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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Professional and Occupational Regulation
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC120-30
VAC Chapter title(s)	Regulations Governing Polygraph Examiners
Date this document prepared	December 5, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

"DPOR" means the Department of Professional and Occupational Regulation.

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.

The promulgating agency is the Department of Professional and Occupational Regulation ("DPOR").

Section 54.1-1802.1 of the Code of Virginia states, in part:

The Department shall administer and enforce the provisions of this chapter. In addition to the powers and duties otherwise conferred by the law, the Director shall have the powers and duties of a regulatory board as contained in §§ 54.1-201 and 54.1-202 and shall have the power and duty to:

1. Promulgate regulations necessary for the reasonable administration of this chapter in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Such regulations shall include, but not be limited to, the establishment of minimum qualifications for the operators of polygraphs and other detection devices;

Code of Virginia § 54.1-201(A)(1) gives DPOR the power and duty 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.”

Code of Virginia § 54.1-201(A)(5) gives authority to DPOR to promulgate regulations. It states, in part, that the power and duty “[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 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.”

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.

No alternatives were considered as part of this periodic review. The regulation enables the Board to fulfill the statutory requirements established in Chapters 2 and 18 of Title 54.1 of the Code of Virginia. Further, the regulation is necessary to ensure that the Board’s statutory requirements are executed in the least burdensome and most efficient and cost-effective manner possible while protecting the health, safety, and welfare of the citizens of Virginia.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s 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.

There were no public comments received.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, 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 forth in the Office of Regulatory Management procedures.

The regulation contains the requirements for obtaining a license, renewal and reinstatement of licenses, standards of practice and conduct, and approval of polygraphy schools to ensure competence and integrity of all licensees and to effectively administer the regulatory program in accordance with Chapters 2 and 18 of Title 54.1 of the Code of Virginia.

The regulation is necessary for the protection of public health, safety, and welfare and is clearly written and understandable.

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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

On November 30, 2023, the Director of DPOR made the decision to retain the regulation “as is” without any change, as explained further in the “Small Business Impact” section. In accordance with the Governor’s Executive Directive Number One (2022), DPOR is currently undertaking a separate action to perform a comprehensive line-by-line review of this regulation.

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.

Code of Virginia §§ 54.1-201(A)(1), 54.1-201(A)(5), and 54.1802.1 mandate DPOR promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. DPOR provides protection to 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 receive a Polygraph Examiner license or to register as a Polygraph Examiner Intern. DPOR is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations.

There were no comments or complaints received during the public comment period. The Regulations Governing Polygraph Examiners are clearly written, easily understandable, and do not overlap, duplicate, or conflict with federal or state law or regulation.

The most recent periodic review of the regulation occurred in 2019. Currently, DPOR is conducting a comprehensive review of the regulation.

