



Final Regulation Agency Background Document

Agency name	Department of Professional and Occupational Regulation
Virginia Administrative Code (VAC) citation	18 VAC 120-30
Regulation title	Regulations Governing Polygraph Examiners
Action title	Fee Increase in Accordance with the Callahan Act (§ 54.1-113)
Date this document prepared	January 22, 2007

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

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.

Statement of final agency action

Please 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 January 11, 2007, the Director of the Department of Professional and Occupational Regulation adopted these fee increases to 18 VAC 120-30 et seq. as final.

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 numbers, if applicable, and (2) promulgating entity, i.e., 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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal 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. Current licensing fees are not providing 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 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" 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 there are no disadvantages to the public or the Commonwealth, please 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.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes were made to the proposed regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response

No public comment was received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

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-	Reexamination Application - \$75	Reexamination Application - \$200

30-100.D		
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.

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.

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 amendments will have no impact on the institution of the family or family stability.