



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 145-30 Regulations Governing Certified Professional Wetland Delineators
Department of Professional and Occupational Regulation
Town Hall Action/Stage: 6299 / 10507
November 12, 2024

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The Board for Professional Soil Scientists, Wetland Professionals, and Geologists (Board) proposes to 1) revise the qualifying education for certification to include a graduate degree and remove the minimum number of required semester hours for certain coursework; 2) increase the timeframe for reinstating an expired certificate from one year to two years, and remove a provision that the Board may require examination or reexamination of an individual who is reinstating a certificate; and 3) make the experience requirement more stringent for those seeking to qualify for certification based on inspection, review, or confirmation of wetland delineations.

Background

The initial impetus for this action was 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

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth.”

This regulation establishes rules for individuals who practice or offer to practice as a wetland professional by providing that such individuals may voluntarily obtain certification from the Board as a certified professional wetland delineator as evidence of qualification to engage in this occupation. Individuals that meet the requirements of certification are authorized to represent themselves to the public as certified professional wetland delineators. However, a lack of certification does not prohibit the practice of wetland delineation. The regulation ensures that individuals who are certified have met the minimum standards (including education, experience, and examination) that have been established by the General Assembly and the Board to practice wetland delineation.

In order to comply with Executive Directive Number One, the Board primarily proposes changes that would repeal language that is duplicative of statute, is non-regulatory in nature, or contradicts current practice. Two other proposed changes aim to reduce regulatory burdens, and one proposed change would increase the stringency of the experience requirement for certification as discussed below.

Estimated Benefits and Costs

As of July 1, 2024, there were 130 certified wetland delineators, and one to eight new applicants were certified annually between fiscal years 2020 and 2024. The number of entrants is relatively small compared to some of the other regulated occupations, and thus the magnitude of the expected impacts discussed below should be relatively limited.

The Board proposes to revise the qualifying education for certification to allow an applicant to have either a graduate degree or the currently required bachelor’s degree, and to also remove the minimum number of required semester hours in biological, physical, and quantitative sciences. Under the proposed changes, an applicant could qualify if they possess either an undergraduate or graduate degree so long as it contains coursework in biological, physical, and quantitative sciences. With these two proposed changes, the Board reports that more individuals would likely qualify for certification as the change would include those whose graduate degree is in biology, physical, and quantitative sciences even if their bachelor’s degree lacks sufficient focus in those areas.

The Board also proposes to increase the timeframe for reinstating an expired certificate from one year to two years, and to remove a provision that the Board may require examination or reexamination of an individual who is reinstating a certificate. These changes would allow more time to reinstate an expired certificate and eliminate the possibility of having to retake the exam.

On the other hand, the Board also proposes to make the experience requirement more stringent for those seeking to qualify based on inspection, review, or confirmation of delineations as an employee of a federal, state or local governmental body that is authorized to review or approve such delineations. This would be made more stringent by increasing the minimum number of nontidal wetland delineations that an applicant must have inspected, reviewed, or confirmed from six out of thirty total delineations to 18 out of thirty. In other words, under the proposal, 60 percent (i.e., 18/30) of the required delineations must be for nontidal wetlands as opposed to current 20 percent (i.e., 6/30). This proposal results from the Board's determination that the current requirement for experience in delineation of nontidal wetlands does not provide sufficient demonstration of competency. More specifically, individuals attempting to qualify based on experience on preparing (as opposed to inspection, review, or confirmation) delineations are required to have 60 percent of their experience based on delineations of nontidal wetlands. The proposal would bring the portion of nontidal wetland delineation experience gained from inspection, review, or confirmation to the same level expected from preparing delineations. According to the Board, nontidal wetland delineations are generally more complicated and take longer to inspect, review, or confirm. Thus, the Board believes this proposed change would increase the stringency of the experience requirement for those who are seeking to qualify based on inspection, review, or confirmation of delineations as an employee of a federal, state or local governmental body that is authorized to review or approve such delineations.

The remaining proposed changes are not expected to create any economic effects other than editorial improvements and clarity as they comprise the repeal of regulatory text that is redundant of statutory language, text that does not reflect current practices, or text that is not regulatory in nature.

Businesses and Other Entities Affected

As of July 1, 2024, there were 130 certified wetland delineators in Virginia and between one to eight new applicants were certified annually between fiscal years 2020 and 2024. No regulants appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.² An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.³ As noted above, one of the proposals would increase the stringency of the experience requirement based on the inspection, review, or confirmation of delineations and would likely require more time and effort from such individuals to qualify for certification. Thus, an adverse impact is indicated.

Small Businesses⁴ Affected:⁵

The proposed amendments do not appear to directly adversely affect small businesses because certifications are issued to individuals, not to business entities. However, the Board states that many certified wetland delineators are likely to be owners or employees of business entities that meet the definition of "small business" in § 2.2-4007.1 of the Code of Virginia.

² Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

³ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁴ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁵ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

Localities⁶ Affected⁷

The proposed amendments do not introduce costs for local governments, nor do they disproportionately affect any locality more than others.

Projected Impact on Employment

One of the proposed changes may impose more time and effort for certification of those that qualify based on inspection, review, or confirmation experience. The new requirement to include a graduate degree as an option, combined with the removal of specific hours for certain coursework requirements, may increase the number of qualified applicants. However, the proposed changes do not appear to have the potential to significantly affect total employment because relatively few certifications are issued annually.

Effects on the Use and Value of Private Property

The potential net impact on asset values of wetland delineation businesses is unclear, but unlikely to be significant as two of the proposed changes are less stringent and may reduce compliance costs by small amount for a small number of applicants and one of the proposed changes is more stringent and may increase compliance costs also by a small amount for a small number of applicants. No direct impact on real estate development costs is expected.

⁶ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.