

Board for Professional Soil Scientists

PRE-NOIRA CHECKLIST EXPLANATION SHEET

1. Reasons for the proposed Regulations (satisfies 1.b of the Pre-NOIRA Section of EO25)

Since the last revision of the regulations in 1993, there have been occurrences, and comments that were brought before the Board by board members, the general public and staff. These circumstances have caused the board to vote to authorize a pre-NOIRA so that the following issues can be adequately addressed:

- Revisit entry requirements
- Revisit the board's general definitions
- Revisit renewal and reinstatement requirements
- Other changes which may be necessary pursuant to the Board's periodic review of its regulations.

2. Legal Authority/Mandate (satisfies 1.a of the Pre-NOIRA section of EO25)

§§ 54.1-201 and 54.1.2200 of the Code of Virginia authorizes the Board for Professional Soil Scientists to promulgate regulations for a regulatory system to regulate individuals in Virginia who practice as soil scientists. While the Board is mandated to establish regulations, content of the regulations is left to the discretion of the Board.

3. Statement of Essential Nature (satisfies 1.c of the pre-NOIRA section of EO25)

This review is essential to comply with the EO25 directive for periodic review of its regulations and to address those items brought before the board in the past several years. It is also essential that the board adopt the least burdensome alternatives allowed.

In order to protect the public, the board desires to clarify in its regulations those issues noted under Number 1 above. This clarification ensures that board regulations are keeping pace with the realities and trends of the profession and yet comply with its mandate to protect the health, safety and welfare of the citizens of the Commonwealth.

The board, although voluntary, believes that soil scientists perform a service, which involves a potential hazard to public health and safety; that minimum qualifications must be set for soil scientists to assure protection of the public. Due to recent incidents involving "shrink soil" challenges in Virginia, there needs to be continued assurance that the board's entry and testing requirements

are minimally adequate to ensure public protection.

4. Statement of Alternatives Considered (satisfies 1.d of the Pre-NOIRA section of EO25)

Failure to adopt these changes will permit the Board's regulations to remain potentially vague in this very important area of public protection. The board's objective in requesting approval to publish a Notice of Intended Regulatory Action is to evaluate the burden and intrusion into commerce resulting from its regulations and determine, with the assistance of public comment, whether its existing regulatory scheme is appropriate or requires revision. The specific areas identified under Item 1 above reflect the board's consideration of alternatives.

DPOR believes these regulations continue to be essential to protect the public by assuring that testers of soil are minimally competent to perform those tasks. Absent the regulations, homeowners and businessmen may incur additional expense to identify competent soil scientists who may cause harm to the public and the environment through incompetent testing procedures.

The Board will assuredly consider any and all comments received during the NOIRA public comment comment period and the proposed regulation comment period as to any proposed alternatives. In addition, any person may petition the board to consider a proposed regulatory change at any time in accordance with the Board's Public Participation Guidelines.

5. State of Impact on Families

The contemplated changes are expected to have no impact on families.

SUPPLEMENTAL SHEET
SOIL SCIENTISTS PRE-NOIRA PACKAGE
SEPTEMBER 8, 1999

1. As stated in our Pre-NOIRA package dated August 20, 1999, the Rules and Regulations for the Board for Professional Soil Scientists require a review to make the following changes:
 - Revisit entry requirement.
 - Revisit the Board's general definitions.
 - Revisit renewal and reinstatement requirements.
 - Other changes which may be necessary pursuant to the Board's periodic review of its regulations.
2. **Entry Requirements.** With regard to entry requirements, the Board needs to ensure the requirements are both in sync with the code and with needs of the professions to ensure only those qualified for certification are allowed to either grandfather or take the required examination. In 1991 the Board developed a policy regarding waiver of examination which should be placed in the regulations to ensure future regulants are aware of and comply with those requirements without needless challenges from those who do not meet the waiver requirements.
3. **Definitions.** With regard to general definitions, the profession has changed over the last ten years and the definitions found in the current regulations need to be reviewed to ensure they comply with current practice and be either revised, deleted or added to.
4. **Renewal/Reinstatement.** Renewal and reinstatement requirements need to be reviewed to ensure they are consistent with the other professions and occupations regulated by the agency. Most other professions are on a staggered renewal cycle, whereas Soil Scientists are renewed on the same date for all those certified regardless of certification date. 18 VAC 145-20-140 regarding reinstatement has two reinstatement deadlines. It should have one to be consistent with other professions and to be less confusing to the certificate holders.
5. **Periodic Review.** The Board's current regulations became effective June 1, 1989. According to EO 25, there is to be a periodic review of existing regulations at least once every three years. It is obvious that these regulations are well past the periodic review cycle. Changes in the profession may require changes in these regulations in the areas listed in paragraph one above. Specifically, this periodic review is needed to eliminate redundancy between the regulations and statute. Much in the regulations is covered in statute and

does not need to be repeated in the regulations. The result of this review should be shorter, more easily understandable, less burdensome regulations