



Final Regulation Agency Background Document

Agency name	Department of Professional and Occupational Regulation
Virginia Administrative Code (VAC) citation	18 VAC 120-30-10 et seq.
Regulation title	Regulations Governing Polygraph Examiners
Action title	General Review
Date this document prepared	February 26, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 final regulations changes the existing regulation to decrease the size of the Polygraph Advisory Board, allows applicants to take portions of the examination at different dates within a one year period, amends language to clarify renewal and reinstatement requirements, and includes a provision that provides a procedure to be used in the event that an examiner supervising an intern is unable to provide verification of experience.

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 or board taking the action, and (3) the title of the regulation.

The Director adopted, as final, these proposed amendments to the Regulations Governing Polygraph Examiners at the Polygraph Advisory Board meeting of January 17, 2013.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 54.1-1802 of the Code of Virginia provides the authority for the Director to promulgate regulations for the licensure of polygraph examiners in the Commonwealth. The content of the regulations is pursuant to the Director's discretion, but shall not be in conflict with the purposes of the statutory authority.

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.

- 1) These actions are essential to protect the health, safety and welfare of citizens by ensuring that those individuals licensed to perform polygraph examinations are adequately trained and have sufficient experience to ensure that those examinations are done properly and correctly. While polygraph examinations are not generally admissible in court proceedings, an incorrectly or improperly done examination may have serious consequences to the individual subject to the exam.

- 2) The final regulations solve a number of issues that have been brought to the attention of the Department. Polygraph examiner interns, and their sponsors, often government agencies, have expended resources to send the interns to school and maintain their employment while they are completing a training program. Under the current regulations some interns have been unable to complete a program when the sponsor has left the agency due to death or retirement. This is a burden on the agency and the citizens that fund that agency. The final regulations provided provisions to address similar situations.

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.

Enter statement here

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.*
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1) In amending these regulations the Director, with the technical expertise of the Polygraph Examiners Advisory Board, reviewed current regulations, amendments to the statutes, current Federal polygraph law and weighed them along with the protection to the public and the burden to the regulant population. Many of these amendments were the direct result of feedback received from applicants as well as input from the licensing staff, which provided anecdotal data of difficulties in processing applications and interaction they may have had with applicants. As a result the Director clarified issues involving intern experience verification and examination difficulties. Other amendments clarify renewal and reinstatement requirements and add consistent language to examination standards. There is no perceived disadvantage to amending the regulations to make them easier to understand.

Expanding and clarifying the acts that can result in disciplinary action brings the regulations in line with other licensing programs and is advantageous to both the licensee and the public. These "prohibited acts" provide both the examiner and the public with a more clear set of guidelines as to what is allowed and what is prohibited. There is no perceived disadvantage to amending the regulations to make them easier to understand and to provide protection to both licensees and the public.

2) This program directly affects a small number of licensees (less than 300) and it is not anticipated that this population will change significantly as a result of these regulatory amendments. The anticipated changes should be an advantage to the licensing staff since the clarifications should lead to a decrease in telephone calls from applicants trying to understand the internship and examination criteria, resulting in more time to process applications, lowering the processing time.

3) There were no other items identified that would be considered pertinent matters of interest to the regulated community, government officials or the public.

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.

Section number	Requirement at proposed stage	What has changed	Rationale for change
18 VAC 120-30-30 A	Decreased the size of the advisory board from eight to seven members.	The proposed change in board size was removed and the current board size remains in place.	The Director received public comment that was reviewed by the Polygraph Examiners Advisory Board that identified the perception that the composition of the advisory board would be unbalanced with more representatives of law enforcement agencies. After reviewing the comment it was determined that, although the elimination of a board member would result in a cost savings (due to a reduction in travel reimbursements, per diems, etc.), the benefits of that savings would be offset by the public and industry perception of the unbalanced board. A decision was made to remove this amendment to the proposed regulations and to explore the composition of the board again at a later date.
18 VAC 120-30-240 (4)		Proposed to amend the Prohibited Acts to include deceptive or misleading statement to solicit or advertise for business or services.	Upon reviewing the proposed regulations, the Director and the Advisory Board were concerned that there was no specific regulations that addressed a licensee that may have been deceptive or misleading in advertising his services. Many other regulatory boards have such provisions in their regulations and this addition to the changes already proposed would bring the polygraph program into line with those other boards.

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
Val Bragg Security Secrets LLC	Concern with decrease in board size. Feels reducing the number of private sector members provides an unfair advantage that may potentially slant decisions to favor law enforcement.	The Director and the Polygraph Examiners Advisory Board reviewed your comment and agree that, at this time, it would not be prudent to reduce the size of the board. For that reason the proposed regulation is removed from the final submission.
Joe Hughes Fairfax County Police Department	Concern with cap placed on what a licensee may charge a consumer for copies of recordings of an exam requested by examinee and fee for copies of written reports. Feels since the allowable charges have not been changed for over 20 years the allowable charges should be higher.	The Director and the Polygraph Examiners Advisory Board reviewed your comment. Consideration was given regarding the number of years since there had been a change in allowable charges. However, it was determined that current technology allows for a substantial decrease in the cost of reproducing such reports and that the current cap is sufficient to cover the cost and any higher charges would be an unnecessary burden to the public.
Terry Bradbery Professional Polygraph and Investigations LLC	Concern with the limited number of evaluations for polygraph tests. Feels additional evaluations recognized by the American Polygraph Association should be included.	The Director and the Polygraph Advisory Board reviewed your recommendation of amending the evaluations from the current "deception indicated, no deception indicated, and inclusive" and determined that, although the American Polygraph Association has recognized additional evaluations, those should be reviewed more carefully by the board to determine if there would be any significant affect on current polygraph procedures used by law enforcement agencies in the Commonwealth. It would not be prudent, without further study, to adopt these recently recognized evaluations.

Enter any other statement here

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 120-30-30		Advisory Board	Paragraph A changes “seven” to “eight”. This change removes the amended language to retain the current size and composition of the advisory board. The Director received public comment that was reviewed by the Polygraph Examiners Advisory Board that identified the perception that the composition of the advisory board would be unbalanced with more representatives of law enforcement agencies. After reviewing the comment it was determined that, although the elimination of a board member would result in a cost savings (due to a reduction in travel reimbursements, per diems, etc.), the benefits of that savings would be offset by the public and industry perception of the unbalanced board. A decision was made to remove this amendment to the proposed regulations and to explore the composition of the board again at a later date.
18 VAC 120-30-40		Basic qualifications for licensure and registration	Adds “within one year from examination approval”. Allows an applicant to take portions of the examination on different dates. This addition also clarifies how long the applicant has to complete the examination. The current language requires an individual to pass all parts of the examination at a single administration. This was burdensome for examination candidates because it did not allow them to split the examination by taking portions on separate dates. By amending the current examination procedures and allowing an individual to take the exam over a multiday period and places a one year “expiration date” on examination results will allow an individual who was unable to schedule the entire examination in a single day, to take the written exam on one day and the practical on another. The change also clarifies the limit on how long an applicant has to complete the entire examination.
18 VAC 120-30-70		Procedures for licensed polygraph examiners to certify the procedures to be used to supervise an intern during an internship	Adds “and duration” the amended language in paragraph A and item 1 clarifies the supervisor shall file a description to record and specify how long a period of time is spent with the intern. Revises reporting procedures for intern supervisors. By amending the reporting

			<p>procedures the licensee supervisor will maintain a more accurate record that not only reports how often time is spent with the intern but will also specify the period of time for each meeting to be reported.</p> <p>Paragraph B provides language that clarifies a supervisor’s review is required prior to an intern rendering an opinion or conclusion for any polygraph examination they have administered.</p> <p>Paragraph C is added to provide procedures for verification options at the discretion of the Board for all new applicants (i.e. polygraph interns) whose supervisor is no longer available to provide experience verification due to extenuating circumstances. 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. This proposal addresses that issue and 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.</p>
18 VAC 120-30-100		Fees	<p>The fee chart removes the duplicate wall certificate and certificate of licensure fee from the regulations. 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.</p>
18 VAC 120-30-110		Examinations	<p>Removes “being administered the same day”. Amends language to allow applicants to take the written portion of the examination at different dates. By amending the current examination procedure will also clarify how long the applicant has to complete the examination. The current language requires an examination candidate to pass all parts of the examination at a single administration. This was burdensome for examination</p>

			<p>candidates because it did not allow them to split the examination by taking different parts on separate dates. This change will allow an individual who was unable to schedule the entire examination in a single day, to take the written exam on one day and the practical on another while clarifying the limit on how long an applicant has to complete the entire examination. The change also makes it less burdensome for an individual by allowing split portions of the examination to be administered on over a multiday period and places a one year "expiration date" on examination results while having no effect in the competency of the examination candidate.</p>
18 VAC 120-30-160		Qualifications for Renewal	<p>Adds language to include appeal provision and to clarify the Boards authority to deny license renewal or discipline a regulant.</p> <p>Paragraph A amends statutory references to the Administrative Process Act and allows an individual to appeal board action involving licensure renewal.</p> <p>Paragraph B adds language that allows disciplinary sanctions by the board before granting renewal of a license. This amendment is added to incorporate language that is consistent with those of other programs within the department.</p>
18 VAC 120-30-170		Reinstatement Required	<p>Amends language to read more clearly and to clarify the requirements for reinstating a license.</p> <p>Paragraph B amends language to clarify and specific the number of months an individual has to reinstate their license. This amendment clarifies when an individual who formerly held a license must apply as a new applicant for licensure and requires the individual to all meet the current entry requirements.</p>
18 VAC 120-30-180		Department discretion to deny reinstatement	<p>Adds language to amend statutory references to the Administrative Process Act and allows an individual to appeal board action involving licensure reinstatement.</p>
18 VAC 120-30-200		Polygraph examination procedures	<p>Paragraph C raises the fee cap that a polygraph examiner is allowed to charge for their services. The change is in response to</p>

			<p>comments received by private polygraph examiners who state the increase is needed to cover their costs. This fee cap has not changed within the regulations in a decade and is not a licensing fee.</p>
18 VAC 120-30-220		Examination standards of practice	<p>Paragraph G changes “test” to “charts”. It was determined that “charts” is more appropriate terminology.</p> <p>Paragraph H removes “full-time” because it was determined not to be relevant because it addresses employment not examination results.</p>
18 VAC 120-30-230		Records	<p>Item 4 adds “every” to clarify that all reports must be within the records retained by the polygraph examiner or intern.</p> <p>Item 5 amends “tape” to “electronic”. It was determined that “charts” is more appropriate terminology.</p>
18 VAC 120-30-240		Grounds for fines, denial, suspension or revocation of licenses or denial or withdrawal of school approval	<p>Amends the section heading from “Grounds for fines, denial, suspension or revocation of licenses or denial or withdrawal of school approval” to “Prohibited Acts”. It was determined that this would be consistent with those of other board regulations housed within the department.</p> <p>Item 3 removes “directly related to the occupation”. It was determined that individuals in this profession are associated with law enforcement and therefore all misdemeanors and felony convictions not just convictions directly related to their professions should be disclosed and reviewed by the board. In addition, item 3 increases days from “10” to “30” for compilation of records to make an easy time frame. This change will make a more reasonable time frame. In addition this time frame is consistent with those of other boards housed within the department.</p> <p>Item 4 adds “Has made, in the course of soliciting for or advertising a business or service licensed under § 54.1-1802, a false, deceptive or misleading statement orally, in writing or in printed form.” This amendment is added to incorporate language that is consistent with those of other programs within the department.</p> <p>Item 6 clarifies the number of days to respond</p>

			<p>to board requests. This change was determined to be a reasonable time frame that is consistent with those of other boards housed within the department.</p> <p>Adds item 9, 10, 11, and 12 in order to make these items a violation of the regulations that are subject to sanction, if an intern, polygraph examiner, polygraph school, school's owner or instructor fails to follow or comply. The language change is similar for education providers who hold providers accountable. In addition the language is consistent with the other board regulations housed within the department.</p> <p>Adds "Has" to item 9 through 12 to correct formatting to make consistent with the preceding items 1 through 8.</p>
18 VAC 120-30-260		Approval of polygraph school curriculum	Adds "in a format approved by the advisory board". This amendment makes reporting submissions consistent for all polygraph schools.
18 VAC 120-30-270		Minimum requirements for school curriculum	<p>Paragraph A removes "accepted" because polygraph is a defined term within the statute and therefore, the language is not necessary.</p> <p>Amends section B and item 13 to require polygraph schools to add a polygraphy ethics course to its curriculum. The proposed change is in response to comments received by public polygraph examiners who state that schools should include such a course in their curriculum.</p>
18 VAC 120-30-300		Periodic requalification for continued course approval	This provision amendment gives the board authority to randomly audit education providers.

Enter any other statement here