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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Professional and Occupational Regulation
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 120-30-40 18 VAC 120-30-240
VAC Chapter title(s)	Regulations Governing Polygraph Examiners
Action title	Amendments to Incorporate Changes from Marijuana Legalization
Final agency action date	September 21, 2021
Date this document prepared	September 21, 2021

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Department of Professional and Occupational Regulation is amending existing regulations to conform to SB 1406, enacted by the General Assembly during the 2021 Special Session I. The marijuana legalization legislation limits dissemination of criminal history record information related to misdemeanor marijuana offenses, and prohibits state agencies from requiring disclosure of certain marijuana convictions during the occupational licensing process.

In order to comply with the statutory amendments, the Department has approved the exempt action necessary to conform its regulations concerning qualifications for licensure and standards of conduct to the requirements of § 19.2-389.3 of the Code of Virginia. The final action will remove any reporting by applicants or licensees of misdemeanor marijuana convictions.

This action conforms the regulations to the law and is exempt from the Administrative Process Act because there is no agency discretion pursuant to § 2.2-4006(A)(4)(a) of the Code of Virginia.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "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."

The General Assembly enacted Chapter 550 during its 2021 Special Session I, mandating the Board update its regulations pertaining to disclosure of marijuana-related misdemeanor offenses by applicants and licensees in order to conform to the changes in § 19.2-389.3.

Statement of Final Agency Action

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 September 21, 2021, the Director authorized staff to file the necessary exempt action to conform the Regulations Governing Polygraph Examiners.