



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	Fee Increase in Accordance with the Callahan Act (§ 54.1-113)
Date this document prepared	May 4, 2006

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

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed regulations will increase fees for licensed polygraph examiners and polygraph examiner interns to ensure that revenues are sufficient but not excessive to cover the program's operating expenses. Fees were decreased in 1998 and in 1999 based on a program surplus. This surplus has been depleted since that time with program expenses exceeding the revenue produced by regulant fees. Current fees are not adequate to pay the program's 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 program 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.

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 number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe 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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The intent of the proposed regulatory changes 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 licensing 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 in the investigation of citizen complaints against polygraph examiner licensees. The majority of licensed polygraph examiners are law enforcement officers who use the polygraph to investigate criminal activity and to conduct pre-employment examinations. With an increased emphasis on local, state and national security, it is imperative that the Department ensure that no unnecessary obstacles block individuals' ability to become licensed polygraph examiners.

Decades of technological advancements have resulted in changes in equipment and theories in the polygraph field. These changes have been incorporated into the polygraph examiner license examinations of other states and the curricula of schools approved to provide pre-licensure training to polygraph examiners. After reviewing the current polygraph examiner license examination, the Polygraph Examiner Advisory Board advised that the license examination should be updated to incorporate these advancements to ensure that prospective

Virginia polygraph examiners are adequately tested for competency, thereby affording a level of protection to those individuals who are subject to polygraph examinations in Virginia. Consequently, in 2005, the Director authorized the expenditure of approximately \$16,500 to update the polygraph examiner license examination, which was finalized in September 2005 and implemented in December 2005.

The Department of Professional and Occupational Regulation receives no general fund money. Instead, it 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.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested 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 a polygraph examiner's license by reciprocity is increased from \$45 to \$95.
 The fee for a polygraph examiner intern registration is increased from \$20 to \$75.
 The fee for a polygraph examiner's license by examination is increased from \$75 to \$200.
 The fee for a polygraph examiner's license by re-examination is increased from \$75 to \$200.
 The fee for renewal of a polygraph examiner's license is increased from \$15 to \$55.
 The fee for reinstatement of a polygraph examiner's 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

This proposed regulatory action represents no disadvantages to the public or the Commonwealth. 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 license examination, and is consistent with other states' polygraph examiner licensing fees.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

It does not appear that there are any federal requirements concerning the fees for polygraph examiners at the local or state levels.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities will be particularly affected by these proposed regulations.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the board/agency is 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) probable effect of the regulation on affected small businesses; and, 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, fax or e-mail to Kevin Hoeft, Regulatory Boards Administrator, Polygraph Examiners Advisory Board, 3600 West Broad Street, Richmond, Virginia, 23230; (804) 367-6166 (Phone); (804) 367-0674 (Fax); polygraph@dpor.virginia.gov (e-mail). Written comments must include the name and address of the commenter. Comments must be received by the last date of the public comment period to be considered.

A public hearing will be held. When scheduled, notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the

Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Polygraph Examiner Licensing Program

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 Regulants: The Board currently regulates 284 polygraph examiners.

Projected Cost to Regulants: 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 Regulants</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 cost of polygraph examiner license 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. 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 regulation.

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 citizens' 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 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.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Since these regulations are being amended only to increase fees to meet the expenses of the polygraph examiner licensing program, no other alternatives exist for amending the regulations to bring them into compliance with the Code of Virginia while minimizing the adverse effect on small business.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

No public comments were received during the public comment period.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

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.

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
18 VAC120-30-100.D	Application for Intern Registration - \$20	Application for Intern Registration - \$75
18 VAC120-30-100.D	Examination Application - \$75	Application for Examiner's License by Examination - \$200
18 VAC120-30-100.D	Reexamination Application - \$75	Reexamination Application - \$200
18 VAC120-30-100.D	License Renewal - \$15	License Renewal - \$55
18 VAC120-30-100.D	License Reinstatement - \$50	License Reinstatement - \$75
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.