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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	18VAC145-20
Regulation title	Board for Professional Soil Scientists, Wetland Professionals, and Geologists Regulations Governing Professional Soil Scientists
Date	December 22, 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 licensing requirements for soil scientists and ensure that these professionals meet minimum education, training, experience, and examination standards that are crucial to the protection of the public health, safety, and welfare of the public.

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
William Sledjeski	It is imperative that the regulation regarding licensing of soil scientists be retained due to existing and increasing regulatory requirements for competence in the testing and evaluation of soil-based practices. Local and state regulations include storm water management, on site waste water disposal, interpretative soil mapping as required by local ordinance for problem soils including shrink-swell, karst, high water table, wetland delineation and other limiting development features. Nutrient management for both urban and agricultural practices is a soil science based practice. All of these are intended to not only protect the health and health and welfare of the citizens but also the natural resources of the Commonwealth.	The Board concurs

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 protection of the public health, safety, and welfare.

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 licensing requirements for soil scientists.
2. Only one public comment was received. The comment recommends that the regulation regarding the licensing of soil scientists be retained due to existing and increasing regulatory requirements for competence in the testing and evaluation of soil-based practices.
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.