



townhall.virginia.gov

Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

Agency name	Board for Professional Soil Scientists, Wetland Professionals, and Geologists
Virginia Administrative Code (VAC) citation	18VAC145-30
Regulation title	Board for Professional Soil Scientists, Wetland Professionals, and Geologists Regulations Governing Wetland Professionals
Date	December 23, 2015

This information is required pursuant to Executive Order 17 (2014).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

(1) Relevant Laws

[§ 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.

[§ 54.1-404.A](#) of the *Code of Virginia* authorizes the board as follows: "The Board shall promulgate regulations not inconsistent with this chapter governing its own organization, the professional qualifications of applicants, the requirements necessary for passing examinations in whole or in part, the proper conduct of its examinations, the implementation of exemptions from license requirements, and the proper discharge of its duties."

The imperative form of the verb “shall” is used, making the Board’s authority to regulate mandatory rather than discretionary. Executive Order 17 (2014) states, in part, “Each existing regulation in the state shall be reviewed at least once every four years by the promulgating agency unless specifically exempted from periodic review by the Governor.”

(2) Promulgating Entity

Board for Professional Soil Scientists, Wetland Professionals, and Geologists.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

No viable alternative has been identified. The current regulations establish minimum requirements for the certification of wetland delineators. The regulations establish requirements for a certificate program (not a licensure program); therefore, the regulations do not affect the practice of wetland delineation by non-certified individuals.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Brian Owen, MSA, PC	Opposed to the requirement for one of the three required references be a certified PWD when applying to take the wetland delineator exam.	The Board felt it necessary that at least one reference be from a certified PWD. This is a statutory requirement §54.1-2206.2.
VAWP-Tara Fisher, Carolyn Keeler, Kelly Coleman, Robin Bedenbaugh	Supports retaining the regulations in their current form.	The Board concurs.
Michael Rolband, Wetland Studies & Solutions, Inc.	1) Make it mandatory for all delineations be prepared under the supervision of a certified PWD. Certification should be mandatory.	1) Voluntary certification
Michael Rolband,	2) Add continuing education requirement	2) Certified programs typically do not have continuing education requirements

Wetland Studies & Solutions, Inc.	3) Clarify that neither PWDs, nor uncertified wetland delineator practitioners are allowed to practice land surveying.	3) It would be inappropriate in the Wetland Delineator regulations. Regulations governing land surveyors specify requirements. Already prohibited by statute §54.1-2201.B.2
-----------------------------------	--	--

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulations are consistent with the criteria of Executive Order 17 (2014) in that they are necessary for the establishment of minimum standards for certification but do not preclude the practice of wetland delineation by non-certified individuals.

Result

Please state that the reason why the agency is recommending that the regulation should stay in effect without change.

The agency recommends that the regulations remain in effect and unchanged.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and 5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the basis for the agency’s determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

1. The current regulations establish minimum requirements for the certification of wetland delineators; however, because the regulations establish requirements for a certificate program (not a licensure program), the regulations do not affect the practice of wetland delineation by non-certified individuals.
2. Although no comments were received online; three comments were sent to the Board. The first comment is a statutory requirement. The second comment is already prohibited by statute. The last comment is in support of retaining the regulations in their current form.
3. The regulations are not complex in nature.

4. The regulations do not overlap, duplicate, or conflict with federal or state laws or regulations but instead work in concert with them.

5. The last periodic review concluded January, 2012. There were further changes to the regulations that became effective March 1, 2015.

No small business impact has been identified.