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Fast-Track Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) Chapter citation(s)	4VAC50-85-40
VAC Chapter title(s)	Nutrient Management Training and Certification Regulations
Action title	Expansion of eligibility requirements
Date this document prepared	September 9, 2021 (revised January 3, 2022)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Nutrient Management Training and Certification Regulations (4VAC50-85) establish the minimum qualifications for individuals who prepare nutrient management plans and the minimum components and content of a nutrient management plan. Nutrient management plans address nutrient applications to both urban landscape and agricultural operations; these plans improve and protect water quality using best management practices such as timing, rate and placement of fertilizer, manure and biosolids for agricultural and urban purposes.

This regulatory action will provide an additional option for individuals to meet the eligibility criteria established in 4VAC50-85-40, which outlines the items needed to achieve certification. Individuals who successfully complete a two-year college degree program and one and one-half years of practical experience will meet the educational components of these requirements. Existing language has been

amended to clarify that an individual who receives a four-year degree will only be required to complete one-year of practical experience in order to meet the education requirements for certification.

In order to meet Virginia’s water quality goals, including Virginia’s Phase III Chesapeake Bay Watershed Implementation Plan (WIP), a significant increase in the number of nutrient management plans developed and implemented by producers needs to occur. However, in order for this to happen, an increase in the number of certified planners is also necessary. This regulatory action will expand the number of certified nutrient management planners that are available to assist agricultural producers, state agencies, localities, institutions of higher learning, and other entities with the development and implementation of nutrient management plans.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

Board means the Virginia Soil and Water Conservation Board.

Department means the Department of Conservation and Recreation.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Virginia Soil and Water Conservation Board (Board) initiated this fast-track regulatory action for the Nutrient Management Training and Certification Regulations (4VAC50-85-40) on September 23, 2021.

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 Executive Order 14 (as amended, July 16, 2018), “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.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

A periodic review of the Nutrient Management Training and Certification Regulations was started on April 21, 2021. Many of the comments received by the Board requested an expansion of the options available to meet the educational components of the eligibility criteria established in 4VAC50-85-40.

This regulatory action is expected to be non-controversial as it provides an additional option for achieving the educational components needed to achieve nutrient management certifications. This does not have any impact on the individuals who are currently certified. Additionally, increasing the number of certified planners will assist Virginia in meeting its water quality goals.

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.

Section 10.1-104.2 A. of the *Code of Virginia* requires the Department of Conservation and Recreation to “operate a voluntary nutrient management training and certification program to certify, in accordance with regulations adopted by the Virginia Soil and Water Conservation Board pursuant to subsection D, the competence of persons preparing nutrient management plans...”

Additional requirements for the *Nutrient Management Training and Certification Regulations* (4VAC50-85) are set out in §10.1-104.2 D of the *Code of Virginia*, which states:

D. The Virginia Soil and Water Conservation Board shall adopt regulations:

1. Specifying qualifications and standards for individuals to be deemed competent in nutrient management plan preparation, and providing for the issuance of documentation of certification to such individuals;
2. Specifying conditions under which a certificate issued to an individual may be suspended or revoked;
3. Providing for criteria relating to the development of nutrient management plans for various agricultural and urban agronomic practices, including protocols for use by laboratories in determining soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purpose of nutrient management;
4. Establishing fees to be paid by individuals enrolling in the training and certification programs;
5. Providing for the performance of other duties and the exercise of other powers by the Director as may be necessary to provide for the training and certification of individuals preparing nutrient management plans; and
6. Giving due consideration to relevant existing agricultural certification programs.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

This regulatory action will provide an additional option for individuals to meet the eligibility criteria established in 4VAC50-85-40, which outlines the items needed to achieve certification. Individuals who successfully complete a two-year college degree program and one and one-half years of practical experience will meet the educational components of these requirements.

In order to meet Virginia’s water quality goals, including Virginia’s Phase III Chesapeake Bay Watershed Implementation Plan (WIP), a significant increase in the number of nutrient management plans developed and implemented by producers needs to occur. However, in order for this to happen, an increase in the number of certified planners is also necessary. This regulatory action will expand the number of certified nutrient management planners that are available to assist agricultural producers, state agencies, localities, institutions of higher learning, and other entities with the development and implementation of nutrient management plans.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The amendment will allow for individuals who have successfully completed a two-year college degree program with a major in an agriculturally related area with coursework in the area of nutrient management such as soils, soil fertility, and plant science, and one and one-half years of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the department to be eligible for certification under these regulations. This action reflects the increased number of colleges offering two-year degrees in agricultural studies and the value of practical in-field experiences. This amendment should lead to an increase in the number of certified nutrient management planners. An additional amendment also clarifies that an individual who receives a four-year degree will only be required to complete one-year of practical experience in order to meet the education requirements for certification.

Issues

Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

This regulatory action will provide an additional educational option for those individuals interested in becoming certified nutrient management planners. This does not have any impact on the individuals who are currently certified. Additionally, increasing the number of certified planners will assist Virginia in meeting its water quality goals.

There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale

for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No agency, locality, or entity is particularly affected by this regulatory action.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>Currently, a \$100 certification and recertification fee is authorized to be collected from individuals seeking to become certified nutrient management planners. As the number of individuals that are able to be certified could increase as a result of this regulatory action, the agency may see an increase in fees collected.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no anticipated fiscal impact to other state agencies or institutions of higher education.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change may increase the number of certified nutrient management planners. Section 10.1-104.4 requires state agencies and institutions of higher education "that own land upon which fertilizer, manure, sewage sludge or other compounds containing nitrogen or phosphorus are applied to support agricultural, turf, plant growth, or other uses shall develop and implement a nutrient management plan for such land." Increasing the number of certified nutrient management planners offers additional opportunities for technical assistance and support to state agencies and</p>

	institutions of higher education during the development and implementation of the plan..
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Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There is no anticipated fiscal impact to localities.
Benefits the regulatory change is designed to produce.	Certain localities and other entities are regulated by the State Water Control Board under 9VAC-25-890 (General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems) or through individual permits. These localities and other entities are required by the permit to develop and implement nutrient management plans for lands over an acre that receive nutrients. Increasing the number of certified nutrient management planners offers additional opportunities for technical assistance and support to these localities and entities during the development and implementation of the plan.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Individuals may choose to become a certified nutrient management planners through the option provided by this regulatory action. No other entities will be affected by this regulatory action.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	This regulatory action is not anticipated to have any fiscal impact on other entities. However, there may be additional professional opportunities provided for an individual through this action.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs associated with this regulatory change. There is no impact on the individuals that are currently certified nutrient management planners.
Benefits the regulatory change is designed to produce.	An individual may choose to become a certified nutrient management planner through the option provided by this action; it could expand the available professional opportunities for an individual.

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.

There are no functional alternative to amending these regulations. This regulatory change will provide an additional educational option to achieve the certification requirements established in 4VAC50-85-40. The language reflects the increased number of colleges offering two-year degrees in agricultural studies and the value of practical in-field experiences. As the educational requirements are established in the regulation, a regulatory action is necessary to expand the accepted educational options.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulatory change is not anticipated to have an adverse impact on small businesses; thus, no alternative regulatory methods are believed to be applicable to the current action. This regulatory action may increase the number of certified nutrient management planners by providing another option to meet the educational components. This regulatory change will provide additional professional opportunities for individuals who complete a two-year degree program.

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.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Soil and Water Conservation Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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 to Christine Watlington Jones at christine.watlington@dcr.virginia.gov or by mail at 600 East Main Street, 24th floor, Richmond, Virginia 23219. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
4VAC50-85-40		<p>Currently, only those individuals who supply proof of meeting one of the following are eligible to be certified under the regulations:</p> <p>a. A copy of a college transcript indicating completion of a college degree with a major in an agriculturally related area with coursework in the area of nutrient management such as soils, soil fertility, and plant science, and one year of practical experience related to nutrient management planning or implementation of nutrient management concepts and</p>	<p>The recommended amendments are as follows:</p> <p>a. A copy of a college transcript indicating completion of a <u>four year</u> college degree with a major in an agriculturally related area with coursework in the area of nutrient management such as soils, soil fertility, and plant science, and one year of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the department,</p> <p>b. A copy of a college transcript indicating <u>completion of a two year college degree with a major in an agriculturally related area with coursework in the area of nutrient management such as soils, soil fertility, and</u></p>

		<p>principles acceptable to the department, or</p> <p>b. A combination of education to include nutrient management related educational courses or training and a minimum of three years of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the department.</p>	<p><u>plant science, and one and one-half years of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the department, or</u></p> <p>...</p> <p>The current b will become c.</p> <p>This language will allow an additional educational option for individuals interested in becoming certified nutrient management planners. The language reflects the increased number of colleges offering two-year degrees in agricultural studies and the value of practical in-field experiences. An additional amendment also clarifies that an individual who receives a four-year degree will only be required to complete one-year of practical experience in order to meet the education requirements for certification.</p> <p>Additionally, this regulatory action should result in an increase in nutrient management planners. Expanding the number of certified nutrient management planners will enable planners to provide additional technical assistance to agricultural producers, state agencies, localities, institutions of higher education, and other entities that are required to develop and implement nutrient management plans. The development and implementation of nutrient management plans is a key component of Virginia’s plans to achieve its water quality goals including the Phase III Chesapeake Bay Watershed Implementation Plan (WIP).</p>
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