

Approval of Response to a Periodic Review of the Nutrient Management Training and Certification Regulations (4VAC50-85)

§ 2.2-4007.1. Regulatory flexibility for small businesses; periodic review of regulations.

D. In addition to other requirements of §2.2-4017, all regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law. When a regulation has undergone a comprehensive review as part of a regulatory action that included the solicitation of public comment on the regulation, a periodic review shall not be required until four years after the effective date of the regulatory action.

E. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
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.

F. Prior to commencement of the regulatory review required by subsection D, the agency shall publish a notice of the review in the Virginia Register of Regulations and post the notice on the Virginia Regulatory Town Hall. The agency shall provide a minimum of 21 days for public comment after publication of the notice. No later than 120 days after close of the public comment period, the agency shall publish a report of the findings of the regulatory review in the Virginia Register of Regulations and post the report on the Virginia Regulatory Town Hall.

§ 10.1-104.2. Voluntary nutrient management training and certification program.

A. The Department shall 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 for the purpose of (i) assisting landowners and operators in the management of land application of fertilizers, municipal sewage sludges, animal manures, and other nutrient sources for agronomic benefits and for the protection of the Commonwealth's ground and surface waters and (ii) assisting owners and operators of agricultural land and turf to achieve economic benefits from the effective management and application of nutrients...

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...

Executive Order 14 (2018) (amended)

Existing state regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law, as regarding § 2.2-4007.1 of the Code of Virginia.

Prior to commencement of the periodic regulatory review, the agency shall publish a notice of the review in the Register and post the notice on Town Hall. The agency shall provide a minimum of 21 days for public comment after publication of the notice. No later than 120 days after close of the public comment period, the agency shall publish a report of the findings of the regulatory review in the Register and post the report on Town Hall.

Recommended Motion:

The Virginia Soil and Water Conservation Board approves the responses to the comments received during the periodic review of the Nutrient Management Training and Certification Regulations (4VAC50-85) and authorizes the Department to post the report of findings to the Virginia Regulatory Town Hall and to publish the findings in the Virginia Register.



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) Chapter citation(s)	4VAC50-85
VAC Chapter title(s)	Nutrient Management and Training Certification Regulations
Date this document prepared	September 9, 2021

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**.

Acronyms and Definitions

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

"DEQ" means the Virginia Department of Environmental Quality.

"NMP" means nutrient management plan.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

"WQIF" means the Water Quality Improvement Fund.

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 or 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.

This periodic review was conducted pursuant to Executive Order 14 (as amended July 16, 2018) and §2.2-4017.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no alternatives to adopting regulations.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Anonymous	DEQ has a Fact Sheet distributed to poultry litter end-users that provides a template for nutrient management that is more understandable, more likely to be implemented and less costly to farmers. This should be used as the Nutrient Management requirement in Virginia. DEQ already inspects these field records with the farm production facility.	<p>The fact sheet referenced in this comment provides four options for producers that use poultry litter on their fields; having a nutrient management plan is one of these options. A producer may receive funding to offset the cost of the development of a nutrient management plan through a direct pay initiative established by the Department for certain counties within the Chesapeake Bay Watershed or through the Virginia Agricultural Best Management Practice Cost-share (VACS) Program.</p> <p>DEQ must inspect the farm production facility under statutory and regulatory requirements, which are outside the scope of this regulation (4VAC50-85).</p> <p>No revisions to the regulations are being proposed to address this comment.</p>
Eric Paulson; Virginia State Dairymen's Association	[A]sk that you strongly consider expanding the eligibility of the Nutrient Management Training and Certification program to include those that have obtained 1.5 years of relevant experience as well as completed an associates degree with an emphasis on nutrient management. Our own land grant universities such as Virginia Tech offer training and coursework in nutrient management.	The Board concurs with this comment. A regulatory action will be initiated to include the completion of a two-year college degree and 1.5 years of practical experience as an option under the eligibility requirements established in 4VAC50-85-45.
Hobey Bauhan, Virginia Poultry Federation	[E]ncourage you to expand eligibility for the Nutrient Management Training and Certification Program to those who have completed a two-year agricultural associates degree with emphasis on nutrient management and have at least 1.5 years of relevant experience. This would include the two-year Ag Tech program at Virginia Tech, which provides training in nutrient management.	The Board concurs with this comment. A regulatory action will be initiated to include the completion of a two-year college degree and 1.5 years of practical experience as an option under the eligibility requirements established in 4VAC50-85-45.
Jim Riddell	As the industry has changed and training evolved students are completing the 2 year Ag Tech program at Va. Tech and receive thorough training in NMP development. Many also have the relevant experience in order to qualify to take the exam for certification.	The Board concurs with this comment. A regulatory action will be initiated to include the completion of a two-year college degree and 1.5 years of practical experience as an option under the eligibility requirements established in 4VAC50-85-45.

	Virginia should add a section to the code in order to also allow students who have completed the 2 year Virginia Tech program and who possess at least 1.5 years of relevant experience---to take the exam for Nutrient Management Planner.	
Kyle Shreve, Virginia Agribusiness Council	[W]e urge the Department to open the Nutrient Management Training and Certification Regulations [4 VAC 50 ? 85] in order to widen the eligibility requirements for individuals with a 2-year Associates Degree.	The Board concurs with this comment. A regulatory action will be initiated to include the completion of a two-year college degree and 1.5 years of practical experience as an option under the eligibility requirements established in 4VAC50-85-45.
Martha Moore, Virginia Farm Bureau Federation	On behalf of the farmers across Virginia, we would request that this regulations be opened for allowing additional students to be eligible for certification...Therefore, the section that addresses the eligibility for certification in the regulations needs an additional section that would allow an agriculture focused associates degree with some additional experience be eligible for certification as a nutrient management planner. These degree programs can be developed and some exist with curriculum that would make these students be able to have this credential to help Virginia farmers to maintain and increase the number of active plans available.	The Board concurs with this comment. A regulatory action will be initiated to include the completion of a two-year college degree and 1.5 years of practical experience as an option under the eligibility requirements established in 4VAC50-85-45.
Richard L. Fitzgerald	As a certified nutrient management planner working in va., dealing with two regulatory agencies with respect to nutrient management issues is redundant and confusing. DEQ inspects the farms and the NMP. Remove the requirement in the regs requiring an approval letter from DCR. As long as it is prepared by a trained planner working closely with the farmer is acceptable by DEQ.	The Board concurs with this comment. A regulatory action will be initiated to include the completion of a two-year college degree and 1.5 years of practical experience as an option under the eligibility requirements established in 4VAC50-85-45.
Richard L. Fitzgerald	Abolish the "soils" management language from the Standards & Criteria. At the large scale of the soil surveys many of the soil types do not actually appear within a field boundary. The surveys may be relative on large (56 ac.) fields. In fact, there is a paragraph in every published soil survey where the scientists	If no yield records are available, soils information is utilized as a starting point for a nutrient management plan. This information used to management crop production is based on the Virginia Agronomic Land Use Evaluation System developed by Virginia Tech. Virginia Tech serves as the agronomic and technical resource for the Department's nutrient management program.

	<p>themselves recognized this issue and state;" do not use this information to manage a farm or field".</p>	<p>No revisions to the regulations are being proposed to address this comment.</p>
<p>Richard L. Fitzgerald</p>	<p>Flexibility for farmers to increase crop production and improve soil productivity or soil health is not allowed unless the farmer provides actual records which comes a great expense (\$2500-3000) for a typical farm with animal manures. In these same soil surveys, every one has a statement to manage all soils for "increasing the soil's organic matter and tith".</p>	<p>The regulations allow a producer to amend nutrient management plan amended based on changing field conditions. This could include updated field records, changing crop types, or changes in the farm operations.</p> <p>Assistance with keeping field records, in addition to field record keeping booklets, are available to producers through the Department's nutrient management program, Virginia Cooperative Extension, and many agricultural lending institutions. As the assistance and booklets are provided at no charge to the producer, the Board is unsure where the estimated expense is derived from.</p> <p>No revisions to the regulations are being proposed to address this comment</p>
<p>Richard L. Fitzgerald</p>	<p>Please review the 2016 document from Virginia Nutrient Management Leadership Team (VNMLT) deeper into the 100 page document to see the actual farmer comments to the survey instead of the public statements offered by the team.</p>	<p>The Department has reviewed this document; however, there are numerous comments from producers included in the report. The Board is unclear which comment(s) are being supported from the document.</p> <p>No revisions to the regulations are being proposed to address this comment.</p>
<p>Richard L. Fitzgerald</p>	<p>Move the authority for this program to VDACS and fund it through WQIF dollars instead of Chesapeake Bay Funding, solely. Issues will have a better grassroots focus and landowners will have better access for representation.</p>	<p>Section 10.1-104.2 of the Code of Virginia requires the Department to operate a nutrient management training and certification program. As transferring this program to VDACS would require a statutory change, it is outside the scope of a regulatory action.</p> <p>No revisions to the regulations are being proposed to address this comment.</p>
<p>Richard L. Fitzgerald</p>	<p>Drop the requirement for a certified planner's signature on the cover page of a plan. I prepare the plan. My signature does not mean I implement the plan.</p>	<p>The planner signature on the cover page of the plan does not imply that the nutrient management planner is implementing the plan. The signature on the cover page is a way for the Department to ensure that the plan was developed by a certified nutrient management planner.</p> <p>No revisions to the regulations are being proposed to address this comment.</p>

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set out in Executive Order 14 (2018) as it is necessary for the protection of public health, safety and welfare of the citizens and visitors to the Commonwealth. The Board is conducting a period review of the regulations.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

Amend the regulations. Recommended amendments would allow individuals who successfully complete a two-year college degree program and one and one-half years of practical experience to meet certain eligibility requirements set out in 4VAC50-85-40.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The regulations do not have an adverse impact on small businesses and do not overlap, duplicate or conflict with any known federal or state law or regulation.