



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 120-30 – Regulations Governing Polygraph Examiners
Department of Professional and Occupational Regulation
July 15, 2010

Summary of the Proposed Amendments to Regulation

The Department of Professional and Occupational Regulation (Department) proposes to:

- 1) reduce the size of the Polygraph Examiners Advisory Board from eight members to seven members,
- 2) allow applicants to pass all parts of the polygraph examiners licensing examination within one year from examination approval rather than the current requirement of all at a single administration,
- 3) increase the fee an examiner may charge from \$25 to \$35,
- 4) provide for a procedure to be used in the event that an examiner supervising an intern is unable to provide verification of experience,
- 5) remove the listing of duplicate wall certificate and certificate of licensure fees from the regulations,
- 6) specify the number of days within which licensees must provide requested records or other information to the Department,
- 7) add new grounds for discipline which are already grounds for discipline for other Boards housed within the Department, and
- 8) clarify renewal and reinstatement requirements.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Under the current regulations the Polygraph Examiners Advisory Board (Board) is “composed of three Virginia licensed polygraph examiners employed by law enforcement agencies of the Commonwealth, or any of its political subdivisions; three Virginia licensed polygraph examiners employed in private industry; and two citizen members as defined in §§ 54.1-107 and 54.1-200 of the Code of Virginia.” The department proposes to eliminate one of the private industry slots. This would reduce the size of the Board from eight members to seven.

This is advantageous in that having an odd number of members avoids ties in voting. Further, according to the Department, “with the decrease in the number of private polygraph examiners in the programs population, it has become extremely difficult to fill the position on the Board.” Thus the proposed change in allotment of seats on the Board better represents the actual population of polygraph examiners and their sources of employment. Also, one fewer Board member modestly reduces Board costs. Since there is no apparent disadvantage to the proposal, it clearly produces a net benefit for the Commonwealth.

The current regulations require that applicants pass all parts of the licensing examination at a single administration in order to be eligible for a polygraph examiners license. The Department proposes to instead require that applicants pass all parts of the licensing examination within one year from examination approval. This proposed change would allow an individual who is unable to schedule the entire examination in a single day to take the written exam on one day and the practical on another, while also clarifying the limit on how long an applicant has to complete the entire examination. Currently exams are given three or four times a year only in Richmond. Under the proposed language the written portion could be taken at testing centers around the state. According to the Department, the current vendor has five or six testing centers around the state. The proposed language increases convenience and potentially reduces travel costs for applicants. Neither the Department nor the Board believes that passing all parts in a single sitting is necessary to display competence. Thus, this proposal also produces a net benefit for the Commonwealth.

According to the Department the maximum fee that an examiner may charge has not been changed in a decade. Therefore the Department proposes to increase the cap from \$25 to \$35. Examiners are not required to charge the maximum amount and if clients wish to compare offered examiner services based on price they can. Thus this loosening of the restraint on the free market will likely produce a net benefit.

The Department points out that “Under the current regulations on any number of occasions an intern has been unable to complete a program when a supervisor has either left the agency or is no longer available due to illness, death or retirement. This has been a reoccurring issue that has been brought to the department’s attention.” To address this issue the Department proposes to add language to the regulations that permit the Board to review an intern’s charts in

lieu of a supervisor who is unable to continue. This will alleviate an intern having to repeat the period of internship previously served because their supervisor is no longer available. This proposal will also eliminate the burden placed on the sponsors of the interns who are generally agencies and citizens that fund the agency.

The current regulations list \$25 fees for requested duplicate wall certificates and certificates of licensure. The Department states that “These fees are administrative fees set by the department for all other programs. Since this fee is an administration fee and not a licensing fee, to be consistent with other program within the department it should not be in the regulations of a specific Board.” According to the Department, the amount charged will most likely be less than \$25 in practice. Also, these certificates are very rarely requested. Given the likely reduction in fee charged and lack of burden on the Department, this proposal also should produce a net benefit.

The current regulations list “Has failed, within a reasonable period of time, to provide any records or other information requested or demanded by the department” as grounds for discipline. The Department proposes to replace the vague “a reasonable amount of time” with “21 days.” Specificity is superior to vagueness in that it will reduce the likelihood of dispute toward the actual requirement in practice. Twenty-one days is also clearly a reasonable amount of time within which to produce records.

The Department proposes to add the following to the list of grounds for discipline:

- Failure of the regulant, school’s owner or instructor to maintain for a period of one year from the date of each administered polygraph examination a complete and legible copy of all documents relating to the polygraph examination, including but not limited to, examination questions, results, conclusions drawn, written or electronic reports;
- Failure to inform the board in writing, within 30 days, that the regulant, school’s owner or instructor has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of polygraphy.
- Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the regulant’s, or school’s owner’s possession concerning all records for which the regulant, school’s owner or instructor is required to maintain.

- Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the regulant, school's owner or instructor.

In regards to discipline, the Department may fine, deny, suspend, or revoke any license or registration, or deny or withdraw school approval. According to Department, all of the above new grounds for discipline are standard grounds for discipline in the other boards housed within the Department.

Businesses and Entities Affected

The proposed amendments affect the 275 licensed polygraph examiners in the Commonwealth, as well as their private and public employers, polygraph examiner schools and instructors, applicants for licensure, and polygraph examination clients.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property

Private polygraph examiners will be able to charge up to \$35 per examination rather than the current maximum of \$25. Thus polygraph examination could potentially become more profitable.

Small Businesses: Costs and Other Effects

Private polygraph examiners will be able to charge up to \$35 per examination rather than the current maximum of \$25. Thus firms that offer polygraph examination could potentially become more profitable.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs

The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.