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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Professional and Occupational Regulation
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 120-30
VAC Chapter title(s)	Regulations Governing Polygraph Examiners
Action title	Standards of Practice and Conduct Review
Date this document prepared	January 27, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The intent and goal of this regulatory change is to review and amend the Standards of Practice and Conduct. Comment has been received indicating that changes to the Virginia Freedom of Information Act may require amendments to the Regulations with regards to copies of polygraph reports being made available to the public. Additional amendments may be discovered during the review process that may warrant amending.

In the past, law enforcement agencies were able to withhold polygraph reports from FOIA requests because their some case files were exempt from FOIA and not accessible to the public. Amendments to the Virginia Freedom of Information Act provided access to some closed law enforcement cases to the public.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

There are no acronyms or definitions that are not otherwise defined in this document or the regulations.

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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

DPOR initiated this action in order to review and amend the Standards of Practice and Conduct to align with FOIA.

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 and 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.

§ 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 regulations is pursuant to the Board’s discretion, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

Reviewing and amending the regulations to ensure compliance with amendments to the Code of Virginia is essential in order to comply with the applicable statutes.

No potential issues have been identified.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Section 18 VAC 120-30-200. Polygraph examination procedures.

Review and amend to ensure compliance with FOIA

Section 18 VAC 120-30-210. Examination pretest procedure.

Review and amend if additional pretest procedures are identified when ensuring compliance with FOIA for 18 VAC 120-30-200.

Section 18 VAC 120-30-220. Examination standards of practice.

Review and amend if additional examination standards are discovered.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

Although no alternatives have been identified at this time, the Board may make changes to the regulatory action under consideration if alternative proposals are identified during the regulatory review process, and after consideration of any submissions during the public comment period.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

INSERT:

The Department of Professional and Occupational Regulation is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Marjorie King at 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, phone: 804-367-2962, fax: 1-866-430-1033, or email: Marjorie.King@dpor.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.