notify the RMP developer within 60 days of potential material changes to the management unity that may require revision of the plan and he will notify the review authority of a change in ownership. Subsection B of 4VAC50-70-60, Revisions to a resource management plan, directs the RMP developer to revise the RMP after being notified by the owner or operator if he determines that it is necessary.</p>
37	William Street (James	Material changes in a farm operation should necessitate	Change not made. Subsection D of 4VAC50-70-60,

	River Association)	revision to existing RMPs, regardless of whether a Certificate of RMP Implementation has been issued. Accordingly, 4VAC50-70-60(D) should be removed.	<p>Revisions to a resource management plan, provides a farmer who has a Certificate of RMP Implementation that has not expired, and who is deemed to be fully implementing the RMP with safe harbor. That farmer who is in compliance with his RMP does not have to revise his RMP because of a new or modified TMDL for the lifespan of the RMP. This subsection is needed and reinforces that a farmer would not have to revise their RMP if a new or modified TMDL is issued during the lifespan of their RMP (safe harbor). There is no mention of a material change in farm operations in this subsection- that is addressed earlier in subsection B. This safe harbor provision is later reinforced in subsection G of 4VAC50-70-80, Issuance of a Certificate of Resource Management Plan Implementation.</p> <p>Material changes in farm operations and revisions to RMPs are addressed in: 4VAC50-70-50, Components of a resource management plan, subdivision C.2., where the owner or operator must affirm that he will notify the RMP developer within 60 days of potential material changes to the management unity that may require revision of the plan and he will notify the review authority of a change in ownership. Subsection B of 4VAC50-70-60, Revisions to a resource management plan, directs the RMP developer to revise the RMP after being notified by the owner or operator if he determines that it is necessary.</p>
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4VAC50-70-70. Review of a resource management plan.

Item Number	Commenter	Comment	Agency Response
38	Richard Chaffin (VASWCD Area V Chairman)	<p>The establishment of the Technical Review Committee should be tied to funding. If sufficient funding is not provided, the SWCD should not be required to perform the review. Some will argue that this Plan is a regulatory matter, and not a funding matter. I submit that there is no reason why the two can't be connected. If that is not the case, I would like to know why.</p> <p>There will have to be professional requirements for those who review Plans. This will typically be SWCD staff, but</p>	<p>As per the definition of Technical Review Committee (TRC), the TRC can be made up of non-SWCD staff. "A TRC may include, but not be limited to, the following members: soil and water conservation district directors, associates, and personnel; Virginia Cooperative Extension personnel; department nutrient management specialists; and such other technical resources available to the district." The necessary certification is already required for a Conservation Planner by NRCS and for a Nutrient Management Planner by DCR. District technical</p>

		they will have to have the same knowledge as those who write the Plans. This means that funding will have to be provided for them to attain the necessary certification. What entity will provide that certification?	employees are currently required to achieve conservation planning certification through existing grant agreements with the Department and receive funding to train their employees. The Department has their own certification program for nutrient management planners and oversees nutrient management certification.  Additionally, the Department is exploring funding support alternatives for Districts associated with unique portions of the program not currently administered already as part of the cost-share delivery process.
39	Ann Jennings (Chesapeake Bay Foundation)	CBF supports changes to section 4VAC 50-70-70 which replaced uncertain language ("address water quality objectives") with language that more clearly ties review of a RMP with requirements articulated in sections 4VAC 50-70-40 and 4VAC 50-70-50.	This remains an element of these regulations.

4VAC50-70-80. Issuance of a Certificate of Resource Management Plan Implementation.

Item Number	Commenter	Comment	Agency Response
40	Wilmer Stoneman (Virginia Farm Bureau Federation)	We remain concerned about the duration of the certificates. Resource Management Plans address water quality in an aggressive manner if implemented to achieve certification. If maintained to the standards prescribed (i.e. "T" for soil loss) the certification should be good for as long as the standards are maintained and field checked. Nine years appears will fit some operations cleanly; for others it will seem arbitrarily short (i.e. pastures and hayland). Regardless, the certification duration must reflect the time necessary to finance the aggressive BMP's required to meet the standard.	The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the stakeholders at those meetings for the RMP Certificate to last a total of nine years, based partly on three Nutrient Management Plan cycles of three-years each. It should also be pointed out that this timeframe is not inconsistent with Board's stormwater general permit requirements that allow a permittee to operate up to two additional permit cycles under current standards (an additional 10 years) if they maintain general permit coverage. The 9 years was also viewed as a middle of the road approach as the agricultural community originally wanted a longer duration and the conservation community a shorter period. When considering the issue it was recognized that for a farmer to want to participate in this voluntary program which is key to its success, a longer certificate period was advisable.
41	Alyson Sappington (Thomas Jefferson SWCD)	To provide greater participation incentive, have a sliding scale where more water quality protection would allow a longer plan lifespan. For instance, a 10' buffer may mean	The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the

		<p>a nine year plan, while a 35' buffer may allow for a 20 year plan. (i.e. The "gold standard" would be rewarded with additional years of surety.) Additionally, a longer plan lifespan would offer more certainty to a farmer and would therefore provide a greater incentive for a farmer to participate.</p>	<p>stakeholders at those meetings for the RMP Certificate to last a total of nine years, based partly on three Nutrient Management Plan cycles of three-years each. It should also be pointed out that this timeframe is not inconsistent with Board's stormwater general permit requirements that allow a permittee to operate up to two additional permit cycles under current standards (an additional 10 years) if they maintain general permit coverage. The 9 years was also viewed as a middle of the road approach as the agricultural community originally wanted a longer duration and the conservation community a shorter period. When considering the issue it was recognized that for a farmer to want to participate in this voluntary program which is key to its success, a longer certificate period was advisable.</p>
42	Jason Carter (Virginia Cattlemen's Association)	<p>A significant portion of the beef cattle produced in Virginia are managed on rented or leased land that is privately owned by individuals with no ownership of agricultural commodities. Long term rental/lease agreements are difficult for many producers to acquire with these landowners due to both competition from other farmers to rent the land at a higher value and land use pressures that raise the possibility of taking the land out of agricultural production and place it on a course for development. Many conservation programs, including this one, require a commitment of many years, and while this may be desirable to the farmer renter, it may not be of interest to a renting landowner to enter into long term agreements for conservation programs when the land can be taken out of production or rented elsewhere. Please consider that all farmers are not operating on 100% owned land where they have control over the ability to implement conservation programs with or without cost share and therefore even consider participating in the RMP. It is our fear that this and similar proposed/existing regulation of conservation practices will force beef producers to downsize due to inability to manage leased land decisions for the long term and lack of incentive for land owners renting to livestock producers to commit to long term agreements necessary for conservation program implementation.</p>	<p>We appreciate the insights expressed in this comment and recognize that some aspects of this program may need to be fine-tuned in the future. The Resource Management Plan program establishes a voluntary program for both owners and operators. Both owners and operators are also eligible for Virginia's voluntary agricultural cost-share programs. The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the stakeholders at those meetings for the RMP Certificate to last a total of nine years, based partly on three Nutrient Management Plan cycles of three-years each. It should also be pointed out that this timeframe is not inconsistent with Board's stormwater general permit requirements that allow a permittee to operate up to two additional permit cycles under current standards (an additional 10 years) if they maintain general permit coverage. The 9 years was also viewed as a middle of the road approach as the agricultural community originally wanted a longer duration and the conservation community a shorter period. When considering the issue it was recognized that for a farmer to want to participate in this voluntary program which is key to its success, a longer certificate period was advisable.</p>
43	Greg Wichelns (Culpeper Soil and Water Conservation)	<p>Depending on stage of implementation, a resource management plan could have up to a 9 year life span. This creates the risk that a producer would implement a series</p>	<p>The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the</p>

	District)	<p>of conservation practices based on current or past technical criteria and later be asked (required?) to change these practices based on new criteria that are computer model based, particularly for engineered practices. A far better (and fairer) process would be to grandfather existing bmp practices that meet the technical criteria in place when they were established and (if?) an evaluation confirms their continued function. Periodic compliance checks can still confirm this. Case example: 2 years ago "Farmer Jones" fenced all his streams and included in this some 10' setbacks based on small stream widths. He has fenced all streams on his farm and implements rotational grazing with good forage management. Should he be excluded from a resource management plan unless he moves all his fences and surrenders a lot more pasture? This could put him out of business, and the pending risk would make it difficult to generate interest in this program. We further believe that ongoing changes per computer model demands and then requiring the producer to implement even more restrictive practices at a later date will undermine the confidence of producers in the process and contribute to low interest in voluntary use of resource management plans and, ultimately, Bay WIP progress. Permanence of a resource management plan and grandfathering of already established, technically competent practices should be the norm.</p>	<p>stakeholders at those meetings for the RMP Certificate to last a total of nine years, based partly on three Nutrient Management Plan cycles of three-years each. It should also be pointed out that this timeframe is not inconsistent with Board's stormwater general permit requirements that allow a permittee to operate up to two additional permit cycles under current standards (an additional 10 years) if they maintain general permit coverage. The 9 years was also viewed as a middle of the road approach as the agricultural community originally wanted a longer duration and the conservation community a shorter period. When considering the issue it was recognized that for a farmer to want to participate in this voluntary program which is key to its success, a longer certificate period was advisable.</p> <p>RMPs will be written with the best technology currently available and are based on a continually evolving process to adaptively manage the farm's resources. At the end of the lifespan of an RMP, the RMP developer may have to revise or update the current best management practices. This program is meant to be an evolving process based on on-farm assessments. Issues such as grandfathering of specified practices through regulatory action would be an issue for future consideration on a case by case basis if found to be necessary.</p>
44	Jeff Kelble (Shenandoah Riverkeeper)	<p>Implementation of the BMP's is entirely voluntary. The Safe Harbor "carrot" of nine years is unlikely to be enough of an incentive to drive overwhelming participation in the full RMP process which is what would be required to meet Bay reduction goals and commitments made in Virginia's Watershed Implementation Plans. For example, Virginia committed to 95% cattle exclusion which seems to imply that 95% of landowners would need to participate in at least this portion of the RMP process. In the Shenandoah Valley, Virginia's current incentive programs have garnered less than 10% participation in cattle exclusion after nearly two decades of implementation. It's farcical to believe that without drastically changing the incentives or the requirements to exclude cattle, that we're magically going to reach 95% in just over another decade's time.</p>	<p>The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the stakeholders at those meetings for the RMP Certificate to last a total of nine years, based partly on three Nutrient Management Plan cycles of three-years each. It should also be pointed out that this timeframe is not inconsistent with Board's stormwater general permit requirements that allow a permittee to operate up to two additional permit cycles under current standards (an additional 10 years) if they maintain general permit coverage. The 9 years was also viewed as a middle of the road approach as the agricultural community originally wanted a longer duration and the conservation community a shorter period. When considering the issue it was recognized that for a farmer to want to participate in this voluntary program which is key to</p>

			<p>its success, a longer certificate period was advisable.</p> <p>The agricultural cost-share program has dramatically changed the incentive for fencing, and is now offering 100% cost-share funding. Consideration of cost-share changes such as this may increase participation as the program is implemented.</p>
45	Jeff Kelble (Shenandoah Riverkeeper)	Protecting local water quality is critical to Shenandoah Riverkeeper's mission. One of the greatest concerns of Shenandoah Riverkeeper is that no attempt has been made by Virginia agencies or by EPA to mathematically determine whether or not the provisions prescribed in the RMP process are guaranteed to remove local streams from the Impaired Waters List (303D/305B). This RMP process, by granting safe harbor for nine years could specifically undermine the ability of those local plans to adopt new measures during their five year renewal cycle.	The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the stakeholders at those meetings for the RMP Certificate to last a total of nine years, based partly on three Nutrient Management Plan cycles of three-years each. It should also be pointed out that this timeframe is not inconsistent with Board's stormwater general permit requirements that allow a permittee to operate up to two additional permit cycles under current standards (an additional 10 years) if they maintain general permit coverage. The 9 years was also viewed as a middle of the road approach as the agricultural community originally wanted a longer duration and the conservation community a shorter period. When considering the issue it was recognized that for a farmer to want to participate in this voluntary program which is key to its success, a longer certificate period was advisable.
46	Jeff Kelble (Shenandoah Riverkeeper)	Shenandoah Riverkeeper is completely opposed to the idea that any pollution source could receive a safe harbor without guarantees that their reductions would guarantee water quality standards are met. I see no calculations, scientific evidence or even any reasoning in the record that would indicate water quality standards will be met.	The agricultural best management practices required in RMPs will certainly protect water quality and have been shown to do such. The VAST scenarios and Chesapeake Bay model show that if broad adoption of the practices are put in place they will adequately address agricultural anthropogenic sources.
47	Ann Jennings (Chesapeake Bay Foundation)	CBF supports the requirement in subsection 4VAC 50-70-80 (l) requiring the Department to maintain a public registry of all current Certificates of RMP Implementation.	This remains an element of these regulations.
48	Ann Jennings (Chesapeake Bay Foundation)	Regarding issuance of a Certificate of RMP Implementation, CBF maintains its recommendation to insert "may" versus "shall" on lines 346 and 352 to allow the Department appropriate flexibility in determining if a particular owner/operator should receive a Certificate of RMP Implementation. Otherwise, it appears that the Department will have no authority to deny "safe harbor" regardless of the circumstances presented by a particular farm operation.	Change not made. The Department believes that once the District has completed their due diligence and has affirmed that the RMP is adequate and fully implemented, an additional review by the Department would be duplicative and unnecessary. In this situation, the language that requires the Department to issue a Certificate of RMP Implementation is appropriate. Less assurity to the process would also likely lead to less participation.

49	Ann Jennings (Chesapeake Bay Foundation)	<p>CBF maintains its recommendation that the Certificate of RMP Implementation expire in six years instead of nine years as indicated on line 358. As currently drafted, these regulations provide no triggers to require implementation of a revised RMP during the life of a valid Certificate. Therefore, the Commonwealth would have no authority to compel implementation of a modified RMP even if, for instance, there is a material change in the farm operation. Nor could the Commonwealth require implementation of a modified RMP if revisions to Virginia's Chesapeake Bay WIP, scheduled for 2017, call for implementation of additional BMPs. We maintain that designing the program with a shorter lifespan for the Certificate of RMP Implementation would afford the Commonwealth a greater opportunity to ensure execution of those BMPs required to maintain the water quality benefits of the program.</p>	<p>The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the stakeholders at those meetings for the RMP Certificate to last a total of nine years, based partly on three Nutrient Management Plan cycles of three-years each. It should also be pointed out that this timeframe is not inconsistent with Board's stormwater general permit requirements that allow a permittee to operate up to two additional permit cycles under current standards (an additional 10 years) if they maintain general permit coverage. The 9 years was also viewed as a middle of the road approach as the agricultural community originally wanted a longer duration and the conservation community a shorter period. When considering the issue it was recognized that for a farmer to want to participate in this voluntary program which is key to its success, a longer certificate period was advisable.</p> <p>Also, material changes in farm operations and revisions to RMPs are addressed in: 4VAC50-70-50, Components of a resource management plan, subdivision C.2., where the owner or operator must affirm that he will notify the RMP developer within 60 days of potential material changes to the management unit that may require revision of the plan and he will notify the review authority of a change in ownership. Subsection B of 4VAC50-70-60, Revisions to a resource management plan, directs the RMP developer to revise the RMP after being notified by the owner or operator if he determines that it is necessary. Such changes would be implemented during the nine-year certificate.</p>
50	Ann Jennings (Chesapeake Bay Foundation)	<p>The word "adequate" is also used in 4VAC 50-70-80 in several locations with apparently different meanings. In subsection A, it denotes a RMP plan that a RMP developer has determined does not need to be revised pursuant to 4VAC 50-70-60 (i.e., due to changes in owner, operator, management unit, or local TMDL or Bay WIP). Subsections C, D, and E of 4VAC 50-70-80 also use "adequate" to describe a RMP plan (in some cases, expressly referring back to subsection A), but these later uses appear to indicate a RMP that both meets the plan requirements stated in 4VAC 50-70-50 (B) (that is, the</p>	<p>Suggested changes were made to clear up the ambiguous language.</p>



		<p>minimum standards of 4VAC 50-70-40 and the administrative components of 4VAC 50-70-50 (C)) and that does not require revision as specified in 4VAC 50-70-60. To clear up this ambiguity, it would be advisable to revise subsection A as follows:</p> <p>A. Prior to issuance of a Certificate of RMP Implementation for a management unit, confirmation shall be made by the RMP developer <u>that the plan meets the requirements stated in 4VAC 50-70-50 B and C</u> and that no revision of the RMP is required in accordance with 4VAC 50-70-60 and as such is adequate, and verification of the full implementation of the RMP shall be completed...</p>	
51	Ann Jennings (Chesapeake Bay Foundation)	<p>CBF maintains the position that the RMP program regulations are not in compliance with §10.1-104.7 (A) which clearly specifies that owners/operators must "fully implement and maintain" [emphasis added] a RMP to be afforded a Certificate of RMP Implementation. The regulations provide for a very lengthy, and even unspecified, timeframe for development and implementation of a corrective action agreement and for appeal of a certificate revocation by the Department. CBF, therefore, again requests that the RMP program regulations specify that the Department shall notify the owner/operator that the Department cannot verify that the owner/operator is in full compliance with §10.1-104.7 (A). Additionally, this section should provide the Department the option to determine that, if a corrective action was previously required for an owner/operator, any new or additional deficiencies could result in immediate revocation of the operator's Certificate of RMP Implementation, depending upon the severity or nature of the deficiencies.</p>	<p>Change not made. The process that is outlined in the regulations for noncompliance issues is not open ended. Under 4VAC50-70-100, Compliance, an implementation schedule is required as part of the corrective action agreement, as agreed to by both parties. The Department has the authority to deal with repeat offenders as appropriate. Subsection E. clearly allows revocation of a Certificate of RMP Implementation for non-compliance with the corrective action agreement.</p> <p>As the Department noted to the Board, although the law prescribes that an owner or operator must fully implement and maintain an RMP to be afforded a Certificate, the Department believes that instead of initially suspending a Certificate, that a preferred alternative to address maintenance of the RMP is to place the owner or operator under an agreed upon corrective action agreement, through a prescribed process, until such time as the owner or operator is back in full compliance or it becomes necessary to revoke the certificate. Suspension of the Certificate would likely make the owner or operator subject to modifying their RMP to address new TMDLs, potentially result in additional costs to the owner of operator, and is not in keeping with the collaborative approach advanced in the regulations to implement this voluntary program.</p>
52	William Street (James River Association)	<p>JRA believes that the lifespan of an RMP should be six years. Given that the Chesapeake Bay TMDL will be revised in 2017, the lifespan must be short enough to ensure that plans will be updated prior to the 2025 deadline in order for Virginia to rely on the RMP in its WIP to meet</p>	<p>The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the stakeholders at those meetings for the RMP Certificate to last a total of nine years, based partly on three Nutrient</p>

		<p>its pollution reductions. The proposed 9-year lifespan would ensure that RMP's incorporate any changes from 2017 revised WIP before the target date of 2025. Additionally, due to the fact that 4VAC50-70-40.C does not contain a timeline within which the Department will revise the minimum standards per revised TMDLs, we believe that the lifespan should be reduced.</p>	<p>Management Plan cycles of three-years each. It should also be pointed out that this timeframe is not inconsistent with Board's stormwater general permit requirements that allow a permittee to operate up to two additional permit cycles under current standards (an additional 10 years) if they maintain general permit coverage. The 9 years was also viewed as a middle of the road approach as the agricultural community originally wanted a longer duration and the conservation community a shorter period. When considering the issue it was recognized that for a farmer to want to participate in this voluntary program which is key to its success, a longer certificate period was advisable.</p> <p>It should also be noted that a date by which the review of minimum standards is to occur was inserted into the regulations.</p>
53	Katie Frazier (Virginia Agribusiness Council)	<p>The Council would prefer that a Certificate of RMP Implementation be valid in perpetuity provided the inspections of implementation of the RMP continue to find the RMP Certificate holder in compliance with the provisions of the RMP. In an effort to reach consensus within the RAP, we agreed to a RMP "lifespan" of 9 years. This is a middle ground that will allow a farmer to implement their plan with certainty about what they must do to maintain the RMP, and as such, the safe harbor. Proposals that shorten the lifespan of the plan to a lesser period will create an unreasonable workload for planners, farmers, and the soil and water conservation districts tasked with reviewing and inspecting the plans.</p>	<p>The Department agrees that nine years is a reasonable duration for the Resource Management Plans. The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the stakeholders at those meetings for the RMP Certificate to last a total of nine years.</p>
54	Jacob Powell (Virginia Conservation Network)	<p>The lifespan of an RMP should be six years. The Chesapeake Bay TMDL will be revised in 2017 to ensure that plans will meet water quality goals by the 2025 deadline. The proposed 9-year lifespan would not ensure that RMP's incorporate changes from 2017 revision, in time to meet that deadline.</p>	<p>The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the stakeholders at those meetings for the RMP Certificate to last a total of nine years, based partly on three Nutrient Management Plan cycles of three-years each. It should also be pointed out that this timeframe is not inconsistent with Board's stormwater general permit requirements that allow a permittee to operate up to two additional permit cycles under current standards (an additional 10 years) if they maintain general permit coverage. The 9 years was also viewed as a middle of the road approach as the agricultural community originally wanted a longer duration</p>

			and the conservation community a shorter period. When considering the issue it was recognized that for a farmer to want to participate in this voluntary program which is key to its success, a longer certificate period was advisable.
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4VAC50-70-90. Inspections.

Item Number	Commenter	Comment	Agency Response
55	Ann Jennings (Chesapeake Bay Foundation)	CBF maintains its recommendation that the RMP program regulations require either inspections no less than once every two (not three) years or annual verification from the owner/operator that a RMP is being fully maintained. This change is warranted as information on BMP implementation will be essential to ensure that Virginia is meeting its two-year milestones and 2017 commitments for reductions in nitrogen, phosphorus, and sediment loads from the agriculture sector in the Chesapeake Bay watershed.	<p>The frequency of on-site inspections was an issue of extensive discussion during the RAP. A compromise was reached by all of the stakeholders for the regulations to require an inspection no less than once every three years, which is what the regulations require. That could mean once every year or one inspection every two years, or more frequently. If the owner or operator is participating in a cost-share program then Virginia's agricultural BMP cost-share program also requires a random five percent spot check of practices to be completed annually. In addition, a five percent sample of the total number of selected practices from previous years is conducted to monitor long-term compliance. This random sampling is also required under DCR's Quality Assurance Project Plan standards for reporting non-point source BMP data to the EPA Chesapeake Bay Program Office.</p> <p>As the Department noted to the Board, if the program is heavily prescribed for, a three year rotation is a very reasonable schedule from a workload perspective. Additionally, other compliance programs also have similar or greater inspection frequencies. For example, the AFO/CAFO inspection program includes a baseline inspection frequency of once every 3 years, which may become more frequent if compliance issues are present, or less frequent to no more than once every 4 years if all is in order.</p>
56	William Street (James River Association)	JRA supports including an annual self-certification from the owner/operator once a Certificate of RMP Implementation has been issued. Maintenance of installed best management practices is the key to ensuring their on-going effectiveness, and annual self-certification is the	An annual self-verification requirement was discussed with the stakeholders at the Regulatory Advisory Panel meetings. It was agreed that this was not the preferred method for the farm community. Self-verification would require one more paperwork exercise for farmers to

		mechanism which will ensure that maintenance occurs regularly. This will not only encourage accountability on the part of the owner/operator, but will also provide Soil and Water Conservation Districts and the Department with a mechanism to determine which owners/operators may not be continuing implementation of their RMPs, triggering the need for an inspection and compliance verification.	complete; create another time commitment ; and potentially cause unnecessary confusion.  As the was stated in the presentation to the Board during the discussions of the proposed regulations, the remarks noted that the department and the agricultural community are not favorable to an annual verification as compliance would likely be low and enforcement of such a provision would be difficult. It is the object of the regulations to keep the program as simple as possible and have as little burden on the farmers as possible while still maintaining a sound voluntary program that will advance significant reductions.
57	Katie Frazier (Virginia Agribusiness Council)	The Council encourages DCR to maintain the provisions contained in both sections addressing inspections and compliance to allow for adequate time for a RMP certificate holder to address non-compliance following an inspection. Allowing producers to have adequate time to correct any issues of noncompliance found during a periodic inspection will be crucial to maintaining producer buy-in and acceptance of the program and of best management practices. Provided the proposed corrective actions are followed, it will not result in severe impacts to water quality.	Much time was spent during the Regulatory Advisory Panel meetings discussing frequency of inspections and compliance issues. The regulations as drafted incorporate the consensus that was reached during those stakeholder discussions and no further changes to these elements have been made.
58	Jacob Powell (Virginia Conservation Network)	The proposed regulation requires inspections every 3 years. To ensure Virginia meets its Bay TMDL two-year milestone goals, inspections should occur no less than every two years.	The frequency of on-site inspections was an issue of extensive discussion during the RAP. A compromise was reached by all of the stakeholders for the regulations to require an inspection no less than once every three years, which is what the regulations require. That could mean once every year or one inspection every two years, or more frequently. If the owner or operator is participating in a cost-share program then Virginia's agricultural BMP cost-share program also requires a random five percent spot check of practices to be completed annually. In addition, a five percent sample of the total number of selected practices from previous years is conducted to monitor long-term compliance. This random sampling is also required under DCR's Quality Assurance Project Plan standards for reporting non-point source BMP data to the EPA Chesapeake Bay Program Office.  As the Department noted to the Board, if the program is heavily prescribed for, a three year rotation is a very reasonable schedule from a workload perspective.

			Additionally, other compliance programs also have similar or greater inspection frequencies. For example, the AFO/CAFO inspection program includes a baseline inspection frequency of once every 3 years, which may become more frequent if compliance issues are present, or less frequent to no more than once every 4 years if all is in order.
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4VAC-50-70-100. Compliance.

Item Number	Commenter	Comment	Agency Response
59	Greg Wichelns (Culpeper Soil and Water Conservation District)	The success of conservation districts in implementing voluntary programs in large part derives from their status as non-regulatory entities. Adding compliance review functions may threaten our historic trust relationships with producers and ultimately limit district's ability to implement Virginia's voluntary Bay WIP strategy. Producers may be unwilling to come forward and engage our services for on farm planning if district's are seen as enforcement agencies.	The RMP program is a voluntary program not a regulatory program. A participant would choose to be a party to the program, understanding that implementation of BMPs would have to be verified. The role of the SWCDs is to verify that the voluntary plan has been put into practice and then, if appropriate, recommend the farm receive a Certificate of RMP. Although the SWCDs would perform the inspections, this is not truly a regulatory role. The Districts would be assuring compliance with the RMP. If issues arise, then DCR would take over as the regulatory agency (4VAC50-70-90 E) and follow the steps laid out in the regulations, 4VAC50-70-100 and 4VAC50-70-110, including written notices, corrective actions and appeals.
60	Cathy Perry, on behalf of the Board of Directors of the Headwaters SWCD	The combination of duties outlined under Chapter 70 moves soil and water conservation districts into a greater regulatory role that will make selling voluntary best management practices more difficult.	The RMP program is a voluntary program not a regulatory program. A participant would choose to be a party to the program, understanding that implementation of BMPs would have to be verified. The role of the SWCDs is to verify that the voluntary plan has been put into practice and then, if appropriate, recommend the farm receive a Certificate of RMP. Although the SWCDs would perform the inspections, this is not truly a regulatory role. The Districts would be assuring compliance with the RMP. If issues arise, then DCR would take over as the regulatory agency (4VAC50-70-90 E) and follow the steps laid out in the regulations, 4VAC50-70-100 and 4VAC50-70-110, including written notices, corrective actions and appeals.  Additionally, the Districts have more interaction with farmers, provide technical assistance, and promote

			voluntary BMPs. The stakeholders feel that the Districts are in the best position to encourage farmers to enroll in agricultural cost-share BMPs.
61	Richard Chaffin (VASWCD Area V Chairman)	It would seem that the reviewing authority would have to agree to the revisions to the Plan. If that authority does not have a say in the matter, there is no reason to have the review to begin with.	As the review authority, Districts do have a say in the matter. Subsection B of 40VAC50-70-100 requires the Department to consult with the review authority/District in the review of a corrective action, but the Department maintains control of the plan approval.
62	Jason Halbert (Charlottesville)	I think compliance and enforcement are key to any program like this and I encourage the use of Soil & Water Conservation Districts in this regard. They often bemoan the idea of anything mandatory or regulatory but this is just simply whining. Farmers have to do their fair share and they should be monitored and inspected just like everyone else in other industries.	The RMP program is a voluntary program that land owners and operators can choose to participate in. DCR feels that a proper balance has been struck between the roles of the District and the roles of DCR in this process.

4VAC50-70-110. Appeals.

Item Number	Commenter	Comment	Agency Response
63	Richard Chaffin (VASWCD Area V Chairman)	It appears that this section is giving authority to DCR to override the decision of a District Board. If this is the case, there is no reason to have the District involved to begin with.	Any regulatory process requires a procedure for an appeal to provide due process. The RMP program establishes an appeals process that does not override the Districts. The appeals process is opened up to all interested parties, including the Districts. Under subsection B of 4VAC50-70-110, any aggrieved party, "including but not limited to a district" can appeal a decision of the Department. All parties to the process have a right to appeal. Both the District's involvement in the RMP process and the appeals opportunity are appropriate.
64	Ann Jennings (Chesapeake Bay Foundation)	CBF supports language provided in section 4VAC 50-70-110 allowing "any party ..... aggrieved by and claiming the unlawfulness of a case decision of the department shall have a right to appeal to the Board in accordance with the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia)." While this language does not fully address our concerns regarding compliance with the RMP program, it will provide some opportunity of redress for individuals who may be affected by Department decisions regarding Certificate of RMP Implementation.	This remains an element of these regulations. As a state regulatory program, the RMP program must follow the requirements of Virginia Administrative Process Act (VAPA). Therefore, due process requirements have been provided within the RMP regulatory framework that are in conformity with the language found within the VAPA to provide a right of appeal to "any party aggrieved by and claiming the unlawfulness of a case decision" (Code of Virginia § 2.2-4026).
65	Ann Jennings	CBF again strongly recommends deleting lines 457 through	During the RAP discussions, it was made clear that

	(Chesapeake Bay Foundation)	458 of section 4VAC 50-70-110 which maintain a "safe harbor" for a farm operation even while the operator appeals a Department decision that the farm operation is, in fact, not in compliance with §10.1-104.7 and consequently could be in violation of State Water Control Law.	revocation of a Certificate of RMP during the corrective action or appeals process was not the preferred alternative. Revocation of a Certificate would require the farmer to start the entire RMP process over from the beginning, even if he willingly corrects any deficiency or wins the appeal. He would also face potential new standards established by the current version of the TMDL negating the safe harbor provisions provided by the RMP program. However, if the farmer does not correct the noted deficiencies or loses the appeal, then he also loses his Certificate.
66	Katie Frazier (Virginia Agribusiness Council)	This section allows "any party aggrieved by and claiming the unlawfulness of a case decision of the department to appeal the decision". This must be clarified to state that appeals are only allowed by a district, owner or operator, or a RMP developer, not all citizens of the Commonwealth who may not agree with the RMP decision. RMPs are voluntary actions taken by agricultural producers, and as such, do not need the same stringent requirements as other regulatory measures, including a right to appeal actions for "all parties".	No changes have been made. As a state regulatory program, the RMP program must follow the requirements of Virginia Administrative Process Act (VAPA). Therefore, due process requirements have been provided within the RMP regulatory framework that are in conformity with the language found within the VAPA to provide a right of appeal to "any party aggrieved by and claiming the unlawfulness of a case decision" (Code of Virginia § 2.2-4026).

4VAC50-70-120. Reporting.

Item Number	Commenter	Comment	Agency Response
67	Jeff Kelble (Shenandoah Riverkeeper)	The RMP specifically prevents the public from verifying that provisions of the RMP are being met by landowners. One of the bedrock principles of the Federal Clean Water Act is that information be made available so citizens can take an active roll in ensuring their local streams are protected. This provision destroys accountability and undermines this citizen involvement.	The RMP program must follow the framework provided through the statutory law. Subsection 24 of § 2.2-3705.6 of the Code of Virginia excludes "documents and other information of a proprietary nature furnished by an agricultural landowner or operator" under a resource management plan from Virginia's Freedom of Information Act. The regulations must follow this law. The Department has set up the RMP program to contain checks and balances throughout the regulatory process. The regulations, specifically subsection D of 40VAC50-70-120, are compliant with Freedom of Information Act provisions. Farm management strategies and input measures should remain confidential as releasing them to the public could potentially have negative fiscal consequences for the farmer.
68	David Bernard	The measures to protect farmer privacy, while	The RMP program must follow the framework provided

	(Richmond)	understandable, will hamper enforcement and the scientific study without which we cannot improve our practice.	through the statutory law. Subsection 24 of § 2.2-3705.6 of the Code of Virginia excludes “documents and other information of a proprietary nature furnished by an agricultural landowner or operator” under a resource management plan from Virginia’s Freedom of Information Act. The regulations must follow this law.  As far as scientific study, the Department will be collecting data and reporting aggregated BMP information. The Department will assess farmers’ BMP implementation efforts through the RMP program and report their results to the public. This information will be included in TMDL reports and made available on DCR’s website: <a href="http://dswcapps.dcr.virginia.gov/htdocs/progs/BMP_query.aspx">http://dswcapps.dcr.virginia.gov/htdocs/progs/BMP_query.aspx</a>
69	Richard Chaffin (VASWCD Area V Chairman)	This section addresses assessments conducted by an SWCD. However, section 70-50 outlines those entities which are authorized to perform assessments, and no mention is made of SWCD’s. Why would a District be performing an assessment, under 70-120.	Changes have been made to subdivision A.1. of section 4VAC50-70-120 to address this comment. Because the language as drafted was unclear, the reference to soil and water conservation districts conducting RMP assessments has been deleted.
70	Richard Chaffin (VASWCD Area V Chairman)	Do the statements contained here indicate that Districts will be entering the data? Is this the start of that data entry occurring with all aspects of the tracking program? [lines 467 and 473]	Yes, under 40VAC50-70-120 A, the districts will be entering data. However, an additional RMP module is expected to be developed that will allow for RMP plan developers to also enter data.

4VAC50-70-130. Review of duties performed by soil and water conservation districts.

Item Number	Commenter	Comment	Agency Response
71	Richard Chaffin (VASWCD Area V Chairman)	This section provides for DCR to make the determination that an elected Board is not performing in a manner acceptable to the Department. It appears that Districts should simply not be involved in this process, at all, and all administration of the program handled by DCR.	The better conduit for the RMP process is to use local Soil and Water Conservation Districts. The Districts have built long-standing relationships with their local farmers and have the contacts needed to get the RMP program off the ground. Additionally, a change has been made to subdivision C 1 of 4VAC50-70-130 to clarify that under this regulation the only funding that can be withheld from a district for failure to perform required duties is RMP related funding.

4VAC50-70-140. RMP developer qualifications and certification.



Item Number	Commenter	Comment	Agency Response
72	Tom Simpson (Water Stewardship)	Requirements for becoming a certified Resource Management Planner are included in the regulations. These appear reasonable and the department should develop the certification program and offer it to private sector professionals as soon as possible following adoption of the regulations. While the certification requirements do not solely rely on NRCS classification level or TSP status, DCR should encourage NRCS to offer TSP/Conservation planner training to the private sector more frequently as it is a component of some certification options and would help assure work quality on the conservation aspects of the RMP.	DCR will continue to work with NRCS on the delivery of this program and continue to encourage training for TSPs and conservation planners. DCR will also support alternative certification processes as outlined in the regulations. Subdivision A.2. of 40VAC50-70-140 requires DCR to provide an alternative to NRCS certification.
73	Cathy Perry, on behalf of the Board of Directors of the Headwaters SWCD	DCR should provide training for writing RMPs and administration of the program to district staff and directors. The training should be offered around the state within convenient travel distance and within a period of time that will allow new employees to be on the job quickly. On-line training should be utilized as much as possible to reduce travel and limit the time personnel are absent from field duties.	DCR realizes RMP developer training is needed for SWCDs and others for the program to be successful. The Department will be developing guidance and other documents to support program implementation. DCR also agrees that on-line training is a preferred method for some people and will take that into consideration.

Comments concerning SWCDs.

Item Number	Commenter	Comment	Agency Response
74	Wilmer Stoneman (Virginia Farm Bureau Federation)	Outside of the regulatory process we believe funding for SWCD's for implementation of these regulations is critical for the success of the program. We also believe that implemented properly these plans provide an opportunity of significant water quality improvements with additional incentives for their development and implementation.	It is anticipated that DCR will provide funding to Districts for providing the technical assistance required with this program's implementation. The additional workload for Districts created by this new program will include RMP plan review, verification of RMP implementation, on-site inspections, and recommendations that a farm is eligible for certification to the Board. DCR truly understands that this new program could create additional workloads for the districts and recognizes that funding is a critical issue.
75	Alyson Sappington (Thomas Jefferson SWCD)	Soil and Water Conservation Districts are given significant responsibilities in these regulations with no assurance for compensation. The regulations should specifically stipulate that SWCDs will receive funding to cover the costs of implementing these regulations within their boundaries.	It is anticipated that DCR will provide funding to Districts for providing the technical assistance required with this program's implementation. The additional workload for Districts created by this new program will include RMP plan review, verification of RMP implementation, on-site

			inspections, and recommendations that a farm is eligible for certification to the Board. DCR truly understands that this new program could create additional workloads for the districts and recognizes that funding is a critical issue.
76	Jason Carter (Virginia Cattlemen's Association)	Soil and Water Conservation Districts throughout the Commonwealth are valuable resources for information dissemination and program marketing to farmers. The proposed RMP places an unnecessary regulatory burden on the local Soil and Water Conservation Districts and associated staff that they are ill equipped to execute and we feel is outside of the purpose of these Districts. Soil and Water Conservation Districts are not going to remain effective in a potential regulatory role that they were not created to fill.	The RMP program was developed as a voluntary program where farmers can opt in or not. It is not a regulatory program. Local Soil and Water Conservation Districts are the best mechanism to implement this process. The Districts have built long standing relationships with their local farmers, as noted in the comment, and have the contacts needed to get the RMP program off the ground.
77	Mac Saphir (Hanover/Caroline SWCD)	I must concur with sections of the comments already submitted regarding the burden that certifying the Resource Management Plans will place on the Soil and Water Conservation Districts. The staffs of most of these districts are already stretched to the limit within their existing budgets. Without more funds to apply to these new duties SWCD's will be hardpressed to carry out these increased duties. We do not need another "unfunded mandate".	It is anticipated that DCR will provide funding to Districts for providing the technical assistance required with this program's implementation. The additional workload for Districts created by this new program will include RMP plan review, verification of RMP implementation, on-site inspections, and recommendations that a farm is eligible for certification to the Board. DCR truly understands that this new program could create additional workloads for the districts and recognizes that funding is a critical issue.
78	Greg Wichelns (Culpeper Soil and Water Conservation District)	Assuming even a moderate to low level of interest by producers for help in developing resource management plans, a significant question arises: Do the districts have the workforces to service this interest? For conservation district staff to perform as plan developers and/or plan reviewers/compliance "inspectors" requires increased staff levels. Current staff levels are already strained by increased DCR programs and would not be able to support these functions. Undertaking plan development would require significant time involvement by senior staff, beginning with the initial inquiry by the producer to substantial final decisions regarding plan component options and implementation. We must meet with the producers to determine their goals and objectives, assess the farm, develop alternatives and cost estimates which meet the RMP criteria, and present them to the producer. If structural measures are required, engineering assistance would also need to be made to determine feasibility as well as cost estimates. These planning costs will occur even if	DCR recognizes the increased workload that Districts could be facing because of this new RMP program and the increased need for BMPs. It is anticipated that DCR will provide funding to Districts for providing the technical assistance required with this program's implementation. The additional workload for Districts created by this new program will include RMP plan review, verification of RMP implementation, on-site inspections, and recommendations that a farm is eligible for certification to the Board. DCR truly understands that this new program could create additional workloads for the districts and recognizes that funding is a critical issue.  There is no requirement for Districts to write RMP plans. The regulations do not require District staff to be RMP developers although it is recognized that until sufficient RMP developers in the private sector are trained that District personnel will likely assist with plan development.

		<p>the producer ultimately elects not to go forward with the RMP. How would this be funded? Apart from the previously described on-the-ground costs, districts would also have additional marketing and administration costs. All the above would also generate data reporting and plan tracking. How would these costs and needed computer and software resources be funded? Does a plan tracking database currently exist? What are the development costs of such and who bears them?</p>	<p>In 2012, a comprehensive study was performed focused on funding for SWCDs. This "Summer Study" has brought funding issues of the Districts before the General Assembly. Discussions are ongoing, including agricultural BMP cost-share funding alternatives. The Commonwealth has committed to achieving certain levels of agricultural BMPs in the Chesapeake Bay TMDL WIP II and will have to strive to meet those levels with or without the RMP program. DCR understands that in order to ramp up BMP implementation we will need more money and technical assistance to get these practices on the ground.</p>
79	<p>Cathy Perry, on behalf of the Board of Directors of the Headwaters SWCD</p>	<p>If Resource Management Plans are accepted by the agricultural community in significant numbers, the soil and water conservation districts do not have the personnel and funding to support the duties of the Technical Review Committee.</p>	<p>DCR recognizes the increased workload that Districts could be facing because of this new RMP program and the increased need for BMPs. It is anticipated that DCR will provide funding to Districts for providing the technical assistance required with this program's implementation. The additional workload for Districts created by this new program will include RMP plan review, verification of RMP implementation, on-site inspections, and recommendations that a farm is eligible for certification to the Board. DCR truly understands that this new program could create additional workloads for the districts and recognizes that funding is a critical issue.</p> <p>In 2012, a comprehensive study was performed focused on funding for SWCDs. This "Summer Study" has brought funding issues of the Districts before the General Assembly. Discussions are ongoing, including agricultural BMP cost-share funding alternatives. The Commonwealth has committed to achieving certain levels of agricultural BMPs in the Chesapeake Bay TMDL WIP II and will have to strive to meet those levels with or without the RMP program. DCR understands that in order to ramp up BMP implementation we will need more money and technical assistance to get these practices on the ground.</p>
80	<p>Cathy Perry, on behalf of the Board of Directors of the Headwaters SWCD</p>	<p>Using past experience of the VACS program as a guide and if a significant number of Resource Management Plans are written, the soil and water conservation districts do not have the personnel, funding, and mileage budgets to conduct the inspections and deal with the compliance issues.</p>	<p>DCR recognizes the increased workload that Districts could be facing because of this new RMP program and the increased need for BMPs. It is anticipated that DCR will provide funding to Districts for providing the technical assistance required with this program's implementation. The additional workload for Districts created by this new program will include RMP plan review, verification of RMP</p>

			<p>implementation, on-site inspections, and recommendations that a farm is eligible for certification to the Board. DCR truly understands that this new program could create additional workloads for the districts and recognizes that funding is a critical issue.</p> <p>In 2012, a comprehensive study was performed focused on funding for SWCDs. This "Summer Study" has brought funding issues of the Districts before the General Assembly. Discussions are ongoing, including agricultural BMP cost-share funding alternatives. The Commonwealth has committed to achieving certain levels of agricultural BMPs in the Chesapeake Bay TMDL WIP II and will have to strive to meet those levels with or without the RMP program. DCR understands that in order to ramp up BMP implementation we will need more money and technical assistance to get these practices on the ground.</p>
81	Tracy C. Pyles, Jr. (Chairman of the Augusta County Board of Supervisors)	<p>The Augusta County Board of Supervisors is concerned with the implementation of this program. If the program is successful in attracting farms to voluntarily prepare Resource Management Plans, how will compliance monitoring be performed? Headwaters Soil &amp; Water Conservation District is not in a position to take on this additional responsibility without a corresponding increase in state funding. Likewise, the County is not in a position to absorb another unfunded mandate. Adequate funding for this initiative should be part of any new regulations .</p>	<p>DCR recognizes the increased workload that Districts could be facing because of this new RMP program and the increased need for BMPs. It is anticipated that DCR will provide funding to Districts for providing the technical assistance required with this program's implementation. The additional workload for Districts created by this new program will include RMP plan review, verification of RMP implementation, on-site inspections, and recommendations that a farm is eligible for certification to the Board. DCR truly understands that this new program could create additional workloads for the districts and recognizes that funding is a critical issue.</p> <p>In 2012, a comprehensive study was performed focused on funding for SWCDs. This "Summer Study" has brought funding issues of the Districts before the General Assembly. Discussions are ongoing, including agricultural BMP cost-share funding alternatives. The Commonwealth has committed to achieving certain levels of agricultural BMPs in the Chesapeake Bay TMDL WIP II and will have to strive to meet those levels with or without the RMP program. DCR understands that in order to ramp up BMP implementation we will need more money and technical assistance to get these practices on the ground.</p>

			Additionally, DCR recognizes that implementation of this program should not be on the backs of counties. The Commonwealth must address adequate funding to put this RMP program into action.
82	Katie Frazier (Virginia Agribusiness Council)	Of top priority and concern is ensuring that there is adequate funding for both producers and soil and water districts to implement the RMP planning process, BMPs authorized by the plan, and any administrative work required as part of the RMP process. Cost-share will be critically important to ensuring that farmers can afford to have a RMP prepared, and then implement the BMPs outlined within the RMP. Likewise, there will need to be funds for training and staffing at Soil and Water Conservation districts to address their responsibility in managing limited oversight of the program. Further changes to both SWCD funding and Ag BMP cost-share policies will need to be reviewed before this program is fully implemented to ensure that creative mechanisms are utilized to maximize usage of this program.	<p>DCR recognizes the increased workload that Districts could be facing because of this new RMP program and the increased need for BMPs. It is anticipated that DCR will provide funding to Districts for providing the technical assistance required with this program's implementation. The additional workload for Districts created by this new program will include RMP plan review, verification of RMP implementation, on-site inspections, and recommendations that a farm is eligible for certification to the Board. DCR truly understands that this new program could create additional workloads for the districts and recognizes that funding is a critical issue.</p> <p>In 2012, a comprehensive study was performed focused on funding for SWCDs. This "Summer Study" has brought funding issues of the Districts before the General Assembly. Discussions are ongoing, including agricultural BMP cost-share funding alternatives. The Commonwealth has committed to achieving certain levels of agricultural BMPs in the Chesapeake Bay TMDL WIP II and will have to strive to meet those levels with or without the RMP program. DCR understands that in order to ramp up BMP implementation we will need more money and technical assistance to get these practices on the ground.</p> <p>DCR realizes RMP developer training is needed for SWCDs and others for the program to be successful. The Department will be developing guidance and other documents to support program implementation.</p>

Comments concerning Public Meetings and DCR Outreach.

Item Number	Commenter	Comment	Agency Response
83	David Fuller (Friends of the Middle River)	I attended the August 14 meeting in Verona, the purpose of which was to gather comments from local farmers/citizens as to their reactions to the proposed Resource	We appreciate the comments received on this matter and will continue to try and improve public notification to the best of our ability. In this situation, DCR did provide public

		<p>Management Plan regulations. I heard about the meeting a few days before but was surprised to learn at the meeting that it was not publicly advertised. The farmers who attended had not seen the proposed regs and had to endure a reading of same which was crammed into a 30 minute period after which they were invited to make comments. The questions they asked were met with " we are only here to take your comments" and basically went unanswered. The meeting did nothing but reinforce the skepticism and distrust that farmers feel toward government officials. This meeting could have been a winner if it had been widely publicized well ahead of time along with the proposed regulations, and run by those who used a powerpoint presentation with the key points, and could/would answer questions of clarification. As the head of a citizen watershed improvement organization, I recognize that we have the same goals as the DCR to encourage best management practices. Farmers are important and deserve our best efforts to help them be successful while they protect our rivers and streams.</p>	<p>notice of these meetings in accordance with state law, § 2.2-4007.03 of the Code of Virginia and as specified in § 10.1-104.9 of the RMP statute. The meetings were advertised on Virginia's Regulatory Town Hall, on the DCR website, and posted on the state's online official Commonwealth Calendar. While there is no state requirement for newspaper releases prior to the meetings, we recognize that would have helped to reach a broader audience. However, it should be noted that the Department did issue a statewide press release following the hearings informing the public of the public comment period and where they could find additional information and how they might comment. DCR did comply with the statutory requirements regarding required public meeting notification. We encourage anyone interested in DCR's meetings to subscribe to the Virginia Town Hall to receive automated notifications of future meetings of interest.</p>
84	Tracy C. Pyles, Jr. (Chairman of the Augusta County Board of Supervisors)	<p>The Augusta County Board of Supervisors has concerns about the regulatory process and financial aspects of the pending regulations. The county is concerned about the lack of adequate public advertisement of the draft regulations and the limited amount of public notice given regarding the local meetings. As a large agricultural county, the public meeting held at the Augusta County Government Center on August 14th should have been heavily advertised and promoted and thus heavily attended. Instead, there was limited advertisement and media coverage and the meeting was poorly attended.</p> <p>There is no mention of a public comment period for these regulations on the DCR website. For comment, one must navigate to the TownHall site, which is very generic. A Google search for "DCR proposed resource management plan regulations" nets only one result on the first page that directly references solicitation of public comments, and that result is not from DCR, but a Trout Unlimited website. This does not appear to support true public participation in the process. We encourage the Department to work more aggressively to advertise the regulations and solicit</p>	<p>We appreciate the comments received on this matter and will continue to try and improve public notification to the best of our ability. In this situation, DCR did provide public notice of these meetings in accordance with state law, § 2.2-4007.03 of the Code of Virginia and as specified in § 10.1-104.9 of the RMP statute. The meetings were advertised on Virginia's Regulatory Town Hall, on the DCR website, and posted on the state's online official Commonwealth Calendar. While there is no state requirement for newspaper releases prior to the meetings, we recognize that would have helped to reach a broader audience. However, it should be noted that the Department did issue a statewide press release following the hearings informing the public of the public comment period and where they could find additional information and how they might comment. DCR did comply with the statutory requirements regarding required public meeting notification. It should also be noted that DCR maintains all pending regulatory information on its website. There is a page dedicated to the RMP program at: <a href="http://www.dcr.virginia.gov/laws_and_regulations/lr7.shtml">http://www.dcr.virginia.gov/laws_and_regulations/lr7.shtml</a></p>

		<p>comments from the agricultural community prior to the final rulemaking.</p>	<p>A press release announcing the public comment period was also posted to DCR's website at <a href="http://www.dcr.virginia.gov/pr_relz_detail.shtml?id=2012-08-27-08-08-36-44145">http://www.dcr.virginia.gov/pr_relz_detail.shtml?id=2012-08-27-08-08-36-44145</a>.</p> <p>It is also noteworthy that between June 29, 2011, and February 14, 2012; the Regulatory Advisory Panel (RAP) held five public meetings, and the RAP's three subcommittees met a total of six times as the regulation were developed and discussed. Additionally, two of the subcommittees held a joint meeting.</p> <p>The Department also encourages anyone interested in DCR's meetings to subscribe to the Virginia Town Hall website to receive automated notifications of future meetings of interest.</p>
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Comments concerning omissions from regulations.

Item Number	Commenter	Comment	Agency Response
85	Robert Whitescarver; John Blair Reeves Sr. (Rockingham County)	The published regulations do not mention feedlots or barnyards. In many cases these land uses do more damage to the waters than the surrounding pastures.	Often feedlots and barnyards are covered by Department of Environmental Quality regulations and permits. Those that are not, may potentially be included under an RMP as determined by an on-farm assessment. However, we recognize upon review of the law that there are no minimum standards provided for feedlots or barnyards like there are for other categories of agricultural land, i.e. cropland, hayland, and pasture. A law change would need to be considered to establish any additional minimum standard requirements associated with the RMP program.
86	John Blair Reeves Sr. (Rockingham County)	The Department has now developed the details and there are many positive aspects. Unfortunately, the Department has failed to determine whether or not these practices meet Virginia's water quality objectives. Please stand with us to urge the Soil and Water Conservation Board not to approve these regulations until we have certainty that these practices actually achieve our water quality objectives.	With wide implementation of agricultural BMPs we will meet agricultural non-point source water quality goals set out in the Bay TMDL. The RMP approach will help to achieve increased BMP implementation. Using the most recent EPA tools, we have run models with both high and moderate agricultural BMP implementation levels and they show that we will be successful.
87	Thomas W. Simpson (Water Stewardship)	During regulatory development there was much discussion about the role of independent third party private sector RMP developers as a means of overcoming current and	The regulation has been modified to specify that when the RMP developer is a District employee or District Board member of the District that is the designated review

		<p>expected staffing and workload issues in Districts. The statute requires that RMPs be certified by the state or its agent (e.g. SWCDs). The regulations appear to give primary responsibility for review of submitted RMPs to SWCDs, which will further increase workloads. The regulations do not appear to discuss the role of SWCD staff in development of RMPs. A policy or other formal clarification of this is needed. Secondly, if a SWCD or NRCS staff person develops a RMP, it would seem a conflict of interest for the District Board (or DCR or NRCS?) (including membership Technical Review Committees) to review that RMP since they are the employer/manager of the person. If SWCD or NRCS develop RMPs, a review policy/protocol that avoids conflict of interest or the appearance thereof, needs to be developed.</p>	<p>authority, the Department shall serve as the review authority for that RMP.</p>
88	David Bernard (Richmond)	<p>Practices once begun can be abandoned if the farm changes ownership or operating control, or if the farmer chooses.</p>	<p>Yes, provisions exist in the regulations to allow for a new farmland owner to continue an existing RMP, revise an existing RMP, or end an existing RMP (Subsection A of 4VAC50-70-60). Also, this is a voluntary program and if a farmer who has an existing RMP chooses to abandon the RMP, then the RMP certificate could be revoked through the corrective action process.</p>
89	David Bernard (Richmond)	<p>The path is left open for farm BMP's to be paid for by other polluters who pay the price through nutrient trading, a practice I do not support.</p>	<p>The Commonwealth remains supportive of nutrient trading as it represents a viable approach to achieving necessary nutrient reductions and improving environmental conditions often at a reduced cost and in situations where onsite reductions are infeasible. The Nutrient Trading Program regulations are under development and will require a baseline of practices to be in place before any trading can occur above and beyond what is required. At this time, we do not know what that threshold will be.</p>
90	David Bernard (Richmond)	<p>I share his [VCN's] concerns that the regulation does not provide sufficient means to establish that the conservation farming practices will in fact achieve water quality goals. Since these regulations are voluntary for now, this is the time to study and improve practices so we will know the best way to farm in Virginia without unduly burdening our water resources. If this effort is to work, it must have provision to study and improve so that practices actually meet water quality goals. This process will also identify the most cost-effective BMPs.</p>	<p>With wide implementation of agricultural BMPs we will meet agricultural non-point source water quality goals set out in the Bay TMDL. The RMP approach will help to achieve increased BMP implementation. Using the most recent EPA tools, we have run models with both high and moderate agricultural BMP implementation levels and they show that we will be successful.</p> <p>The Department will be collecting data and reporting aggregated BMP information. The Department will assess farmers' BMP implementation efforts through the RMP</p>



			<p>program and report their results to the public. Virginia and the other Bay states have technical people who participate in the Chesapeake Bay Program's technical committees and workgroups. The workgroups meet year round and evaluate BMPs for reductions and cost-effectiveness. These efforts will continue and information will continue to be shared through the process.</p>
91	Ann Jennings (Chesapeake Bay Foundation)	<p>CBF recommends that the Department prepare a guidance document for the agriculture community outlining the requirements of the RMP program, the process for achieving a Certificate of RMP Implementation, and information on the types of farms eligible for participation in the RMP program as well as those operations that are not eligible. Specifically, CBF recommends the Department make it clear to the agriculture community that the RMP program is not applicable to animal feeding operations (AFOs), as defined by the Clean Water Act and Virginia state law. As § 10.1-104.7 (A) specifies compliance with TMDL "load allocations" only and Virginia assigned all AFOs to the waste load allocation within the Chesapeake Bay TMDL, the RMP program is not applicable to AFOs.</p>	<p>The Department agrees that many aspects of the RMP program will require further clarification and guidance. Guidance documents will be prepared to assist in the development of the RMP program. As pointed out in the comment and clearly stated in subsection B of § 10.1-104.5 of the Code of Virginia, a RMP does not preclude enforcement of a VPDES permit or a VPA permit, which is required of an Animal Feeding Operation although nothing precludes their inclusion in an RMP.</p>
92	Ann Jennings (Chesapeake Bay Foundation)	<p>CBF requests that the Department develop annual summaries of the RMP program for both the Soil and Water Conservation Board and the general public. This summary should include aggregate information sufficient to determine if the program is achieving water quality goals of Virginia's WIP and the Chesapeake Bay TMDL. The annual summaries should provide information on BMP implementation along with the number and type of participating farm operations. Annual summaries should also detail RMP program implementation verification activity including information on the number and percentage of farms inspected and the number of compliance actions taken by the local Soil and Water Conservation District and/or the Department.</p>	<p>DCR annual summaries of the RMP program would likely be included in the existing bi-annual and annual reports to the Governor and General Assembly. These water quality reports are available to the public as soon as they are published and can be found on the Legislative Information System website:  <a href="http://leg2.state.va.us/dls/h&amp;sdocs.nsf/Published+by+Year?OpenForm&amp;StartKey=2013&amp;ExpandView">http://leg2.state.va.us/dls/h&amp;sdocs.nsf/Published+by+Year?OpenForm&amp;StartKey=2013&amp;ExpandView</a></p>
93	William H. Street (James River Association)	<p>JRA supports the development of strong guidance by the Department detailing the steps that will be necessary to develop, implement and maintain a RMP, as well guidance on the process for gaining and maintaining a Certificate of RMP Implementation. This will be necessary not only for the farmers themselves, but also for Soil and Water Conservation District staff as well as future RMP</p>	<p>The Department agrees that many aspects of the RMP program will require further clarification and guidance. Guidance documents will be prepared to assist in the development of the RMP program.</p>

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Comments concerning the Economic Impact Analysis.

Item Number	Commenter	Comment	Agency Response
94	Greg Wichelns (Culpeper Soil and Water Conservation District)	The economic impact analysis information we reviewed did not appear to include the revenue lost by the producer from the loss of production acres due to any best management practices required by the plan. This analysis also appeared to underestimate the economic impact on conservation districts when the full costs of organizational growth to accommodate programmatic increases are considered; salary, fringe, office, vehicle, training, certification, etc.....	Farmers may experience some lost production costs due to the implementation of some BMPs. In the economic impact analysis we included information on other costs to farmers, including foregone income for land taken out of production and possible reductions in crop yield. This is a voluntary program that farmers may choose to participate in. The Department anticipates that farmers will weigh the benefits of the program against the potential costs and will hopefully choose to participate. The Department recognizes additional funding will be needed for the SWCDs to perform added functions required by the new RMP program.
95	Charlie Wootton (Piedmont Soil and Water Conservation District)	<p>District personnel will bear virtually the entire workload until DCR can develop a training and certification program for Plan Developers and will continue to be responsible for review, inspections, compliance and reporting even if others develop the plan. For a single tract operation that has everything in place, I would estimate based on experience about 60 hours to perform an assessment, gather and review relevant conservation/ nutrient management/grazing plans, write the plan, review with producer and prepare for the local TRC. This time would expand greatly if multiple tracts and/or if additional BMP's were needed before the plan could be completed.</p> <p>Districts would incur additional costs connected with training staff to conduct assessments and develop plans according to the standards in this regulation. This is assuming that said staff is already certified as conservation planners. It is probable that some Districts would have to hire staff so additional costs would be incurred getting them certified as conservation planners before they could be trained as RMP developers. (Currently takes about 18 months to get all the NRCS required trainings.) Also I would think the local TRC would require some training in order to effectively review these plans. These costs would</p>	The Department recognizes additional funding will be needed for the SWCDs to perform added functions required by the new RMP program. There are many issues to be addressed before the program can be put to test, including developing guidance, procedures, templates, and roll out of the program. The Department will work closely with the Districts to ensure concerns are addressed. The regulations (4VAC50-70-140) also provide for the certification of private RMP planners who will be able to develop RMPs.

		be basically fixed regardless of how many plans are actually requested.	
96	Ed Craun (Mount Solon)	<p>The Economic Impact Analysis lacks the most basic information regarding the economic impact to the farmers who participate in the certification, the impact to the farmers who do not participate, and the impact to agribusiness.</p> <p>The analysis states that 47,000 (approximation) farms will be affected. According to the “Legal Mandate”, the analysis should provide the projected costs to the affected businesses – the farms affected by the regulation.</p> <p>The economic impact to the livestock producers of the Shenandoah Valley, the leading livestock production region of the state has not been addressed in this analysis. The Shenandoah Valley is unique in the type of agricultural production due to the geographic lay of the land. Many counties in the valley have a significant amount of farm land that is not suitable for crop production and is utilized as pasture for livestock production.</p> <p>The Virginia Department of Conservation and Recreation considers prescribed grazing as a best management practice. Specifications of the DCR’s pasture management system include maintaining a “minimum height of grasses” and providing “rest periods” of pasture. If mandated for certification, such management practices would result in livestock producers implementing business plans that remove livestock from pastures when pastures are unsuitable according to regulatory standards. Livestock producers would need to consider financial investments in pasture irrigation systems, additional fencing, housing for livestock, and additional feed expenditures in order to meet the new regulatory standards. During drought conditions livestock producers would incur these additional costs or would need to market livestock earlier than planned. Due to the cost of additional improvements, livestock production on rented land would be especially threatened. Such</p>	<p>The RMP regulations provide the framework for a voluntary program to promote agricultural best management practices. Livestock producers who are not regulated as a CAFO or an AFO may elect to participate in the program or they may choose not to.</p> <p>It should also be noted that following a review of the Department’s economic analysis and based on their own independent review, the Department of Planning and Budget found that “[t]he benefits likely exceed the costs for all proposed changes”. They also noted that “[p]articipation in the RMP program is completely optional; thus the proposed regulations do not introduce costs to the public”. The analysis was found to be satisfactory.</p>

		<p>regulations would most likely result in accelerated farm land retirement.</p> <p>Recommended Improvements to Economic Impact Analysis-additional components to be addressed:</p> <ul style="list-style-type: none"> <li>• The cost of production impact to livestock producers.</li> <li>• The profitable and economic viability of livestock operations in the Shenandoah Valley as a result of these regulatory best management practices.</li> <li>• The effect of marketing between certified farm products and uncertified farm products.</li> <li>• A “cost-efficient” compatibility analysis of the regulatory best management practices implemented in the Shenandoah Valley.</li> <li>• The adverse economic impact and adverse livestock health impact of creating a predator-prey wildlife habitat (stream fencing) on all livestock farms with perennial streams.</li> <li>• A financial risk assessment of implementing best management practices that have not been tested sufficiently to establish reliable results.</li> <li>• An assessment of the amount of farm land that will be retired from production due to the inability to be certified in a cost-effective manner.</li> <li>• An assessment of the amount of pasture land that will be converted to cropland due to the anticipated cost of improvements (fencing, pasture irrigation equipment, and livestock housing) needed for certified livestock production.</li> <li>• A comparison of the profitability of certified farming operations and the alternative of retiring farms to participate in nutrient trading programs.</li> <li>• An assessment of the total amount of farm land that will be retired in order to meet the targets of the TMDL Plan and the resulting economic impact of agribusiness in the Shenandoah Valley.</li> </ul> <p>If livestock producers view government pasture management regulations as to oppressive or unprofitably, then alternatives uses such as crop production may increase. The conversion of pasture land to cropland</p>	
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		<p>would actually increase overall soil loss erosion since pasture is the superior vegetative cover for preventing soil erosion on a farm.</p> <p>Recommended Improvements to Regulations: This “Economic Impact Analysis” needs to be revised to specifically address the economic impact to the livestock producers of the Shenandoah Valley, the largest agricultural region of Virginia. In addition the implementation of these regulations should be delayed until the government meets its own legal mandate to complete an economic impact analysis of the farms and agribusinesses affected by these proposed regulations.</p>	
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General Support.

Item Number	Commenter	Comment	Agency Response
97	Robert Whitescarver; John Blair Reeves Sr. (Rockingham County)	I would like to commend the people that no doubt spent long hours developing the proposed regulations. They have set a high bar for conservation and if passed, as is, will surely improve the waters of the Commonwealth.	The Department appreciates the time and dedication of the members of the Regulatory Advisory Panel. Their participation in the regulatory process helped to ensure a balanced voluntary agricultural program to promote best management practices was developed.
98	Jeff Kelble (Shenandoah Riverkeeper)	Shenandoah Riverkeeper applauds the intentions of the Draft RMP and feel that a very good set of BMP's have been prescribed in the RMP in order for landowners to receive safe harbor status. We also feel that if a large percentage of landowners participate then there will be a significant improvement in water quality. However Shenandoah Riverkeeper would like to submit several specific comments on the weaknesses of the draft RMP which are significant enough that they will mean that Virginia will neither meet it's commitments to pollution reduction submitted in their Phase I and Phase II Watershed Implementation Plans.	<p>During the RMP RAP and regulation development process, staff from the Department utilized the Chesapeake Bay Program's decision support tools (VAST and the Chesapeake Bay Watershed Model) to verify that the implementation actions called for in the RMP regulations would be adequate to achieve the Bay TMDL allocations. The support tools allow for a scenario of implementation practices to be entered and then predict the nutrient and sediment loads that would result from the scenario. The challenge was to develop an implementation scenario that reflected the requirements for a RMP.</p> <p>While the regulations specify certain mandatory practices, they also leave some flexibility to allow planners and farmers to use the full suite of best management practices to achieve the required treatment levels on a farm by farm basis. This flexibility in planning makes it impossible to predict the exact mix of practices that would result from</p>

			<p>implementing RMPs. In order to predict if the RMP actions would be adequate to meet the Bay TMDL, some assumptions had to be made to forecast the practices that would be used to achieve "T" as required by statute. The most common practices used through the history of the Commonwealth's Cost-Share program were assumed for use in meeting "T". Staff was conservative when making the scenario assumptions, using the least efficient variety of cover crops, conservation tillage and nutrient management. Further, the scenario assumed all new buffers would be grass, which is less efficient than forest buffers.</p> <p>The analysis assumed high levels of implementation of all of the practices. This was not to imply that there was any expectation that RMPs would be voluntarily adopted to that extent. Rather it was to establish the level of treatment that would be required to meet the Bay TMDL allocations. It would not be reasonable to create RMP requirements that achieve all of the TMDL required reductions from a smaller subset of the farming population. Staff later ran the numbers again at a reduced rate of implementation (60 percent adoption of conservation tillage down from 95 percent and 30 percent cover crops down from 50 percent) and the Watershed Implementation Plan II targets were still met.</p> <p>The result of this analysis indicated that the suite of practices, when implemented broadly, was adequate to meet the Bay TMDL. Therefore, an individual producer implementing and maintaining a RMP could be viewed as having adequate actions in place on his farm to meet his share of the Bay TMDL. If RMPs are not broadly adopted, further regulatory action may be needed to compel the non-adopters to do their part to achieve the Bay goals.</p>
99	Tracy C. Pyles, Jr. (Chairman of the Augusta County Board of Supervisors)	<p>The Augusta County Board of Supervisors supports the concept of voluntary compliance with farm specific Resource Management Plans as a means for producers to demonstrate compliance with TMDL and applicable state water quality requirements as opposed to mandated compliance measures.</p> <p>We look forward to implementation of a program of</p>	<p>The Department thanks you for your support of the voluntary RMP program. We believe the program can help to improve water quality across the Commonwealth through voluntary measures while also benefitting our farmers by providing certainty for the future. The program provides a framework for farmers to achieve and maintain a high level of conservation practices. As long as those practices are maintained, the farmer will be shielded from further</p>

		Resource Management Plans or similar voluntary measures that can provide consistency in regulation for our producers.	conservation requirements for the duration of the RMP.
100	Rosemary Urban (Monroe)	<p>I am a small farmer in Central Virginia where we have numerous creeks and rivers. Our watershed is Horsley Creek to the Pedlar Rver to the James River to the Chesapeake Bay. I support any effort being made to reduce pollution runoff into streams. rivers and the Bay. There are no animals close to the creek and we have planted riparian barriers and removed manure piles from possible creek contamination. Any legislation to clean up Virginia's waterways is necessary and welcome.</p> <p>I am a member of the Virginia Farm Bureau and I support any effort being made to reduce pollution runoff into streams, rivers and the Bay. We have planted riparian barriers and moved all contaminants (manure) away from any possible runoff into the creek. We have no livestock in the farm streams or creek.</p> <p>I am willing to abide by any regulations that will insure the clean future of the Bay. Thank you for your efforts.</p>	The Department thanks you for your support for the RMP program and for all of your conservation efforts. Once the RMP program is launched, we hope that you will participate in the program.
101	Dolly Frazier	<p>Thank you for the article about the EPA and the Chesapeake Bay cleanup efforts. Without such postings in our local paper The Daily News Record I would be completely unaware of decisions being made and I appreciate being given the opportunity to express mine. I am a 54 years old Virginian. We have been battling air and water issues in Virginia for my entire life. I grew up reading about impaired views from the skyline drive due to smog, and compromised streams and rivers due to contaminated run off from both farms as well as municipalities and homes. I think it is essential that we all work together to keep our air and water clean. I know the EPA sometimes seems to be a centralized mess of rules that are out of touch with local issues but it is the only agency in place to protect our environment</p> <p>I would ask that the EPA rules be applied. Water is essential to all living things. It makes up over ninety percent of our bodies. What does it say about us that we are willing to allow the death of such a large and important</p>	Virginia complies with all EPA rules and regulations, including those that deal with water and air pollution. The RMP program does not diminish EPA rules or regulations, it enhances them. Except for animal feeding operations and confined animal feeding operations agriculture is not covered under the Clean Water Act. The RMP program provides an incentive to agriculture to implement best management practices , which they are not required to do.

		bay? Keeping our water and air clean should be a "given" rule to which we should all adhere.	
102	Katie Frazier (Virginia Agribusiness Council)	On behalf of the members of the Virginia Agribusiness Council, we appreciate this opportunity to provide comments on the proposed Resource Management Plan Regulations (4VAC50-70-10 et seq.). As a proponent of the enabling legislation (HB 1830) passed by the 2011 General Assembly, and as an active member of the Regulatory Advisory Panel (RAP) tasked with advising the agency on developing these regulations, we first want to applaud DCR for their efforts to craft regulations that reflect the legislative intent of HB 1830, meet the concerns of both agricultural and conservation groups, and minimize the regulatory burden to implement. While not all parties are completely satisfied, we believe that the proposed regulations are a significant step forwards towards Virginia meetings its commitments within the Chesapeake Bay Total Maximum Daily Load.	The Department appreciates the service and support received from all members of the Regulatory Advisory Panel. We believe the program can help to improve water quality across the Commonwealth through voluntary measures while also benefitting our farmers by providing certainty for the future. The program provides a framework for farmers to achieve and maintain a high level of conservation practices. As long as those practices are maintained, the farmer will be shielded from further conservation requirements for the duration of the RMP.
103	John Blair Reeves Sr. (Rockingham County)	Subject regs. have large import to tens of thousands property owners in Va. - especially those doing real farming for a significant profit (not hobby farming); however, this record so far only has 6 comments--and few of 6 are affected farmers. Suggest allowing more time here and much more outreach to the farming stakeholders-- are farmers really going to support doing these BMPs?	The Department received more public comments than were posted on the Town Hall website. Not all of them were posted to the Town Hall, many were sent by mail and e-mail. The Department anticipates participation by farmers in the program, and is hoping to achieve broad adoption of best management practices. The RMP program paired with the state's agricultural cost-share program, provide two sources of great incentives for farmers to choose to participate.

General Opposed.

Item Number	Commenter	Comment	Agency Response
104	Cathy Perry, on behalf of the Board of Directors of the Headwaters SWCD	Staff has been evaluating how the proposed regulations would affect various sites. It has developed the opinion that Resource Management Plans using the proposed regulations will not accomplish the intended goals.	If broadly adopted, the levels of implementation would be adequate to achieve the nutrient reductions needed based on analysis of the Chesapeake Bay Program model run and VAST scenarios.
105	Jeff Kelble (Shenandoah Riverkeeper)	Unless the underlying assumptions in the RMP can be proven in advance of adoption of these regulations then they should not be approved by the board. Specifically, it must be shown that the RMP process will cause enough	During the RMP RAP and regulation development process, staff from the Department utilized the Chesapeake Bay Program's decision support tools (VAST and the Chesapeake Bay Watershed Model) to verify that the



		<p>BMP's to be installed on enough farms so that it will guarantee that both local water quality standards are met on local streams and that enough reductions are made to satisfy the allocations in Virginia's WIP as it relates to the Bay TMDL.</p>	<p>implementation actions called for in the RMP regulations would be adequate to achieve the Bay TMDL allocations. The support tools allow for a scenario of implementation practices to be entered and then predict the nutrient and sediment loads that would result from the scenario. The challenge was to develop an implementation scenario that reflected the requirements (minimum standards) for a RMP.</p> <p>While the regulations specify certain mandatory practices, they also leave some flexibility to allow planners and farmers to use the full suite of best management practices to achieve the required treatment levels on a farm by farm basis. This flexibility in planning makes it impossible to predict the exact mix of practices that would result from implementing RMPs. In order to predict if the RMP actions would be adequate to meet the Bay TMDL, some assumptions had to be made to forecast the practices that would be used to achieve "T" as required by statute. The most common practices used through the history of the Commonwealth's Cost-Share program were assumed for use in meeting "T". Staff was conservative when making the scenario assumptions, using the least efficient variety of cover crops, conservation tillage, and nutrient management. Further, the scenario assumed all new buffers would be grass, which is less efficient than forest buffers.</p> <p>The analysis assumed high levels of implementation of all of the practices. This was not to imply that there was any expectation that RMPs would be voluntarily adopted to that extent. Rather it was to establish the level of treatment that would be required to meet the Bay TMDL allocations. It would not be reasonable to create RMP requirements that achieve all of the TMDL required reductions from a smaller subset of the farming population. Staff later ran the numbers again at a reduced rate of implementation (60 percent adoption of conservation tillage down from 95 percent and 30 percent cover crops down from 50 percent) and the Watershed Implementation Plan II targets were still met.</p>
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			<p>The result of this analysis indicated that the suite of practices, when implemented broadly, was adequate to meet the Bay TMDL. Therefore, an individual producer implementing and maintaining a RMP could be viewed as having adequate actions in place on his farm to meet his share of the Bay TMDL. If RMPs are not broadly adopted, further regulatory action may be needed to compel the non-adopters to do their part to achieve the Bay goals.</p> <p>As Resource Management Plans are developed and the detailed list of practices that are commonly used to meet the minimum standards is identified, the assumptions used to test the adequacy of RMPs in meeting the Bay TMDL can be re-evaluated. The ideal time to conduct such a re-evaluation would be after the 2017 midpoint assessment, when the next version of the Chesapeake Bay Watershed model is completed and any necessary changes to the Bay TMDL have been made.</p>
106	Joe Kauffman (Luray)	<p>Since the EPA has set the mandates to clean up the Chesapeake Bay, everyone should be treated the same. There should be no exemptions for farmers. We want the farmers to have to abide by the exact same rules, guidelines and taxes as everyone else. These rules to clean up the Bay will close some of the farmers down, but at the same time will open up land for development to bring prosperity to the majority. They should have to compete on an equal basis with everyone else.</p>	<p>The RMP program does not provide an exemption for farmers. It creates a statewide voluntary program that provides incentives to promote adoption of best management practices, as directed by the statute that created the program. Through broad adoption of best management practices, water quality will be improved throughout the Commonwealth, also benefitting the majority.</p>
107	David Bernard (Richmond)	<p>The goal of this statute is to provide a level of certainty to the farming community that voluntary investments today, if sufficient to protect water quality, will not be penalized with additional regulations in the future. Ideally, this is done by allowing farmers to meet these goals voluntarily and in a flexible manner. This statute correctly establishes that certainty in achieving water quality goals and certainty about future requirements are two sides of the same coin. Many aspects of the regulation are strong, including section 4VAC50-70-80 regarding the establishment plan adequacy, section 4VAC50-70-90 regarding inspection frequency, and the creation of a Technical Review Committee. However, the work is not done. Until requirements that can be established as meeting water quality goals - as articulated in statutory</p>	<p>See response to comment # 105.</p>

		<p>law - this regulation must not proceed. I urge you to allow the department and the advisory panel to find a solution that works. The regulation does not provide sufficient means to establish that the conservation farming practices will in fact achieve water quality goals. Since these regulations are voluntary for now, this is the time to study and improve practices so we will know the best way to farm in Virginia without unduly burdening our water resources. If this effort is to work, it must have provisions to study and improve so that practices actually meet water quality goals. This process will also identify the most cost-effective BMP's.</p>	
108	Ed Craun (Mount Solon)	<p>Recommended Improvements to Regulations: The Virginia Department of Conservation and Recreation needs to develop a "Community Ethics Impact" of the overarching goals and the ethical principles of the TMDL Plan prior to the implementation of these regulations [that takes into consideration accountability of all life and all uses of a community].</p> <p>The Virginia Department of Conservation and Recreation should add "faith based" organizations as stakeholders to review and make recommendations for revisions of the ethical principles of the TMDL Plan.</p> <p>Allow local communities that do not share the ethical values of the TMDL Plan to develop their own plan - or determine if such a plan is feasible - or simply reject this plan.</p> <p>Allow local communities and individual farmers who do not share the ethical values of the TMDL Plan to seek a "community ethics exemption" or an "individual ethics exemption" from these regulations.</p>	<p>We thank you for your insights on this matter and wish to assure you that the Department and the Board strive to make sure that the appropriate balance is achieved when a Regulatory Advisory Panel is assembled to address issues such as this. It is also reasonable to believe that when local TMDLS are addressed, which is a topic largely independent of this regulatory action, that public notice does provide an opportunity for such organizations to participate.</p> <p>However, at the end of the day, the Department is required to follow all state and federal rules and regulations that do basically outline a series of goals. For example, TMDLS are required for polluted waters under the federal Clean Water Act. All sources of pollution are considered when developing TMDL implementation plans. In Virginia's localities within the Chesapeake Bay watershed, all sectors of pollution are being asked to do their share to reduce water pollution, including homeowners who fertilize their lawns or have septic tanks, wastewater treatment plants, urban stormwater utilities, and agriculture. The goal is to clean up the Commonwealth's waterways. The Commonwealth will continue to build on its efforts to educate and involve all citizens of the Commonwealth as it is recognized that water quality improvements will only occur through efforts by all.</p>
109	Richard Chaffin (VASWCD Area V Chairman)	<p>The entire process provides extensive authority to a Department of the Commonwealth overriding the authority of an elected Board.</p>	<p>The Virginia General Assembly created the RMP program through the legislative process. They directed the Department to develop regulations to implement the RMP program. These regulations establish the framework for</p>

		<p>The program should not be implemented unless funding is provided.</p> <p>Direct discussions that I have had, along with reports of discussions received from others, indicate that this entire program will have very limited acceptance among the producers in the Commonwealth. If this is the case, there will be a large investment in infrastructure to operate the program that will have only limited usage.</p>	<p>that program. The Department and the Regulatory Advisory Panel both recognize the need for adequate funding to get the program off the ground and to provide incentives for farmers to make the program successful. It is recognized that voluntary approaches deserve a significant effort before regulatory approaches are considered.</p>
110	Ann Jennings (Chesapeake Bay Foundation)	<p>CBF cannot support the RMP program as a tool for achieving the Commonwealth's water quality goals until the Department provides assurance that the Department's program management will necessitate, in 95 percent of the applicable cases, the use of conservation tillage on cropland and prescribed grazing on pastureland. Our discussions with resource professionals indicate that there will be many circumstances for which conservation tillage or prescribed grazing will not be necessary to achieve "T". If the Department intends to require conservation tillage and prescribed grazing as components of a RMP, these requirements should be made clear to the agriculture community as well as called for in the RMP program regulations. Alternatively, if the RMP program is not intended to drive widespread use of these practices, the program will not achieve the load allocation for agriculture for the Chesapeake Bay TMDL, as required by §10.1-104.7 (A).</p>	<p>See response to comment # 105.</p>
111	William Street (James River Association)	<p>The Department of Conservation and Recreation has failed to demonstrate that the currently proposed Resource Management Plan Regulations meet the statutory requirement of ensuring full compliance with the Virginia Chesapeake Bay TMDL Watershed Implementation Plan (see §10.1-104.5(A)). Accordingly, the James River Association cannot support the proposed regulations at this time.</p> <p>Resource Management Plans have the potential to provide for significant pollution reductions in Virginia and simultaneously provide farmers with safe harbor from future regulation. They additionally provide an unprecedented opportunity for Virginia to serve as a</p>	<p>See response to comment # 105.</p> <p>The Department believes that through the hard work and dedication of the Regulatory Advisory Panel that a scientifically sound and balanced set of proposed regulations was developed. Based on the comments received, only minor amendments to those regulations are being recommended and a demonstrated need to reconvene the RAP is not present.</p>

		<p>model for the nation in developing agricultural certainty programs. Unfortunately, the regulations as currently written miss this opportunity and set an insufficient standard for other programs to follow.</p> <p>We respectfully request that the Regulatory Advisory Panel be reconvened so that the issues identified herein may be adequately addressed.</p>	
112	Jacob Powell (Virginia Conservation Network)	<p>The Department of Conservation and Recreation staff worked diligently throughout the development of these regulations, but they were set on finishing by, what appeared to be, an arbitrary deadline. Indeed the regulatory advisory panel was needlessly rushed toward the end of the process. There was little attempt in the development of these regulations to establish if the requirements in the proposed regulation meet water quality goals. An earlier draft version of this regulation was tested with the Virginia Assessment and Scenario Tool or (VAST). However, the requirements of the RMP (4VAC50-70-40) that were tested then were different from what is now proposed, the assumptions made then were never fully vetted by the panel, and VAST itself is not the official tool by which Virginia's water quality goals are measured. For example 4VAC50-70-40.A.1.d, which relates to cover crops now includes the language, "when needed to address nutrient management and soil loss requirements". This language was added after the final meeting of the panel and was never presented to us for consideration. This new language calls into question the assumptions made in the initial VAST assessment. Only after the proposed regulations were offered and outside groups were forced to request that the Chesapeake Bay Program Partnership assess the RMP requirements did the Department even begin to coordinate on the topic. No member of the regulatory advisory panel will have had time to review this information adequately, as it has now only become available on the final day of the public comment period (9/14/2012). Without proper review of this information, and the assurance that the requirements in the proposed regulation meet Virginia's water quality commitments, the Virginia Conservation Network cannot support this regulation. This program offers a unique</p>	<p>See response to comment # 105.</p> <p>The Department believes that through the hard work and dedication of the Regulatory Advisory Panel that a scientifically sound and balanced set of proposed regulations was developed. Based on the comments received, only minor amendments to those regulations are being recommended and a demonstrated need to reconvene the RAP is not present.</p>

		<p>opportunity to the farming community and for all the citizens of the commonwealth. We respectfully request that the regulatory advisory panel be reconvened so that the issues may be adequately addressed.</p>	
113	<p>Chris Wise (Fairfield), Henry McHenry Jr (Charlottesville), Cynthia Britt (Danville), Nicholas Duke Sr. (Crozet), Robert Fener (Amherst), Deborah Dix (Danville), Betty Byrne Ware (Richmond), David Maxson (Roanoke), Katie Storer (Charlottesville), Tyla Matteson (Richmond), Diana Franco (Broadlands), Hollis Stauber (Danville), Pam Jiranek (Charlottesville), Jehanne Arslan (Oakton), Bill and Judy Dent (Harrisonburg), Evelyn Waring (Quinton), George Paine (Northern Virginia Chapter of Trout Unlimited), George Paine (Reston), Mike Craig (Shipman), Anthony Doherty (Round Hill), Barbara Hudson (Chatham), Heidi Baird (Roanoke), Judith Shematek (Seaford), Scott Dicke (Arlington), Thomas Pakurar (Midlothian), Rosemarie Sawdon (Blacksburg), John Cannon (Front Royal), Karen Adams (Roanoke), Frances Lee-</p>	<p>The goal of this statute is to provide a level of certainty to the farming community that voluntary investments today, if sufficient to protect water quality, will not be penalized with additional regulations in the future. Ideally, this is done by allowing farmers to meet these goals voluntarily and in a flexible manner. This statute correctly establishes that certainty in achieving water quality goals and certainty about future requirements are two sides of the same coin. Many aspects of the regulation are strong, including section 4VAC50-70-80 regarding the establishment plan adequacy, section 4VAC50-70-90 regarding inspection frequency, and the creation of a Technical Review Committee. However, the work is not done. Until requirements that can be established as meeting water quality goals - as articulated in statutory law - this regulation must not proceed. I urge you to allow the department and the advisory panel to find a solution that works.</p>	<p>See response to comment # 105.</p>

<p>Vandell (Charlottesville), Diane Wessing (Alexandria), Daniel Crawford (Roanoke), Gary Humenik (Chesapeake), KJ Ficker (Ashburn), Lance Speidell (Arlington), Virginia Cowles (Richmond), Steven Bruckner (McLean), Cynthia Benitz (Delaplane), Bruce Roberts (Alexandria), Avi Dey (Vienna), Cynthia Baute (Blacksburg), David Thompson (Lovingston), Audrey Clement (Arlington), Austin Birch (Paris), Cliff Miller (Sperryville), George Hite (Springfield), Patricia VonOhlen (Newport News), Otis Pauley (Roanoke), Martha Wingfield (Richmond), Susan Halloran (Virginia Beach), Roger Diedrich (Fairfax), Ivy Main (McLean), Charles Shelton (Grottoes), Nicole Wynands (Reston), Brian Moores (Doswell), Paula Chow (Fredericksburg), Amber Brister (Henrico), Lucy Higgins (Richmond), Henry Broaddus (Williamsburg), Martha Wingfield (Ashland), Elisabeth Pethybridge</p>		
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	(Virginia Beach), Julia Bragdon (Virginia Beach), Jason Halbert (Charlottesville)		
114	Suzanne Smith Sundburg (Arlington)	<p>One of this statute's stated goals is to provide farmers who now are making sufficient, voluntary investments to protect water quality with a level of certainty that they will not be penalized with additional regulations in the future. Ideally, safe, clean water quality can be achieved by allowing farmers to meet these goals voluntarily and in a flexible manner. This statute also correctly establishes that certainty in achieving water quality goals and certainty about future requirements are two sides of the same coin.</p> <p>The statutory requirements for this regulation (§ 10.1-104.8) state that they shall “include agricultural best management practices sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality requirements of the Commonwealth.” These are the water quality goals that Virginia has set—ones on which Virginians depend to ensure that all citizens have access to safe, clean water. To date, the state has failed to establish whether the practices prescribed in this regulation meet those goals. Tools that can help address this oversight include water quality models, which are already used to measure these goals and are freely available to the Department.</p> <p>Many aspects of the regulation are strong, including section 4VAC50-70-80 regarding the establishment plan adequacy, section 4VAC50-70-90 regarding inspection frequency, and the creation of a Technical Review Committee. However, the work is not done. Until the requirements can be proven to meet water quality goals—as articulated in statutory law—this regulation must not proceed. Please allow the department and the advisory panel to find a solution that works.</p>	See response to comment # 105.
115	Grace Holden (Arlington)	The purpose of this statute is to give confidence to the farming community that voluntary investments made today, if enough to protect water quality, will not be	See response to comment # 105.



		<p>penalized with additional regulations in the future. This is best achieved by letting farmers to meet these goals voluntarily and in their own way.</p> <p>The statutory requirements for this regulation (§ 10.1-104.8) state that they shall “include agricultural best management practices sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality requirements of the Commonwealth.” These are the water quality goals that Virginia has set, and that the people of the Commonwealth expect and deserve to see met. So far the state has failed to establish that the practices prescribed in this regulation meet those goals. One way to help address this is by using water quality models, which are already used to measure these goals and are freely available to the Department.</p> <p>Many aspects of the regulation are good, including section 4VAC50-70-80 regarding the establishment plan adequacy, section 4VAC50-70-90 regarding inspection frequency, and the creation of a Technical Review Committee. However, more needs to be done. Until requirements that meet water quality goals are determined, as set forth in statutory law, this regulation must not go forward. I ask you to allow the department and the advisory panel to find a solution that works.</p>	
116	Dana Roberts (Richmond)	<p>The goal of this statute is to provide a level of certainty to the farming community that voluntary investments today, if sufficient to protect water quality, will not be penalized with additional regulations in the future. Ideally, this is done by allowing farmers to meet these goals voluntarily and in a flexible manner. This statute correctly establishes that certainty in achieving water quality goals and certainty about future requirements are two sides of the coin.</p> <p>I urge you to allow the department and the advisory panel to find a solution that works.</p>	The Department and the Regulatory Advisory Panel worked together for almost a year to develop the RMP regulations. We were able to reach a consensus and believe that we have developed a program that will be successful.
117	Elizabeth Christeller (Bruington)	Until requirements that can be established as meeting water quality goals - as articulated in statutory law - this	See response to comment # 105.

		regulation must not proceed. I urge you to allow the department and the advisory panel to find a solution that works.	
118	Diana Artemis (Falls Church)	I ask the Soil and Water Conservation Board not to approve these regulations until it has conclusive evidence that these practices actually achieve Virginia's water quality objectives.	See response to comment # 105.
119	Allen Muchnick (Arlington)	<p>The statute was intended to ensure the farming community that voluntary investments today, if sufficient to protect water quality, would not be penalized with additional regulations in the future. Ideally, farmers would be allowed to meet these goals voluntarily and in a flexible manner. This statute correctly establishes that certainty in achieving water quality goals and certainty about future requirements are two sides of the same coin.</p> <p>The statutory requirements for this regulation (§ 10.1-104.8) state that they shall “include agricultural best management practices sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality requirements of the Commonwealth.” These are the water quality goals that Virginia has set, and that the people of the Commonwealth expect and deserve to see met. To date, the state has failed to establish that the practices prescribed in this regulation meet those goals. Tools that can help address this include water quality models, which are already used to measure these goals and are freely available to the Department.</p> <p>Many aspects of the regulation are strong, including section 4VAC50-70-80 regarding the establishment plan adequacy, section 4VAC50-70-90 regarding inspection frequency, and the creation of a Technical Review Committee. However, until requirements that can be established as meeting water quality goals--as articulated in statutory law--this regulation should be adopted. Please direct the department and the advisory panel to find a solution that works.</p>	See response to comment # 105.
120	Jane Twitmyer (Ashburn)	There is currently a debate about establishing practices	The Department follows all state and federal rules and

	<p>for farmers to meet water quality standards. I refer you to the original basis of the Clean Water Act ... assure that the waters of these United States shall be "fishable and swimmable".</p> <p>Currently Virginia ranks near the bottom in the quality of our rivers and other waters. The James in particular receives an enormous quantity of toxic substances into it's waters all of which ends up in the Chesapeake Bay.</p> <p>Why not just monitor the water and when it does not meet federal standards then require the land owner to fix it? This is not a question of scientific practices or of whether or not the farmer acts voluntarily. It is a matter of clean water for all.</p>	<p>regulations. TMDLs are required for polluted waters under the federal Clean Water Act. All sources of pollution are considered when developing TMDL implementation plans. In Virginia's localities within the Chesapeake Bay watershed, all sectors of pollution are being asked to do their share to reduce water pollution, including homeowners who fertilize their lawns or have septic tanks, wastewater treatment plants, urban stormwater utilities, and agriculture. One of the exemptions within the Clean Water Act is agriculture (except for confined animal feeding operations and animal feeding operations). The purpose of the RMP program is to provide incentives for farmers to voluntarily adopt best management practices and further efforts to improve water quality across the Commonwealth.</p>
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**Resource Management Plan Regulations (4VAC50-70-10 et seq.) Public Hearing Comments**

Public hearings were held on the following dates and at the noted locations:

August 13, 2012 in Wytheville (Bland Hall, Room 104, Wytheville Community College, 1000 East Main Street, 7 p.m.)

August 14, 2012 in Verona (Smith Transfer Room West, Augusta County Government Center, 18 Government Center Lane, 7 p.m.)

August 15, 2012 in Williamsburg (James City County Community Center, Community Room A, 5301 Longhill Road, 7 p.m.)

4VAC50-70-10 Definitions.

<b>Item Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Agency Response</b>
121	Commenter not identified	Will a definition of perennial stream be included in the regulations?	A definition has been added. The term is utilized in 4VAC50-70-40 in four locations.
122	Dan Jones, Augusta County	[T]he information that came out from the DCR website had the rules on it and it is not the copy I received tonight which is kind of disappointing. There are a couple of things in here, I have a significantly marked up copy back there. When I got this tonight I said "well, why should I even look at that?" At any rate, there are a couple of questions that I would have that look at technical aspects of this. One of those is a definition of perennial stream. I would like to have a definition of perennial stream. I think what we define as a perennial stream is important. At this point in time,	A definition has been added. The term is utilized in 4VAC50-70-40 in four locations.

		<p>we're looking for a definition of perennial stream potentially changing through the Clean Water Act and other things like that. And I think how that sets in here and what is called a perennial stream is a critical, because if we look at the buffer issue, and I'm not totally against buffers, I'm not totally against everything buffered. I guess what I'm looking at as we change these definitions of perennial streams. What is our definition of perennial stream and what are we going to be held to? Do we have an answer for that or not?</p> <p>To me that's very important. We look at our particular farm; there are several blue lines on that. We had a Chesapeake Bay person comes out who said you need to buffer these. These do not run except in a heavy rain event. If we get two or three inches of rain they may run for like a day or a couple of hours, depending on the season. But they are going to be required to be buffered? In my perspective they're not perennial streams. That's a very critical piece of this buffer aspect. That's the most important one.</p>	
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4VAC50-70-40 Minimum standards of a resource management plan.

<b>Item Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Agency Response</b>
123	Commenter not identified	On line 123 of the draft what does it mean that other BMPs may be applied to achieve minimum standards beyond those identified?	<p>Associated with the additional BMPs to be considered to meet minimum standards in accordance with 4VAC 50-70-40 (B), the language has been clarified to speak to those BMPs that "have been identified by NRCS or included within the Virginia Agricultural Best Management Practices Cost-Share Program and have been approved by the Board or those BMPs identified in the Chesapeake Bay Watershed Model or the Chesapeake Bay TMDL Watershed Implementation Plan. BMPs utilized must be found to achieve the minimum standards of this section.</p> <p>The Department is committed to annually evaluate such new BMPs through decision support tools (VAST and the Chesapeake Bay Watershed Model) to determine whether they achieve the minimum standards and are authorized for use in the RMP</p>

			program as a component of a RMP.
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4VAC50-70-50. Components of a resource management plan.

Item Number	Commenter	Comment	Agency Response
124	Dan Jones	My question in this procedure is how far with the work loads of districts will be reasonable and so on. What time frame are we looking at between the implementation of this – is it January, February, whatever it is and the time a person can have their implementation certification in hand? I guess what I'm looking at is that we're in a time frame that is rapidly evolving and what we're going to be asked to do in the TMDL processes. Even though we have modeling, I don't believe we know yet what is really required or whether we're above the mark or below the mark in what we're requiring in the final implementation. Here we have a two year milestone or a four year milestone or whatever milestone we have out there. I would hope people would be looking for implementation plans. But what happens as we start implementation plans and these milestones are flipping on us and we don't know what's required? That's my concern. If I ask for an implementation plan can I get it in six months, a year, three months, a year, is that milestone going to be the same then as it is now? What milestone are we going to use for that economic analysis? My concern as we go down this path, are we going to be asked to look at more subjects more things that we're looking at. My concern is if we do the certification we have a set thing that we're looking at. I understand that at our nine year rollover we could be looking at another ballgame, which is not very settling on my part.	We believe the program can help to improve water quality across the Commonwealth through voluntary measures while also benefitting our farmers by providing certainty for the future. The program provides a framework for farmers to achieve and maintain a high level of conservation practices. As long as those practices are maintained, the farmer will be shielded from further conservation requirements for the duration of the RMP. The Department will also be working diligently with the Districts to develop a stable and timely program and associated processes.

4VAC50-70-80. Issuance of a Certificate of Resource Management Plan Implementation.

Item Number	Commenter	Comment	Agency Response
125	Dan Jones	The other question I had with this certification of RMP implementation. Is that the final product that we're looking for? Is the final thing the certification of implementation?	Yes, the regulatory process sets out the framework to obtain a Certificate of Resource Management Plan Implementation. The process begins with the individual on-farm assessment conducted by a certified plan writer, the resource management plan

			review process described in 4VAC50-70-70 and the certificate issuance process described in 4VAC50-70-80.
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4VAC-50-70-100. Compliance.

Item Number	Commenter	Comment	Agency Response
126	Commenter not identified	As a farmer, if I have agreed to this, after the nine years is up am I no longer required to have a resource management plan?	<p>During the hearing, Mr. Bennett noted that the RMP was not a requirement, but that at the end of nine years, the farmer could get a new nine year RMP. He noted that there were provisions for opting out.</p> <p>The duration of a RMP Certificate is nine years. However, this is a voluntary program and if a farmer who has an existing RMP chooses to abandon the RMP, then the RMP certificate could be revoked through the corrective action process. A farmer may also choose to continue participating in the program after the expiration of his nine-year certificate.</p>
127	Commenter not identified	If I choose not to participate, will I be subjected to any modifications to the local TMDL or to the Bay TMDL?	It depends. If there are new provisions to the TMDLs that direct agricultural best management practices for any load allocation addressing benthic, bacteria, nutrient, or sediment impairments, then yes.

4VAC50-70-120. Reporting.

Item Number	Commenter	Comment	Agency Response
128	Commenter not identified	Will there be a public record of which management units are participating in the program? What level of public intrusion is there going to be onto my farm? It was noted that the proposed regulations address exemptions of certain personal and proprietary information under the Virginia Freedom of Information Act.	The RMP program must follow the framework provided through the statutory law. Subsection 24 of § 2.2-3705.6 of the Code of Virginia excludes “documents and other information of a proprietary nature furnished by an agricultural landowner or operator” under a resource management plan from Virginia’s Freedom of Information Act. The regulations must follow this law. The Department has set up the RMP program to contain checks and balances throughout the regulatory process. The regulations, specifically subsection D of 40VAC50-

			70-120, are compliant with Freedom of Information Act provisions. Farm management strategies and input measures should remain confidential as releasing them to the public could potentially have negative fiscal consequences for the farmer.
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4VAC50-70-140. RMP developer qualifications and certification.

Item Number	Commenter	Comment	Agency Response
129	Commenter not identified	One line 518 regarding the nutrient management plan, who will determine if the professional meets the academic and applied proficiencies? Who determines that? Are these the NRCS standards?	Under 4VAC50-70-140, the Department will be the decision maker regarding certification in accordance with the section. However, the Department acknowledges that many aspects of the RMP program will require further clarification and guidance. Guidance documents will be prepared to assist in the development of the RMP program and to offer additional clarify on what will be acceptable to meet the general standards set out in 4VAC50-70-140.

Buffers.

Item Number	Commenter	Comment	Agency Response
130	Commenter not identified	The question of grass vs. forest buffer. It is my understanding that a forest is more effective at holding the soil in place. What would be the advantage of having a grass buffer? You can't use that grass, for hay or pasture. It's going to grow up and eventually become some type of forest land anyway. What would be the regulations on how that 35 ft. buffer is going to be managed if it is going to be a grass buffer?	The 35' forest or grass buffer requirement for cropland and hayland is consistent with NRCS standards and is consistent with the statutory language establishing the RMP program, § 10.1-104.8. The advantage of both grass and forested buffers is to provide at least a 35' buffer along perennial streams where no nutrients are applied. Both grass and forested buffers protect the streams from nutrient rich runoff from the agricultural fields by absorbing nutrients and slowing stormwater runoff. If the landowner or operator were to participate in one of the cost-share practices for buffers, then he would be required to follow those provisions for forest or grass buffers.
131	Commenter not	Would the area with the grass buffer be mowed or bush hogged?	The Department acknowledges that many aspects of

	identified	Would there be a reason to do that and how would a grass buffer as opposed to a permanent forest buffer be managed?	the RMP program will require further clarification and guidance. Guidance documents will be prepared to assist in the development of the RMP program and to work through the details of specific questions such as this. An RMP developer will make on-farm assessments for each RMP, including what type of buffer is required. This may include management of that buffer. If cost-share has been accepted for the practice, management must be done in accordance with the cost-share requirements.
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Funding for SWCDs.

Item Number	Commenter	Comment	Agency Response
132	Charles Horn	I am a farmer, right now I'm speaking on behalf of the Headwater Soil and Water Conservation District. I see Soil and Water Conservation Districts mentioned a whole lot in this proposal. I'm wondering if Richmond has money to send to districts for the staff we are going to need to make this work. Our staff is fully occupied. We've got bigger workloads right now than we've got money to do it. If this goes into place where are we supposed to get the money to hire additional help? If Richmond has the money, I'm not opposed to the program. This is the first time I've seen anything about it or heard about it. I see an awful lot of things that look like they're written by a lawyer to me, but maybe it's a good program. I'm not sure about that, I'm not going to say. But I am concerned for Soil and Water Conservation Districts. If the money doesn't come to us to have the staff, we cannot take this workload on.	<p>DCR recognizes the increased workload that Districts could be facing because of this new RMP program and the increased need for BMPs. It is anticipated that DCR will provide funding to Districts for providing the technical assistance required with this program's implementation. The additional workload for Districts created by this new program will include RMP plan review, verification of RMP implementation, on-site inspections, and recommendations that a farm is eligible for certification to the Board. DCR truly understands that this new program could create additional workloads for the districts and recognizes that funding is a critical issue.</p> <p>In 2012, a comprehensive study was performed focused on funding for SWCDs. This "Summer Study" has brought funding issues of the Districts before the General Assembly. Discussions are ongoing, including agricultural BMP cost-share funding alternatives. The Commonwealth has committed to achieving certain levels of agricultural BMPs in the Chesapeake Bay TMDL WIP II and will have to strive to meet those levels with or without the RMP program. DCR understands that in order to ramp up BMP implementation we will need more</p>



			money and technical assistance to get these practices on the ground.
133	Katie Frazier, Agribusiness Council	<p>Specifically there are several things we believe are important to making this program a success...[omitted text, see DCR Outreach below] The second is insuring there is adequate funding both for technical assistance for Soil and Water Conservation Districts as they work on implementing their portion of this plan for funding, for training, for resource management plan writers as well as producers who are implementing these plans. The cost of writing these plans and implementing the best management practices that are included in the resource management plans needs to be shared.</p> <p>We believe that without some of that adequate funding that this program cannot be a success for producers and the Soil and Water Conservation Districts can't bear the burden without that cost share assistance.</p>	See response to comment # 132.
134	Jim Belote, Onancock	<p>In doing this you are not only increasing the budget of the state but increasing the county budgets. If you do this and everybody wants to do it, how many years is it going to take to do it? Also what is the cost of the plan? If the state is going to do it what is it going to cost the state? Don't want everybody to think these areas are going to do all of this stuff and you get there and it's not done and you say "why didn't you do it?" Also you need a plan for ongoing service changes. If they make any changes, changes are going to have to be made in a timely manner. You need to staff that effort.</p> <p>I am opposed to the Soil and Water Conservation Districts becoming a regulatory agency. The directors do not get paid, they're volunteers. They already have programs where they help the farmer. If you start doing stuff on a regulatory basis you could destroy those programs. I've never seen voluntary and regulatory programs mixed together and work. You don't want to destroy what is already good. I have a big question in my mind about this being done.</p> <p>You're doing almost the same thing being done in 1985. We tried the same thing except with pesticide plans. That didn't work; you couldn't hire enough people to do them all. The resources were not there. Left the pesticide plan, the extension services did that. They were probably the easiest to do. Essentially doing the same</p>	<p>DCR recognizes the increased workload that Districts could be facing because of this new RMP program and the increased need for BMPs. It is anticipated that DCR will provide funding to Districts for providing the technical assistance required with this program's implementation. The additional workload for Districts created by this new program will include RMP plan review, verification of RMP implementation, on-site inspections, and recommendations that a farm is eligible for certification to the Board. DCR truly understands that this new program could create additional workloads for the districts and recognizes that funding is a critical issue.</p> <p>In 2012, a comprehensive study was performed focused on funding for SWCDs. This "Summer Study" has brought funding issues of the Districts before the General Assembly. Discussions are ongoing, including agricultural BMP cost-share funding alternatives. The Commonwealth has committed to achieving certain levels of agricultural BMPs in the Chesapeake Bay TMDL WIP II and will have to strive to meet those levels with or without the RMP program. DCR understands that in order to</p>

		<p>thing again except moving to more of a regulatory phase.</p> <p>I'm getting very disturbed about federal budget, state budget, everybody is short on money. I would rather see some of this stopped and just send the federal money back to DC to balance the budget. We've got a serious situation. We've got to stop saying we're going to do this and stop costing the federal government a lot of money. I would like to see state employees get raises instead of all of this. State employees have not had raises for years. There's been talk about a bonus but it still doesn't go to the base salary. They have not had a merit raises for years. They went to a different type of merit system and never funded it. A pay for performance was initiated in the first year or two or most of them never got that. They don't get the step raises for working for time and very rarely get cost of living. You need to start fixing some of the things you've got rather than starting a whole lot of new programs.</p> <p>I know it's well intended and everything. I hope it does work. But I think you really need to look at whether we can do all of these things if you really want people to comply 100%. If you had the money should you be putting it there or somewhere else?</p>	<p>ramp up BMP implementation we will need more money and technical assistance to get these practices on the ground.</p> <p>The RMP program is a voluntary program not a regulatory program. A participant would choose to be a party to the program, understanding that implementation of BMPs would have to be verified. The role of the SWCDs is to verify that the voluntary plan has been put into practice and then, if appropriate, recommend the farm receive a Certificate of RMP. Although the SWCDs would perform the inspections, this is not truly a regulatory role. The Districts would be assuring compliance with the RMP. If issues arise, then DCR would take over as the regulatory agency (4VAC50-70-90 E) and follow the steps laid out in the regulations, 4VAC50-70-100 and 4VAC50-70-110, including written notices, corrective actions and appeals.</p> <p>Additionally, the Districts have more interaction with farmers, provide technical assistance, and promote voluntary BMPs. The stakeholders feel that the Districts are in the best position to encourage farmers to enroll in agricultural cost-share BMPs.</p>
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Economic Impact

Item Number	Commenter	Comment	Agency Response
135	Commenter not identified	Is it anticipated that a good part of the money for farmers who choose to participate in the Resource Management Plan program would come from developers or localities in order to meet their MS4 discharge and, in lieu of operating their MS4 or sewage treatment plant, these developers and localities would pay farmers, is that correct?	The Commonwealth remains supportive of nutrient trading as it represents a viable approach to achieving necessary nutrient reductions and improving environmental conditions often at a reduced cost and in situations where onsite reductions are infeasible. The Nutrient Trading Program regulations are under development and will require a baseline of practices to be in place before any trading can occur above and beyond what is required. At this time, we do not know what that threshold will be.

Other regulations .

<b>Item Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Agency Response</b>
136	Commenter not identified	Regarding the Nutrient Trading Regulations, is it correct that there are no draft regulations at this point?	Yes, the Nutrient Trading Program regulations are currently under development.

Public Meetings and DCR Outreach

<b>Item Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Agency Response</b>
137	Larry Wills	I am member of the Augusta County Board of Supervisors. My main concern is that this meeting was not well publicized. I'm not sure how many of our farmers, my constituents, even knew about this meeting. To me to have a comment period like this and not have it in the paper and well publicized was a very big shortcoming on your part. As far as the voluntary part, I haven't seen what the voluntary issues are. But I would think that would be a concern of some of the farmers that have to implement it as to whether they're practical from that side. Because there's nothing in the regulation talking about the voluntary part other than the buffers. If there are voluntary things other than the buffers, that needs to be part of the public hearing so you can hear comments on that also. Thank you.	We appreciate the comments received on this matter and will continue to try and improve public notification to the best of our ability. In this situation, DCR did provide public notice of these meetings in accordance with state law, § 2.2-4007.03 of the Code of Virginia and as specified in § 10.1-104.9 of the RMP statute. The meetings were advertised on Virginia's Regulatory Town Hall, on the DCR website, and posted on the state's online official Commonwealth Calendar. While there is no state requirement for newspaper releases prior to the meetings , we recognize that would have helped to reach a broader audience. However, it should be noted that the Department did issue a statewide press release following the hearings informing the public of the public comment period and where they could find additional information and how they might comment. DCR did comply with the statutory requirements regarding required public meeting notification. We encourage anyone interested in DCR's meetings to subscribe to the Virginia Town Hall to receive automated notifications of future meetings of interest.
138	Dan Jones	I thought it was kind of interesting to get this and I was very disappointed that this was not very well publicized. I was shocked that we didn't have 200 people in here today. The only reason I would have found out about this was because I'm a member of Farm Bureau and they put out some information.	See response to comment # 137.  We are pleased that the Farm Bureau informed their members.

139	Katie Frazier	<p>Specifically there are several things we believe are important to making this program a success. First is clear guidance and clear communication to the industry about what this program actually does and a great public relations campaign in coordination with the industry to get the word out about this.</p>	<p>DCR will be developing guidance and other documents to support program implementation. We believe the program can help to improve water quality across the Commonwealth through voluntary measures while also benefitting our farmers by providing certainty for the future. As stated in the regulations, 4VAC50-70-150, the department and the districts will encourage and promote the adoption of RMPs among agricultural communities across the Commonwealth. Assistance from and coordination with the industry to get the word out would be most welcome and helpful.</p>
140	Jim Belote	<p>I have to talk. I took so long to get here. I live on the Eastern Shore. I am Jim Belote a farmer. I worked for Extension for 33 years as the extension agent on the Eastern Shore and am in the Chesapeake Bay region. First of all it took a long time to get here. I left at 2:00 p.m. and had a 7 mile backup in the Hampton Roads Bridge Tunnel. Having these meetings here like this is a hardship. If you can have them on the Eastern Shore or something, I'd appreciate it. If they don't do something about these roads, they're just eliminating the Eastern Shore from participating in Richmond. I do have some concerns but a lot of these will be off the cuff.</p> <p>I looked for information and can't find it which concerns me. I wonder if you did the same thing. If you have 100% compliance, everybody in the Bay region says we'll do everything we can, how many people will that be? How many farms? I think you should have it before you put this regulation in effect to see if you can do the work load. No need getting stirred up if you can't deliver. How many people are you going to need to do it? Our Soil and Water Conservation District personnel are very sharp people. They're not paid much but the locality didn't even know the meeting was being held here tonight.</p>	<p>We appreciate the comments received on this matter and will continue to try and improve public notification to the best of our ability. In this situation, DCR did provide public notice of these meetings in accordance with state law, § 2.2-4007.03 of the Code of Virginia and as specified in § 10.1-104.9 of the RMP statute. The meetings were advertised on Virginia's Regulatory Town Hall, on the DCR website, and posted on the state's online official Commonwealth Calendar. While there is no state requirement for newspaper releases prior to the meetings, we recognize that would have helped to reach a broader audience. However, it should be noted that the Department did issue a statewide press release following the hearings informing the public of the public comment period and where they could find additional information and how they might comment. However, DCR did comply with the statutory requirements regarding required public meeting notification. We encourage anyone interested in DCR's meetings to subscribe to the Virginia Town Hall to receive automated notifications of future meetings of interest.</p> <p>Meeting the TMDL loads will require the collective efforts of all farmers. The overarching intent of the RMP program is to incentivize voluntary adoption of practices at a high level. See response to comment # 105 for additional information on compliance/ participation levels.</p>

General Support.

Item Number	Commenter	Comment	Agency Response
141	Charlie Drumheller	<p>The comment that I would have would be that I think we're all a little leery of more government intervention with farms. This is a voluntary program. However, voluntary programs often work into mandatory programs. So of that I've got some concerns. However, that being said, I would like to say that this program has the potential to identify and put into the program farmers that are not on cost share and are not on a government program that have done best management practices. So I think in that sense, I do like the idea of the program. But again there is some hesitancy of embracing another government program on our farms.</p>	<p>The Department thanks you for your support of the voluntary RMP program. We believe the program can help to improve water quality across the Commonwealth through voluntary measures while also benefitting our farmers by providing certainty for the future. The program provides a framework for farmers to achieve and maintain a high level of conservation practices. Accounting for those practices that are currently not identified will help progress accounting efforts for the Bay TMDL.</p>
142	Katie Frazier, Virginia Agribusiness Council	<p>We will be providing extensive written comments, but I wanted to make a few verbal comments as well. First, thank you for the opportunity to hold this public comment meeting and period. We believe these Resource Management Plan regulations are extremely important especially in light of the Chesapeake Bay TMDL structure that our industry in particular is facing. As proponents of House Bill 1830 and the legislation and resulting regulation we are hopeful this program will be useful for producers and will recognize the complexity and diversity of farms in Virginia giving their individual operations some flexibility to implement whole farm plans while providing certainty and flexibility in doing so.</p> <p>I did want to point out a few items in the proposed regulations that have been a source of contention that we believe strike a good balance and they should be maintained in the final regulatory framework.</p> <p>There is the lifespan of the resource management plan specifically being nine years and not something shorter than that. This gives our producers the ability to plan long term into the future to truly implement the practices they have in place. To continue to keep them up to speed but provide that certainty in that the world as they know it is not going to change every time there is a TMDL or a water quality program that's out there. This also provides a reasonable work load for planners, farmers and Soil and Water Conservation Districts who are tasked with dealing with the plan.</p>	<p>The Department agrees that nine years is a reasonable duration for the Resource Management Plans. The duration of Resource Management Plans was a topic of significant discussion at the Regulatory Advisory Group meetings. A compromise was reached among the stakeholders at those meetings for the RMP Certificate to last a total of nine years.</p> <p>Much time was spent during the Regulatory Advisory Panel meetings discussing frequency of inspections and compliance issues. The regulations as drafted incorporate the consensus that was reached during those stakeholder discussions and no further changes to these elements have been made.</p>

		<p>The final item we believe must be maintained within the regulations is allowing adequate time to address any noncompliance that may be found within the resource management plan implementation. The nine-year lifespan in the proposed regulations is reasonable.</p> <p>Adequate time allows producers to work to implement and address the issues that are found during an inspection. That will be critically important not only to ensure that producers maintain their resource management plans but to maintain their best management practices that are called for in their plan. Maintaining overall industry acceptance and of the program and industry acceptance of best management practices.</p> <p>I don't think that based on experience with other water quality problems that working towards a compliance based program while allowing people to do that has shown any significant water quality degradation. In the past we've been able to rely on that and continue to make progress with some of our other permitting programs. So that will be maintained.</p>	
143	Bill Street, James River Association	<p>I'll make this short and sweet since a lot of these folks have heard the perspective of the RAP. We've been supportive of the program as an important tool in reaching our water quality goals in the James River and the rest of the Chesapeake Bay. I think there are a couple of outstanding questions that we would raise. These were raised at the Soil and Water Conservation Board meeting as well. For the program to be successful it needs to be recognized and have a lot of confidence that the plans that are developed will truly meet what the law calls for which is meeting the water quality standards and agriculture's share of that.</p> <p>Particularly the language added at the end with regard to cover crops brings up a question of how that will be utilized in this program. We will also include this issue in our formal comments and look forward to your answers.</p>	See response to comment # 105.

General Opposed.

Item Number	Commenter	Comment	Agency Response
144	Ed Craun, Mt.	Does the TMDL plan consider all agricultural use of land as	Except for AFOs and CAFOs, agriculture is not

	Solon	<p>pollution? The pollution definition according to the TMDL glossary from the EPA is defined as man-made or man-induced alteration of water. There's a few other words in there, such as man-made or man-induced of the chemical or physical, biological, radiological integrity of the water. Is agriculture pollution by this definition?</p>	<p>regulated by the EPA. The RMP regulations provide the framework for a voluntary program to promote agricultural best management practices. When the practices are implemented to meet the minimum standards of the RMP law at sufficient levels, they will collectively address the allocated agricultural TMDL reductions in phosphorus, nitrogen, and sediment.</p>
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