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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Professional and Occupational Regulation
<b>Virginia Administrative Code (VAC) citation(s)</b>	18 VAC 120-30
<b>Regulation title(s)</b>	Regulations Governing Polygraph Examiners
<b>Action title</b>	Amend Renewal and Reinstatement Requirements
<b>Date this document prepared</b>	April 18, 2019

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 (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The intent of this regulatory action is to amend the regulations by extending the license term and reinstatement periods currently in place. These amendments will eliminate the requirement that licenses be renewed annually and, by extending the reinstatement period, provide a longer amount of time a licensee may be late with a renewal payment and not have the license terminated.

### Acronyms and Definitions

*Please define all acronyms or technical definitions used in the Agency Background Document.*

“DPOR” means the Department of Professional and Occupational Regulation.

## Mandate and Impetus

*Please 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, board decision, etc.). 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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DPOR initiated this action in order to decrease the regulatory burden on licensed polygraph examiners when complying with the renewal or reinstatement requirements, pursuant to the policies and principles enumerated in E.O. 14 (2018) as well as the Regulatory Reduction Pilot Program (Chapter 444 of the 2018 Acts of Assembly).

## Legal Basis

*Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

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Va. Code § 54.1-1802.1 grants the DPOR Director the "powers and duties of a regulatory board" and directs him to "[p]romulgate regulations necessary for the reasonable administration of [Chapter 18 of Title 54.1] in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)."

## Purpose

*Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

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Currently, the majority of regulatory boards at DPOR and its companion agency, the Department of Health Professions, issue licenses on a two-year cycle. Polygraph examiner licenses are one of the few exceptions that must renew on an annual basis, which can prove burdensome to some licensees. A two-year license term is aligned with the Commonwealth's biennial budget cycle for purposes of fee-setting; it provides a reasonable, less restrictive timeframe for an individual to be licensed to work without re-qualifying with the credentialing source; and it brings the renewal requirements in line with other regulatory programs in Virginia.

Since 2014, there have been multiple instances in which a licensed polygraph examiner has had their license expire past the current six-month reinstatement period, which requires that they apply as a new examiner and complete all entry criteria again (including the examination) in order to become "relicensed." In one instance the individual had been licensed for nearly 20 years. In many of the examples there were mitigating circumstances, outside the control of the individual that resulted in the license not being reinstated during the six-month window.

In reviewing the instances where an individual lost their license simply for being late with a payment, staff conducted a review of other regulatory boards' reinstatement regulations. This review found that most regulatory boards have a minimum of a one year reinstatement period, double that currently in place for

polygraph examiners. Extending the reinstatement period to one year would have eliminated virtually all of the situations experienced since 2014 where an individual had to reapply for licensure.

## Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

### **Section 18 VAC 120-30-100. Fees.**

Review current renewal and reinstatement fees to ensure compliance with § 54.1-113 of the Code of Virginia, and adjust as necessary.

### **Section 18 VAC 120-30-120. Renewal Required.**

Amend this section to increase the license term to two years from the last day of the month in which the license was issued.

### **Section 18 VAC 120-30-140. Fees for renewal.**

Repeal this section and move pertinent language to other sections as necessary.

### **Section 18 VAC 120-30-170. Reinstatement required.**

Amend this section to extend the reinstatement period to 12 months.

## Alternatives

*Please 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.*

Although no alternatives have been identified at this time, the Board may make changes to the regulatory action under consideration if alternative proposals are identified during the regulatory review process, and after consideration of any submissions during the public comment period.

## Periodic Review and Small Business Impact Review Announcement

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form.

Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

## Public Participation

DPOR is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is also 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

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://www.townhall.virginia.gov>.

Anyone wishing to submit comments may do so by one of the following methods:

- Via the **REGULATORY TOWN HALL website** at <http://townhall.virginia.gov/>

*OR send to the attention of:*

**Marjorie King, Board Administrator**

Department of Professional and Occupational Regulation

**By E-MAIL to:**

[polygraph@dpor.virginia.gov](mailto:polygraph@dpor.virginia.gov)

**By FAX to:**

(866) 430-1033

**By U.S. Mail to:**

9960 Mayland Drive, Suite 400  
Richmond, VA 23233

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.