



Virginia
Regulatory
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Final Regulation Agency Background Document

Agency name	Board for Professional Soil Scientists and Wetland Professionals
Virginia Administrative Code (VAC) citation	18 VAC 145-20
Regulation title	Board for Professional Soil Scientists Regulations
Action title	Amend
Document preparation date	July 16, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The purpose of the proposed action is to adjust fees as necessary in accordance with § 54.1-113 of the Code of Virginia (Callahan Act). Any other changes that may be necessary may also be considered.

Statement of final agency action

Please 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.

On July 14, 2004, the Board for Professional Soil Scientists and Wetland Professionals adopted final changes to the fees contained in the Professional Soil Scientists regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 describes each regulatory board's power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department...”

§ 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The intent of the proposed changes in regulations is to increase fees for professional soil scientist applicants and regulants. The Board must establish fees adequate to support the costs of board operations and a proportionate share of the Department's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money, but instead is funded from revenue collected for applications, renewals, examination fees, and other fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the Department's authorized special revenue appropriation.

The ability of the Board to continue to process applications in a timely and accurate manner increases the level of public safety and welfare by ensuring that only those applicants that meet or exceed the requirements set forth in the statutes and regulations are granted certificates.

The Board for Professional Soil Scientists and Wetland Professionals has no other source of revenue from which to fund its operations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Fees will be increased as necessary to comply with the § 54.1-113 of the Code of Virginia. Any other changes which may be necessary may also be considered.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The primary issue for the proposed fee increase is the Department's statutory requirement to comply with the Callahan Act.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the certificate to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to level of income.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

No changes were made to the text of the proposed regulations since the publication of the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Summary of comment received:

Believes that the fee adjustments are too high and out of line. In addition, believes that the numbers presented are "highly suspect and do not represent a true picture of DPOR costs."

Board response:

Budget and Expenditures

The Board's budget and expenditures have increased substantially for the 02-04 and future biennia, primarily due to the introduction of a new profession to the Board (wetlands professionals). Increased expenditures relate to additional board meetings, regulatory review, and expanded board responsibilities for the new program. In addition, an examination must be developed for the new program at a projected cost of \$15,000, to be incurred sometime in the current or next biennium, and then must be administered on an ongoing basis.

The Board's share of agency costs has also increased substantially. In compliance with § 54.1-113 of the Code of Virginia (Callahan Act), agency expenditures are allocated to each board and fees are established that are sufficient but not excessive to cover the board's direct expenditures and allocated costs. In order to maintain fees at equitable

levels for the smaller boards, the department uses an allocation system that employs ‘steps’ based on a board’s volume of regulants. A smaller percentage is applied to boards with less than 100 licensees to reflect the smaller proportion of resources required by the boards. This Board is one of the smallest regulated by DPOR, and historically has maintained approximately 80-90 licensees. In the past biennium the board’s number of regulants increased to more than 100, and the percentage used to allocate agency costs to the Board have increased accordingly. The increased costs resulting from that step increase are reflected in the Board’s overall cost increase.

Fees

Individual renewal fees are currently \$175 per two-year licensing period, and have not increased since 1989. The proposed fee of \$260 is expected to become effective by 2005, reflecting a period of more than 15 years during which the fee remained unchanged. The 49% increase in the renewal fee represents an average annual increase of about 3%. During that same period of time, the Consumer Price Index has increased 48%. In recent years, DPOR’s overall budget has increased an average of about 5% annually. The annualized increase in the soil scientist renewal fee is consistent with the increase in the CPE, and less than the Department’s overall increases.

Most of the Board’s revenues are provided through renewal fees. The Board has made a decision to establish application fees at a higher rate to reflect the processing workload associated with the application process, and to maintain lower examination fees to allow for reasonable entry into the profession.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement		Proposed change and rationale	
151		New application	\$150	New application	\$150 <u>300</u>
		Examination fee	\$150	Examination fee	\$150
		Reexamination fee	\$75 for each part	Reexamination fee	\$75 for each part
		Renewal fee	\$175	Renewal fee	\$175 <u>260</u>
		Late renewal fee	\$25	Late renewal fee	\$25
		Reinstatement fee	\$200	Reinstatement fee	\$200 <u>300</u>
		Dishonored check fee	\$25	Dishonored check fee	\$25

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Enter any other statement here

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

These fee increases are not anticipated to have any significant impact on Virginia's families.