



Final Regulation Agency Background Document

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| Agency name | Board for Professional Soil Scientists, Wetland Professionals, and Geologists |
| Virginia Administrative Code (VAC) citation | 18VAC145-20 |
| Regulation title | Professional Soil Scientists Regulations |
| Action title | The action will transition the soil scientist regulation program from certification to licensure. |
| Date this document prepared | January 28, 2014 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The action will transition the soil scientist regulation program from certification to licensure pursuant to Chapters 777 and 859 of the 2011 Session of the Virginia General Assembly. The changes will include the addition of a continuing education (CE) requirement for the renewal and maintenance of licensure. Other changes eliminate language in the regulations which is duplicative of language already contained in the corresponding statutes.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

The Board for Professional Soil Scientists, Wetland Professionals, and Geologists approved 18VAC145-20 which changed the professional soil scientist certification program to licensure at its January 9, 2014 meeting.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

(1) Relevant Laws

HB1734 (Chapter 777) and SB1265 (Chapter 859) of the 2011 Session of the Virginia General Assembly require that the Board's regulatory program for soil scientists change from certification to licensure.

(2) Promulgating Entity

Board for Professional Soil Scientists and Wetland Professionals

§ 54.1-201.5 of the *Code of Virginia* states that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

The authority is mandatory for the agency to comply with the relevant changes to Virginia statutes.

Purpose

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

This regulation amendments are required for the Board to comply with the mandates of HB1734 (Chapter 777) and SB1265 (Chapter 859) of the 2011 Session of the Virginia General Assembly. The Chapters of Assembly require that the Board's regulatory program for soil scientists change from certification to licensure effective July 1, 2013.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed regulations contain changes to facilitate the transition of the program from certification to licensure. These changes include the Board's adoption of the CSSE-prepared exam and continuing

education requirements for license renewal and reinstatement. Changes also include modification of the regulation language to make it easier to read and understand and the elimination of language already established in statute.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

1) The primary advantage to the public is that individuals practicing soil science work will now be required to adhere to established minimum standards in order to obtain a license to continue to practice. These minimum standards establish a baseline performance which must be met by all licensed professionals offering the public increased protection against incompetent practice. The primary disadvantage to individuals is the new requirement for licensure. Individuals presently practice soil science work are not required to be certified because certification is voluntary. However, licensure is mandatory. Therefore, individuals will be required to earn their soil scientist license in order to legally continue to practice soil science work.

2) The primary advantage to the agency is compliance with the laws establishes by the Acts of Assembly. The primary advantage to the Commonwealth is a soil science regulatory program which may invite licensed soil scientists from other states to do business in Virginia due to potential reciprocal licensure agreements. No primary disadvantage to the agency or Commonwealth has been identified.

3) The Board's adoption of the CSSE-prepared national exam as a result of the program transition to licensure could facilitate Commonwealth citizens' ability to more easily obtain licensure in other states. The CSSE-prepared exam is a national exam and is recognized by several other states including neighboring North Carolina.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

There have been no changes.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

| Commenter | Comment | Agency response |
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| Lauren Schmitt – | Ms. Schmitt stated that the | The Board concurs. |

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| <p>VAPSS Lobbyist</p> | <p>association and members are in support of the regulations and believe they are necessary to protect the land and property of citizens, protect from unqualified professionals, and provide consistency to states.</p> | |
| <p>Ryan Reed – VAPSS President</p> | <p>Public Hearing – Mr. Reed stated that the current regulations do not provide adequate protection. The proposed regulations provide additional structure. He further stated that there are many ramifications from unqualified professionals and that this helps provide consistency across the country. Mr. Reed supports the transition from certification to licensure and asks the Board to approve the regulations.</p> <p>Town Hall comment – The Virginia Association of Professional Soil Scientists strongly supports the proposed regulations: 18VAC145-20; <i>Transition Soil Scientists from Certification to Licensure</i>.</p> <p>We believe these proposed regulations are necessary and will serve to protect the land, property and citizens of Virginia. Currently, certification for soil science is only optional under Virginia law and does not provide adequate protection from unqualified professionals practicing soil science. Licensure will ensure that only those professionals specifically educated and trained in the field of soil science can practice soil science in the Commonwealth. Licensure will also provide a structure in which these professionals can be properly regulated.</p> <p>Proper soil evaluation is critical to building housing developments and structures, developing agricultural farmland and protecting the</p> | <p>The Board concurs.</p> |

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| | <p>Chesapeake Bay watershed. Inaccurate soil interpretation can have disastrous effects at the cost of taxpayers. Cracked foundations, falling roadways, loss of vegetation and water contamination are only some of the ramifications of unqualified professionals practicing soil science. These proposed regulations would prevent the severe economic impact and negative consequences homeowners, farmers and developers experience as a result of unregulated professionals practicing soil science.</p> <p>In addition, switching from certification to a national examination will provide consistency with the rest of the country and promote the industry of soil science by attracting more soil scientists to find work in Virginia. The national exam is the standard licensing examination for soil scientists and is given to soil scientists throughout the country.</p> <p>We fully support the transition of soil scientists from certification to licensure and respectfully ask that the Board for Professional Soil Scientists, Wetland Professionals and Geologists approve these proposed regulations in their current form</p> | |
| <p>Nan Gray – past VAPSS president and former board member</p> | <p>Town Hall: I wholeheartedly approve of what you have written. The education requirements are clear. The new document is beautiful and everything I have wanted since 1988, except for one more thing. Soil Scientists also come in female packaging. When he becomes she/he, him becomes him/her, etc., I shall be even happier. Thank you for your diligence and your attention to detail. The future Soil Scientists thank you, too.</p> | <p>The Board concurred with most comments however in regards to writing style and format, we utilize the format as prescribe by the Registrar’s office.</p> |
| <p>Jeff Walker – VAPSS</p> | <p>Town Hall – I join the community of soil</p> | <p>The Board concurs with Mr. Walker’s initial comments however, regarding the matter of a seal, there currently is no requirement in the</p> |

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| <p>President Elect</p> | <p>scientists and citizens which support the implementation of licensure, ensuring that only those professionals specifically educated and trained in the field of soil science can practice soil science in the Commonwealth. Licensure will also provide a structure in which these professionals can be properly regulated.</p> <p>I suggest that the Board for Soil Board for Professional Soil Scientists, Wetland Professionals and Geologists approve these proposed regulations in their current form.</p> <p>Furthermore I suggest that the Board direct its staff to research and propose the creation of an approved seal which may be used in designating documents which have been created under the auspices of a Licensed Professional Soil Scientist. The seal shall be used to improve the ability of the public to discern that the standards of the Board have been followed and should appear on those documents which are to be relied upon by other professionals in the design or consideration of issues which may be identified in soil assessments and reports.</p> | <p>regulations for a seal. The Board may investigate the need for a seal at a later time.</p> |
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All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
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| 10 | | Definitions | The definitions of this section are modified to be consistent with the language contained in the Code. Duplicative definitions listed here are removed and referenced to the currently established definition in |

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| | | | <p>the Code.</p> <p>"Department" is eliminated and "Board" is used throughout to accurately refer to the transaction between the Board and its regulants.</p> |
| 60 | | Certification Qualifications | <p>The section is renamed to "General Application Requirements" to more accurately reflect its purpose. The language is amended to refer to the requirements in the Code which are more than just education, experience, and examination. Further, the language expands on the power of the Board to investigate the accuracy and validity of documents submitted by an applicant to substantiate his qualifications for licensure.</p> |
| 70 | | Qualifications for Examination | <p>This section is stricken in its entirety because it duplicates the requirements of §54.1-2205 of the Code which establishes the specific education and experience requirements for licensure. Reference to the Code and these specific requirements is made in section 60 of the regulations.</p> |
| 90 | | Qualifying Experience in Soil Evaluation | <p>This section is amended to include language referring to the specific length of experience required as established by the Code. Including this reference helps applicants to understand that the Code has established the "length" of experience and this section of the regulations establishes the "type" of experience necessary for licensure.</p> <p>Minor changes to the language are made to incorporate grammatical parallel structure, to specify experience eligibility requirements in item #1, and to clarify the value and applicability of education used to substitute for experience in item #6.</p> |
| 91 | | Core Course Requirements | <p>This section is amended to be more consistent with the language of the Code.</p> <p>The language is also amended to correct an error in the title of a course type from "Chemistry," incorrectly listed as a standalone course, to "Soil Physical and Colloidal Chemistry."</p> |
| 100 | | Examination | <p>This section is amended to accommodate the Board's adoption of the CSSE national exam in replacement of the currently used Board-prepared exam.</p> |
| 111 | | Waiver from Examination through Reciprocity | <p>This section is stricken in its entirety because it duplicates the requirements of §54.1-2206 of the Code which establishes the Board's authority to waive the examination for licensure based on a reciprocal agreement between the Board and another state's board.</p> |
| 120 | | Expiration | <p>This section is amended to accommodate the transition of the program from certification to licensure.</p> |

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| 130 | | Procedures for Renewal | This section is amended to include the Board's requirement for statutory-mandated CE. The language is also amended to be read more clearly. |
| 140 | | Reinstatement | <p>Current language requires a regulant to complete initial entry requirements for licensure if his license is expired for more than six months but less than a year. The same requirement is established for those regulants whose license is expired for more than one year.</p> <p>Requiring a regulant to complete initial licensure entry requirements when his license is between six months and a year expired is excessive. The section is amended to simply require the reinstatement fee of such regulants. However, those regulants whose license is expired for more than one year will be required to meet initial entry requirements for licensure.</p> |
| | 145 | Continuing Education Requirements | This section is added to comply with the Board's statutory mandate to establish CE requirements. |
| 151 | | Fees | This section is amended to remove exam fees related to the Board-prepared examination as a result of the Board's adoption of the CSSE-prepared examination. |
| 160 | | Professional Conduct | This section is simply reworded to read more clearly. |
| 170 | | Grounds for Suspensions, Revocation, Denial of Application, Renewal, or other Disciplinary Action | This section is renamed to "Sanctions and Powers of the Board." The language is amended to eliminate duplicative language and read more clearly. |