



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	120
VAC Chapter Number:	30
Regulation Title:	Regulations Governing Polygraph Examiners
Action Title:	Amending
Date:	July 19, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The purpose of the proposal is to make the following changes:

General clarifying changes to the regulation throughout and restructuring in some parts for ease of understanding and use. In addition, the school section, Part VI, is being modified to clearly indicate the Board's/Director's intentions. Other changes which may be necessary pursuant to the Board's/Director's periodic review of the regulation, and any other changes which may be necessary, will be considered.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

§§ 54.1-201 and 54.1-1802 of the Code of Virginia authorizes the Board/Director to promulgate regulations for a regulatory system. While the Board/Director is mandated to establish regulations, the content of the regulations is up to the discretion of the Board/Director.

§ 54.1-201. Powers and duties of regulatory boards.

The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.
2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure within its particular regulatory system, including when necessary the preparation, administration and grading of examinations.
3. To certify or license qualified applicants as practitioners of the particular profession or occupation regulated by such board.
4. To levy and collect fees for 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 of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.
5. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.
6. To ensure that inspections are conducted relating to the practice of each practitioner certified or licensed by the regulatory board to ensure that the practitioner is conducting his practice in a competent manner and within the lawful regulations promulgated by the board.
7. To revoke, suspend or fail to renew a certificate or license for just causes as enumerated in regulations of the board.
8. To receive complaints concerning the conduct of any person whose activities are regulated by the regulatory board and to take appropriate disciplinary action if warranted.

9. To promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

§ 54.1-1802. Regulations.

The Director shall promulgate regulations not inconsistent with the laws of Virginia necessary to carry out the provisions of this chapter and Chapter 1 (§ 54.1-100 et seq.).

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposal is to make the following changes:

General clarifying changes to the regulation throughout and restructuring in some parts for ease of understanding and use. In addition, the school section, Part VI, is being modified to clearly indicate the Board's/Director's intentions. The changes are to ensure that the Board's/Director's intent is clearly reflected in the regulations to that the regulations are clear as possible. Ensuring that the regulations are as clear as possible will facilitate the regulants complying with the Board's/Director's requirements which will better protect the health, safety and welfare of the public. Other changes which may be necessary pursuant to the Board's/Director's periodic review of the regulation, and any other changes which may be necessary, will be considered.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The purpose of the proposal is to make the following changes:

1. Clarify the definition of "Advisory board" in 18 VAC 120-30-10.
2. Clarify wording in 18 VAC 120-30-30.A and 18 VAC 120-30-230.A regarding the Board's authority.
3. Move 18 VAC 120-30-40.A.2 and A.3 to 18 VAC 120-30-50.A. for clarity so that all the requirements for interns are located in one place in the regulations.

4. Move 18 VAC 120-30-40.A.4 to a new section, 18 VAC 120-30-55, for clarity so that all the requirements for interns are located in one place in the regulations.
5. Clarify wording in 18 VAC 120-30-40.B.
6. Clarify wording in 18 VAC 120-30-70.A.1.
7. Clarify wording in 18 VAC 120-30-90.
8. In 18 VAC 120-30-100.D, clarify that the \$45 fee is for reciprocity applicants.
9. Clarify wording in 18 VAC 120-30-110.
10. Clarify wording in 18 VAC 120-30-130.
11. Update referenced sections in 18 VAC 120-30-160 due to changes in 18 VAC 120-30-40.
12. In 18 VAC 120-30-190.A, clarify that the new expiration date shall be one year from the previous expiration date.
13. Clarification of wording in 18 VAC 120-30-200.C.
14. Revise the wording in 18 VAC 120-30-220 to more accurately reflect the intent and application of this section.
15. Make two grammatical changes in 18 VAC 120-30-230.
16. In 120-30-240, update part 8 due to changes made to 18 VAC 120-30-220 and update part 2 to correct the reference to the Code of Virginia.
17. Clarify the wording in 18 VAC 120-30-250.A.
18. Reword the second sentence of 18 VAC 120-30-270.B. for clarity.
19. Change the requirements in 18 VAC 120-30-280.A.1 from a Virginia licensed attorney to an attorney licensed in a state or jurisdiction of the US to teach the legal aspects of polygraph examination. This change is appropriate for those schools located outside of Virginia.
20. Clarify wording in 18 VAC 120-30-280.A.5.

21. Delete 18 VAC 120-30-280.C and insert three new sections (18 VAC 120-30-290, 300 and 310) into Part VI of the regulations regarding the reporting of any changes/amendments to approved programs as well periodic requalification for continued course approval and grounds for withdrawing approval from schools.

22. Any other changes which may be necessary.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The primary advantage to the public is that the proposed changes will help ensure that the Board's/Director's regulants will have a clearer set of regulations to use and understand thereby facilitating compliance. It is also anticipated that applicants will find the regulations easier to use and understand. There are no anticipated disadvantages.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Fiscal Impact of Proposed Regulation

Summary:

The revised regulations provide general clarifying changes. Revisions amend the Board's regulations to require approved schools to report any changes to the Board, and specify the circumstances under which the Board's approval may be withdrawn from a school.

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 indirect

costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Fiscal Impact: None.

	FY 2001	FY 2002	FY2003	FY2004
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

Description of Costs:

One-Time: N/A

Ongoing: N/A

Cost to Localities: None anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: Individual practitioners regulated by the Board will have regulations that provide clear and more easily understandable requirements. Schools regulated by the Board will be impacted by the requirement to report changes to the Board, and by clarification of circumstances under which approval may be withdrawn.

Estimated Number of Individuals, Businesses, or Other Entities Impacted: Approximately 260 regulants will be impacted by these changes.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The purpose of the proposal is to make the following changes:

1. Clarify the definition of “Advisory board” in 18 VAC 120-30-10.
2. Clarify wording in 18 VAC 120-30-230.A regarding the Board’s authority.

3. Move 18 VAC 120-30-40.A.2 and A.3 to 18 VAC 120-30-50.A. for clarity so that all the requirements for interns are located in one place in the regulations.
4. Move 18 VAC 120-30-40.A.4 to a new section, 18 VAC 120-30-55, for clarity so that all the requirements for interns are located in one place in the regulations.
5. Clarify wording in 18 VAC 120-30-40.B.
6. Clarify wording in 18 VAC 120-30-70.A.1.
7. Clarify wording in 18 VAC 120-30-90.
8. In 18 VAC 120-30-100.D, clarify that the \$45 fee is for reciprocity applicants.
9. Clarify wording in 18 VAC 120-30-110.
10. Clarify wording in 18 VAC 120-30-130.
11. Update referenced sections in 18 VAC 120-30-160 due to changes in 18 VAC 120-30-40.
12. In 18 VAC 120-30-190.A, clarify that the new expiration date shall be one year from the previous expiration date.
13. Clarification of wording in 18 VAC 120-30-200.C.
14. Revise the wording in 18 VAC 120-30-220 to more accurately reflect the intent and application of this section.
15. Make two grammatical changes in 18 VAC 120-30-230.
16. In 120-30-240, update part 8 due to changes made to 18 VAC 120-30-220 and update part 2 to correct the reference to the Code of Virginia.
17. Clarify the wording in 18 VAC 120-30-250.A.
18. Reword the second sentence of 18 VAC 120-30-270.B. for clarity.
19. Change the requirements in 18 VAC 120-30-280.A.1 from a Virginia licensed attorney to an attorney licensed in a state or jurisdiction of the US to teach the legal aspects of polygraph examination. This change is appropriate for those schools located outside of Virginia.

20. Clarify wording in 18 VAC 120-30-280.A.5.

21. Delete 18 VAC 120-30-280.C and insert three new sections (18 VAC 120-30-290, 300 and 310) into Part VI of the regulations regarding the reporting of any changes/amendments to approved programs as well periodic requalification for continued course approval and grounds for withdrawing approval from schools.

22. Any other changes which may be necessary.

Alternatives

Please describe the specific 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.

Failure to adopt these changes will permit the Board's/Director's regulations to not be as clear as possible. The Board/Director will consider any and all comments received during the comment periods as to any proposed alternatives. In addition, anyone may petition Board/Director to consider a regulatory change at any time in accordance with the Board's/Director's Public Participation Guidelines.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Based on the fact that no comments have been received regarding this issue, and based on the Board's review, the regulation is clearly written and easily understandable by the affected individuals.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable

regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulations will be reviewed during the Board's/Director's normal course of regulatory review that in no case shall exceed three years from the effective date of these regulations.

The Board's/Director's regulations will be evaluated based on comments received in writing and at public hearings scheduled to receive comments on the Board's/Director's regulations. Any other items noted by the Board/Director that need to be addressed during the course of the Board/Director conducting its business will be noted and retained on file by staff for consideration by the Board/Director during regulatory review.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The contemplated changes are expected to have no impact on families.