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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board for Professional Soil Scientists, Wetland Professionals, and Geologists
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC145-20
<b>VAC Chapter title(s)</b>	Professional Soil Scientists Regulations
<b>Action title</b>	General Review of Professional Soil Scientists Regulations
<b>Date this document prepared</b>	August 22, 2023 (revised October 27, 2023)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The Board for Professional Soil Scientists, Wetland Professionals, and Geologists (“the Board”) intends to undertake a general regulatory review of the Professional Soil Scientists Regulations. The regulation provides for the licensure of professional soil scientists.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
2. Review to ensure the regulation compliments current Virginia law and meets applicable federal requirements, if any;

3. Review to ensure the regulation is organized, clear, and understandable; and
4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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“DPOR” means Department of Professional and Occupational Regulation.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor “...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth.”

This action is not the result of a mandate.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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The agency is Board for Professional Soil Scientists, Wetland Professionals, and Geologists.

Section 54.1-201 of the Code of Virginia provides, in part:

- A. The powers and duties of regulatory boards shall be as follows:
  1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.
  5. 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.

### **Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

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The General Assembly has charged the Board with the responsibility for regulating those who engage or offer to engage in the practice of soil evaluation, by requiring that such individuals obtain a license in order to engage in this occupation.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to assure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the Board.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

### **Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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During its review of the regulation, the Board is expected to consider the following:

**PART II – ENTRY (18VAC145-20-60 et seq.):**

- **General Application Requirements (18VAC145-20-60):** Removing a provision stipulating that applications and accompanying materials become property of the Board. Adding a provision that an applicant must provide a current mailing address.
- **Qualifying Experience in Soil Evaluation (18VAC145-20-90):** Removing provisions that allow for undergraduate or graduate study to be substituted for experience. Currently, a year of full-time undergraduate study in a soils curriculum or related natural science may count as one-half year of experience, up to a maximum of two years. Similarly, a year of full-time graduate study in a soils curriculum may count as one year of experience, up to a maximum of two years. The Board intends to repeal these provisions. This change is contingent upon a change in statute which would reduce the minimum number of years of experience required for a license. This statutory change that has been requested. If the statute is modified, the Board will proceed with the change. If it is not modified by the deadline to file proposed language, the revision will be pulled from the proposed regulation.

- Core Course Requirements (18VAC145-20-91): Simplifying core course requirements to require course work in a soil science related curriculum.
- Examination (18VAC145-20-100): Removing duplicative provisions that require an applicant to meet entry requirements established in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

Part III – RENEWAL/REINSTATEMENT (18VAC145-20-120 et seq.):

- Procedures for Renewal (18VAC145-20-130): Adding a provision that a licensee applying for renewal or reinstatement cannot receive credit for completing continuing education with the same content more than once during the time period prior to renewal or reinstatement. Revising provisions related to the renewal of suspended licenses.
- Reinstatement (18VAC145-20-140): Extends the period for reinstatement of a license from one year to two years.
- Continuing Education Requirements (18VAC145-20-145): Revising provisions for continuing education (CE) courses that will be accepted by the Board. Removing unnecessary provisions related to the computation of continuing education credit. Currently, licensees are required to complete eight (8) hours of continuing education “per year” during a renewal period, which is two years. Regulants must submit 8 CE hours per year for a total of 16 CE hours per renewal period. With this change, regulants will be required to submit only 8 CE hours per renewal period. This change requires a statutory change that has been requested. If the statute is modified, the Board will proceed with the change. If it is not modified by the deadline to file proposed language, the revision will be pulled from the proposed regulation.

The Board has developed preliminary draft text.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

A goal of this regulatory action is to review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

**Periodic Review and Small Business Impact Review Announcement**

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact*

*review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

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This NOIRA is not being used to announce a periodic review or a small business impact review.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The Board for Professional Soil Scientists, Wetland Professionals, and Geologists is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Kate Nobsch  
Executive Director  
9960 Mayland Drive  
Perimeter Center, Suite 400  
Richmond, VA 23233  
BPSSandWP@dpor.virginia.gov  
(866) 465-6206 (fax)

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.