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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	18VAC145-11
Regulation title	Board for Professional Soil Scientists, Wetland Professionals, and Geologists Public Participation Guidelines
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

[§ 2.2-4007.02](#)

Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations. Under § 2.2-4007.02 of the *Code of Virginia*, every rulemaking body in Virginia is required to adopt public participation guidelines and to use these guidelines in the development of its regulations. Chapter 321 of the 2008 Acts of Assembly (effective July 1, 2008) mandated that, by December 1, 2008, agencies either adopt model public participation guidelines issued by the Department of Planning and Budget, or if they need to make significant changes to the model guidelines, promulgate new public participation guidelines as fast-track regulations.

[§ 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 regulations are necessary for the Board to comply with §2.2-4007.02 of the Code of Virginia and Chapter 321 of the 2008 Acts of Assembly.

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	The Board concurs

	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.	
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.	<p>1) Make it mandatory for all delineations be prepared under the supervision of a certified PWD. Certification should be mandatory.</p> <p>2) Add continuing education requirement</p> <p>3) Clarify that neither PWDs, nor uncertified wetland delineator practitioners are allowed to practice land surveying.</p>	<p>1) Voluntary certification</p> <p>2) Certified programs typically do not have continuing education requirements</p> <p>3) It would be inappropriate in the Wetland Delineator regulations. Regulations governing land surveyors specify requirements.</p> <p>Already prohibited by statute §54.1-2201.B.2</p>

Four public comments were received during the public comment period. The first 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. The second comment is a statutory requirement. The third comment is already prohibited by statute. The last comment is in support of retaining the regulations in their current form.

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 written clearly and are easily understandable. Further, they are necessary for the Board to comply with §2.2-4007.02 of the Code of Virginia and Chapter 321 of the 2008 Acts of Assembly.

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 are necessary for the Board to comply with §2.2-4007.02 of the *Code of Virginia* and Chapter 321 of the 2008 Acts of Assembly.
2. Four comments were received during the public comment period.
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. The current Soil Scientist regulations became effective March 1, 2015. The current Wetland Delineator regulations became effective March 1, 2015. The current Geologists regulations became effective January 1, 2015.

No small business impact has been identified.