



Proposed Regulation Agency Background Document

Agency name	Board for Professional Soil Scientists and Wetland Professionals
Virginia Administrative Code (VAC) citation	18VAC145-20
Regulation title	Professional Soil Scientists Regulations
Action title	The action will transition the soil scientist regulation program from certification to licensure.
Date this document prepared	May 7, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The action will transition the soil scientist regulation program from certification to licensure pursuant to Chapters 777 and 859 of the 2011 Session of the Virginia General Assembly. The changes will include the addition of a continuing education (CE) requirement for the renewal and maintenance of licensure. Other changes eliminate language in the regulations which is duplicative of language already contained in the corresponding statutes.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"CE" means continuing education that is required for the renewal or reinstatement of a soil scientist license.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

(1) Relevant Laws

HB1734 (Chapter 777) and SB1265 (Chapter 859) of the 2011 Session of the Virginia General Assembly require that the Board’s regulatory program for soil scientists change from certification to licensure.

(2) Promulgating Entity

Board for Professional Soil Scientists and Wetland Professionals

§ 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.

The authority is mandatory for the agency to comply with the relevant changes to Virginia statutes.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

This regulation amendments are required for the Board to comply with the mandates of HB1734 (Chapter 777) and SB1265 (Chapter 859) of the 2011 Session of the Virginia General Assembly. The Chapters of Assembly require that the Board’s regulatory program for soil scientists change from certification to licensure effective July 1, 2013.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

The proposed regulations contain changes to facilitate the transition of the program from certification to licensure. These changes include the Board's adoption of the CSSE-prepared exam and continuing education requirements for license renewal and reinstatement. Changes also include modification of the regulation language to make it easier to read and understand and the elimination of language already established in statute.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

1) The primary advantage to the public is that individuals practicing soil science work will now be required to adhere to established minimum standards in order to obtain a license to continue to practice. These minimum standards establish a baseline performance which must be met by all licensed professionals offering the public increased protection against incompetent practice. The primary disadvantage to individuals is the new requirement for licensure. Individuals presently practice soil science work are not required to be certified because certification is voluntary. However, licensure is mandatory. Therefore, individuals will be required to earn their soil scientist license in order to legally continue to practice soil science work.

2) The primary advantage to the agency is compliance with the laws established by the Acts of Assembly. The primary advantage to the Commonwealth is a soil science regulatory program which may invite licensed soil scientists from other states to do business in Virginia due to potential reciprocal licensure agreements. No primary disadvantage to the agency or Commonwealth has been identified.

3) The Board's adoption of the CSSE-prepared national exam as a result of the program transition to licensure could facilitate Commonwealth citizens' ability to more easily obtain licensure in other states. The CSSE-prepared exam is a national exam and is recognized by several other states including neighboring North Carolina.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

No requirements more restrictive than federal requirements have been identified.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities have been identified as being particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to:

Board for Soil Scientists and Wetland Professionals
 9960 Mayland Dr., Suite 400
 Richmond, VA 23233
 (804) 367-8514 (phone)
 (866) 465-6206 (fax)
BPSSandWP@dpor.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

Summary:

The proposed regulations will change the current certificate program for professional soil scientists to a licensure program, requiring a professional soil scientist to be licensed to perform work in Virginia. The regulations are also changing the examination given to become licensed. The current exam is administered by the agency and the new exam will be the national exam prepared by the Council of Soil Science Examiners (CSSE) for the Soil Science Society of America (SSSA).

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Fiscal Impact:

	FY 2012	FY 2013	FY2014	FY2015
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Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	\$0	\$0	\$0	\$0
Ongoing Costs	\$0	\$0	\$2,000	\$2,000
Total Fiscal Impact	\$0	\$0	\$2,000	\$2,000
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: Currently, the examination developed and administered by the agency is updated and revised at least every ten years at a cost of approximately \$20,000. By using the national examination, there is a savings of these development and revision costs.

Ongoing: In order to utilize the national exam, the board will need to obtain membership in the SSSA and pay the annual membership fees of \$2,000. The SSSA will provide access to the CSSE national exam.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: This regulation change will affect all professional soil scientists.

Estimated Number of Regulants: As of May 1, 2012, there are 133 Professional Soil Scientists certified by the Board and very little change in the number of regulants is expected as a result of the revised regulations.

Projected Cost to Regulants: Examination fees are currently \$150 paid to the agency. With the regulation change, the applicants will pay CSSE for the examination costs. Application, renewal, and reinstatement fees will not change.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

No alternatives are available. The proposed changes are necessary for the Board to comply with Chapters 777 and 859 of the 2011 Session of the Virginia General Assembly. The proposed changes are as minimal as possible to still achieve the purpose of the newly amended statutes.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

1) In the proposed regulations, the Board has included the least stringent compliance and reporting requirements. Current regulations require that a regulant, whose license is expired for more than six months, must pay a reinstatement fee *and* meet all requirements for initial licensure. The proposed language allows this same individual to simply pay a reinstatement fee if his license is expired for more than six months but less than one year. If the license is expired for one year or more, however, the regulant must reapply and meet all current initial entry requirements. Further, the least stringent reporting requirements are established to still meet the requirements of applicable law. The Board is also charged with establishing continuing education (CE) requirements. The proposed language includes this requirement but only requires reporting every two years during license renewal. The regulant is simply required to submit a copy of a completion certificate or equivalent proof of CE completion along with the license renewal payment. As a result of this method, no audit for regulants to prove CE compliance will be necessary thus the regulant will not have to maintain any further board-required CE documentation for his past license renewals.

2) The establishment of less stringent reporting schedules or deadlines for compliance or reporting requirements is detailed in 1) above.

3) Compliance or reporting requirements are consolidated as much as possible to still maintain compliance with the law. Prior to CE, certified regulants were still required to submit payment to the Board to renew their certificate. The proposed language simply requires that, in addition to the license renewal payment, the regulant submit a copy of a certificate or equivalent proof of completion of CE. Upon the Board's receipt of payment and proof, the license is renewed and no further reporting requirement is necessary regarding CE compliance.

4) The proposed language has a negligible effect on small businesses.

5) The proposed language has a negligible effect on small businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No public comments were received following the publication of the NOIRA.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights

of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No family impact has been identified.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		Definitions	The definitions of this section are modified to be consistent with the language contained in the Code. Duplicative definitions listed here are removed and referenced to the currently established definition in the Code. "Department" is eliminated and "Board" is used throughout to accurately refer to the transaction between the Board and its regulants.
60		Certification Qualifications	The section is renamed to "General Application Requirements" to more accurately reflect its purpose. The language is amended to refer to the requirements in the Code which are more than just education, experience, and examination. Further, the language expands on the power of the Board to investigate the accuracy and validity of documents submitted by an applicant to substantiate his qualifications for licensure.
70		Qualifications for Examination	This section is stricken in its entirety because it duplicates the requirements of §54.1-2205 of the Code which establishes the specific education and experience requirements for licensure. Reference to the Code and these specific requirements is made in section 60 of the regulations.
90		Qualifying Experience in Soil Evaluation	This section is amended to include language referring to the specific length of experience required as established by the Code. Including this

			<p>reference helps applicants to understand that the Code has established the "length" of experience and this section of the regulations establishes the "type" of experience necessary for licensure.</p> <p>Minor changes to the language are made to incorporate grammatical parallel structure, to specify experience eligibility requirements in item #1, and to clarify the value and applicability of education used to substitute for experience in item #6.</p>
91		Core Course Requirements	<p>This section is amended to be more consistent with the language of the Code.</p> <p>The language is also amended to correct an error in the title of a course type from "Chemistry," incorrectly listed as a standalone course, to "Soil Physical and Colloidal Chemistry."</p>
100		Examination	<p>This section is amended to accommodate the Board's adoption of the CSSE national exam in replacement of the currently used Board-prepared exam.</p>
111		Waiver from Examination through Reciprocity	<p>This section is stricken in its entirety because it duplicates the requirements of §54.1-2206 of the Code which establishes the Board's authority to waive the examination for licensure based on a reciprocal agreement between the Board and another state's board.</p>
120		Expiration	<p>This section is amended to accommodate the transition of the program from certification to licensure.</p>
130		Procedures for Renewal	<p>This section is amended to include the Board's requirement for statutory-mandated CE. The language is also amended to be read more clearly.</p>
140		Reinstatement	<p>Current language requires a regulant to complete initial entry requirements for licensure if his license is expired for more than six months but less than a year. The same requirement is established for those regulants whose license is expired for more than one year.</p> <p>Requiring a regulant to complete initial licensure entry requirements when his license is between six months and a year expired is excessive. The section is amended to simply require the reinstatement fee of such regulants. However, those regulants whose license is expired for more than one year will be required to meet initial entry requirements for licensure.</p>
	145	Continuing Education Requirements	<p>This section is added to comply with the Board's statutory mandate to establish CE requirements.</p>
151		Fees	<p>This section is amended to remove exam fees related to the Board-prepared examination as a result of the Board's adoption of the CSSE-prepared</p>

			examination.
160		Professional Conduct	This section is simply reworded to read more clearly.
170		Grounds for Suspensions, Revocation, Denial of Application, Renewal, or other Disciplinary Action	This section is renamed to "Sanctions and Powers of the Board." The language is amended to eliminate duplicative language and read more clearly.