



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Professional and Occupational Regulation
Virginia Administrative Code (VAC) citation	18 VAC 120-30-10 et seq.
Regulation title	Regulations Governing Polygraph Examiners
Action title	Change of Fees
Document preparation date	August 17, 2005

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed regulations will increase fees for the Polygraph Examiners and Polygraph Examiner Interns to ensure that revenues are sufficient but not excessive to cover the program's ongoing operating expenses. Fees were decreased in 1998 and in 1999 based on a surplus experienced by the program. This surplus has been depleted since that time with program expenses exceeding the income produced by regulant fees. Current fees are not adequate to pay continuing operating costs. Without the proposed fee increases, the program's deficit will continue to increase and the Department will not collect adequate revenue to pay for operations.

All costs incurred in support of program activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (§54.1-113), and the general provisions of §54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

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 March 3, 2005 the Polygraph Examiner Advisory Board recommended that the fees be adjusted and on August 5, 2005, Louise Fontaine Ware, Director of the Department of Professional and Occupational Regulation, approved that recommendation, adjusting the Polygraph Examiner Advisory Board's licensing fees pursuant to § 54.1-201 and § 54.1-1802.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

§ 54.1-113 requires regulatory boards to revise their licensure fees so that the fees are sufficient but not excessive to cover the boards' fees. § 54.1-1802 requires that the Director of the Department of Professional and Occupational Regulation promulgate regulations that are not inconsistent with the laws of Virginia necessary to carry out the provisions of Chapter 18 of Title 54.1 of the *Code of Virginia* and Chapter 1 (§ 54.1-100 et seq. of the *Code of Virginia*).

18 VAC 120-30-30 provides authority for the Director of the Department of Professional and Occupational Regulation to appoint an advisory board to advise the Department on any matters relating to the practice or licensure of polygraph examiners in Virginia.

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 the regulation 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 licensing fees for Polygraph Examiners and Polygraph Examiner Interns. The Department must establish fees adequate to support the costs of program operations and a proportionate share of the Department's operations for that program. By the close of this biennium, current fees will not provide adequate revenue for those costs.

The Department provides protection for the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to practice as polygraph examiners, as well as ensuring that polygraph examinations are conducted in a manner consistent with both Federal Law and Virginia Law. Without adequate funding there would be delays in the administration of licensing

examinations and complaints against regulants, brought to the attention of the Department by citizens, could not be investigated and processed in a timely manner. The majority of licensed polygraph examiners are law enforcement officers who use the polygraph to investigate crime and to conduct pre-employment examinations. With an increased emphasis on local and national security, it is imperative that the Department ensure that there are adequate opportunities for individuals to become licensed to conduct polygraph examinations.

Decades of technological advancements have been responsible for changes in equipment and theories used in the polygraph field. These changes have been incorporated into the examinations of other states and the curricula of schools approved to provide pre-license training to polygraph examiners. After a review of the current examination by the Advisory Board, it was determined that the exam given to applicants of a license in Virginia should be updated in order to incorporate these advancements and to ensure that polygraph examiners are tested in a manner to ensure adequate competency, affording a level of protection to those individuals who are subject to examination.

The Department of Professional and Occupational Regulation receives no general fund money, but instead, is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing 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 levels to provide that revenue. Fee revenues collected on behalf of the boards fund the Department's authorized special revenue appropriation.

The Department has no other source of revenue from which to fund its operations for the licensure of polygraph examiners and polygraph examiner interns.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-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 (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Regulatory programs are required to comply with the provisions of the Callahan Act (§ 54.1-113 of the *Code of Virginia*) in order to ensure adequate funding is available to continue to operate those programs required by law. Generally, fee increases required by the Act are promulgated as under the standard provisions for regulatory review. This process can be lengthy and the continued operation of the program without the requested increase in fees could result in an even greater deficit than anticipated and the need to increase fees almost immediately in order to address that deficit. By using the fast track process for a fee increase required by statute, the income/expense ratio becomes more stable, decreasing the likelihood of the need for another immediate fee increase, which is less burdensome to the regulant.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The existing regulations are being amended to increase the fees applicable to several licensing items.

18 VAC 120-30-100. Fees.

The fee for an examiners license by reciprocity is increased from \$45 to \$95.

The fee for an intern registration is increased from \$20 to \$75.

The fee for an examiners license by exam is increased from \$75 to \$200.

The fee for a re-examination is increased from \$75 to \$200.

The fee for renewal of an examiners license increased from \$15 to \$55.

The fee for reinstatement of an examiners license is increased from \$50 to \$75.

The dishonored check fee will be removed from the regulations.

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.*

This proposed regulatory action represents no disadvantages for the public. Fees for licensed polygraph examiners and prospective licensed polygraph examiners will be increased to a level that meets the Board's operating expenses, pays for the cost to implement a new polygraph examiner licensing examination, and is consistent with other states' polygraph examiner licensing fees.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Polygraph Examiner Licensing Program

Polygraph Fiscal Impact of Proposed Regulation

Summary:

Under fees established in 1995, the Board collected revenues in excess of expenditures and accumulated a substantial cash balance. Fees were reduced in 1998 and again in 1999 to allow the Board to spend the accumulated cash and revenues. Current financial analysis and projections indicate that the Polygraph Board will soon deplete the accumulated cash balance, and may reach a deficit position by the close of the current biennium. Fee increases are necessary to ensure that the Board continues to collect adequate revenue and cash to continue to pay its ongoing operating expenses. Proposed fees remain substantially lower than 1995 fees.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

	FY 2005	FY 2006	FY2007	FY2008
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: There are no one-time costs associated with the proposed regulations.

Ongoing: There are no ongoing costs associated with the proposed regulations.

Cost to Localities: Some localities provide funding to employees who are performing a task that requires licensure or certification as part of their employment (e.g. polygraph examiners, teachers, emergency medical technicians, etc.). While it is known that some localities do provide this benefit, it is not known exactly how many of the licensees work for those localities, so an exact cost could not be provided. However, with an estimated regulant population of less than 300 and anecdotal evidence that indicates that few localities have more than three polygraph examiners on their payroll, the over impact would be negligible.

Description of Individuals, Businesses, or Other Entities Impacted: The majority of polygraph examiners are employed by government agencies at either the local or state level. Generally, those who are not employed by government agencies are sole proprietorships with no employees, who contract out their services to local or state government for the purposes of pre-employment, investigative and probation/parole requirements.

Estimated Number of Regulators: The Board currently regulates 284 polygraph examiners.

Projected Cost to Regulators: Polygraph application fees will increase by \$50, costing \$95 to become licensed. Renewal fees will increase \$40, for an annual cost of \$55 to remain licensed. Overall, proposed increases in fees will remain a small portion of the cost to work as a Polygraph Examiner. No economic impact is anticipated beyond the direct impact of the increased cost to become and remain licensed. Increases in fees are not expected to have a significant effect on individuals deciding to become or remain licensed by the Board.

**Financial Status and Projections
Proposed Fees**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulators</u>
2000-02	31,259	14,135	12,837	32,557	253.6%	257
2002-04	32,557	10,950	16,297	27,210	167.0%	285
2004-06	27,210	11,714	45,097	-6,173	-13.7%	284
2006-08	-6,173	39,429	29,356	3,900	13.3%	
2008-10	3,900	39,823	32,946	10,777	32.7%	
2010-12	10,777	40,222	36,975	14,024	37.9%	
2012-14	14,024	40,624	41,496	13,152	31.7%	

Fee History

<u>Major Fee Type</u>	<u>1995</u>	<u>1998</u>	<u>1999</u>	<u>Proposed *</u>
Application Fee	125	75	45	95
Renewal Fee	110	25	15	55

NOTE:

Increased expenditures in the 2004-06 biennium are due to the expected cost of examination

development.

Increased costs associated with examination administration will continue into future biennia.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Department has considered the following alternatives to increasing fees for the Polygraph Examiners Advisory Board:

- Reduce services: Because the regulatory activities conducted by the Department are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to citizen's ability to work, and would decrease the Department's effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety and welfare.
- Obtain a Treasury loan to fund operations: The Department could request a loan from the general fund to cover the program's deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for repayment of the loan.
- Supplement Department activities with general funds: The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. The Department's boards are intended to be self-funding per §§ 54.1-113, 54.1-201, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support board operations does not appear to be an appropriate use of taxpayer dollars.

Family impact

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

These regulatory amendments are not anticipated to have any significant impact on Virginia families.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Current requirement	Proposed change and rationale
18 VAC120-30-100 C	Identification of additional processing charge for dishonored checks, listed in paragraph D.	Amending the language to indicate that the additional processing charge is set by the Department, removing the reference to paragraph D. This is in conjunction with the removal of the dishonored check fee from the regulations as this is an administrative charge used by the agency and is based on actual charges incurred from the bank.
18 VAC120-30-100 D	Application for Examiner's License - \$45	Application for Examiner's License by reciprocity - \$95.00
18 VAC 20-30-100 D	Application for Intern Registration - \$20.00	Application for Intern Registration - \$75.00
18 VAC120-30-100 D	Examination Application - \$75.00	Application for Examiner's License by exam - \$200.00
18 VAC120-30-100 D	Reexamination Application - \$75.00	Reexamination Application - \$200.00
18 VAC120-30-100 D	License Renewal - \$15.00	License Renewal - \$55.00
18 VAC120-30-100 D	License Reinstatement - \$50.00	License Reinstatement - \$75.00
18 VAC120-30-100 D	Dishonored Check - \$25	Removed from the fee requirements as this is an administrative charge used by the agency and is based on actual charges incurred from the bank.