



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 120-30 Regulations Governing Polygraph Examiners
Department of Professional and Occupational Regulation
Town Hall Action/Stage: 5273 / 8806
December 20, 2019

Summary of the Proposed Amendments to Regulation

The Department of Professional and Occupational Regulation (DPOR) proposes to: 1) change the length of polygraph examiner licensure from 12 months to 24 months, 2) change the license renewal fee from \$55 for 12 months to \$110 for 24 months, 3) change the Application for Examiner's License by Reciprocity fee from \$95 (covers the first year of licensure) to \$190 (covers the first two years of licensure), 4) change the Application for Examiner's License fee from \$45 (covers the first year of licensure) to \$90 (covers the first two years of licensure), 5) increase the period of time after license expiration that the license can be reinstated from six months to 24 months, and 6) eliminate the one month grace period to pay the renewal fee.

Background

The regulation lists three license application fees: Application for Examiner's License by Reciprocity fee, Application for Examiner's License fee, and Application for Examiner's License by Examination fee.

License by Reciprocity is for polygraph examiners who are licensed in states with whom Virginia has reciprocal agreements (Alabama, Kentucky, Mississippi, North Carolina, South Carolina, Texas, Vermont and West Virginia). These applicants for Virginia licensure would not have to take the Virginia examination and would instead pay the Application for Examiner's License by Reciprocity fee.

An Application for Examiner's License is used when an individual is licensed in a state without a reciprocity agreement, and who requests to have DPOR review their application to

determine if the examination completed in that state is equivalent; if DPOR determines that it is equivalent, that applicant is not required to complete the examination. These applicants would pay the Application for Examiner's License fee.

All other applicants must pass Virginia's exam and pay the Application for Examiner's License by Examination fee.

Estimated Benefits and Costs

Changes in License Length and Fees

The table below shows how application fees would change for the types of licensure application. Under the current regulation, where the license lasts for one year, a renewal fee must be paid for the second year. The renewal fee in the current regulation is \$55. Under the proposed regulation, where the license lasts for two years, no renewal fee is required for the second year.

Application Fees

Application Type	<u>Current One-Year License</u>	<u>Proposed Two-Year License</u>
Examiner's License by Reciprocity	\$95	\$190
Examiner's License	\$45	\$90
Examiner's License by Examination	\$200	\$200

Taking this information into account, the tables below demonstrate that under the proposed regulation total fees for the first two years would increase by \$40 for License by Reciprocity. In addition, total fees would decrease for the other two types of application: by \$10 for an Examiner's License, and \$55 for License by Examination.

Cost for First Two Years: License by Reciprocity

	<u>First Year</u>	<u>Second Year</u>	<u>Total First Two Years</u>
Current Regulation	\$95	\$55	\$150
Proposed Regulation	\$190	\$0	\$190

Cost for First Two Years: Examiner's License

	<u>First Year</u>	<u>Second Year</u>	<u>Total First Two Years</u>
Current Regulation	\$45	\$55	\$100
Proposed Regulation	\$90	\$0	\$90

Cost for First Two Years: License by Examination

	<u>First Year</u>	<u>Second Year</u>	<u>Total First Two Years</u>
Current Regulation	\$200	\$55	\$255
Proposed Regulation	\$200	\$0	\$200

After the first two years, the cost per year would be \$55 regardless of the path to licensure as the renewal fee would be \$110 every other year under the proposed regulation. This is the same per year cost as under the current regulation where the renewal fee is \$55 every year. By switching from one-year licenses to two-year licenses, polygraph examiners would have to pay more upfront, but would save the small amount of time involved in sending payment in the second year of each license term.

Late Payments

The current regulation allows what is essentially a one month grace period in paying for license renewal. If the payment is paid up until one month after the expiration date of the license, reinstatement is not required and there is no late fee. DPOR proposes to eliminate the one month grace period. Under the proposed regulation, the licensee would have to pay the reinstatement fee instead of the renewal fee. Practically speaking, this would essentially work out to be a \$40 late fee, since the reinstatement fee is \$150 compared to the \$110 renewal fee. This change may encourage some licensees to be more diligent about sending their renewal payment in on time.

As shown in the table below, an individual who is more than one month, but less than six months late in re-applying for licensure must pay a \$75 reinstatement fee under the current regulation. However, if the individual is more than six months late they must apply as a new

applicant for licensure. According to DPOR, since 2014 there have been multiple instances in which a licensed polygraph examiner has had their license expire past the current six-month reinstatement period, which requires that they apply as a new examiner and complete all entry criteria again (including the examination) in order to become “relicensed.” In one instance, the individual had been licensed for nearly 20 years without incident. In many of the examples there were mitigating circumstances, outside the control of the individual that resulted in the license not being reinstated during the six-month window.

Current Regulation: Missing Payment Due Date for License Renewal

<u>Lateness</u>	<u>Requirement to Retain or Regain Licensure</u>
Zero Days <= One Month	\$55 renewal fee
One Month < Six Months	\$75 reinstatement fee
<= Six Months	Must apply as a new applicant, meeting all then current entry requirements, including retaking an examination

DPOR proposes to allow licensees to reinstate their license up until 24 months after the expiration of their license versus the current limit of six months. This would substantially benefit licensees who are six months to 24 months late in paying for license renewal and wish to continue practicing as a polygraph examiner. These licensees would not have to apply as a new examiner and complete all entry criteria again (including the examination) in order to regain licensure. DPOR believes these licensees would not be a risk to the public’s health, safety, and welfare.

Proposed Regulation: Missing Payment Due Date for License Renewal

<u>Lateness</u>	<u>Requirement to Retain or Regain Licensure</u>
Zero Days < 24 Months	\$150 reinstatement fee instead of \$110 renewal fee if earlier payment
<= 24 Months	Must apply as a new applicant, meeting all then current entry requirements, including retaking an examination

Businesses and Other Entities Affected

DPOR directly regulates polygraph examiners, but not the businesses or other entities where they work. The proposed amendments affect the 296 licensed polygraph examiners in the Commonwealth, as well as future applicants.

Small Businesses¹ Affected:

As stated above, DPOR directly regulates polygraph examiners, but not the businesses or other entities where they work. According to DPOR, some examiners operate privately, and may perform polygraphs for other individuals to comply with parole or probation. They are often contracted with government entities to perform pre-employment screenings. It is not known how many work for small businesses.

Localities² Affected³

Some localities may employ polygraph examiners. The proposal to allow reinstatement up until 24 months past the license expiration date may reduce the likelihood that their employed polygraph examiners who are late in paying for renewal have a time gap where they cannot legally work as they reapply for licensure. It is not known how many localities employ polygraph examiners.

Projected Impact on Employment

The proposed amendments do not appear to substantially affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments do not appear to substantively affect the use and value of private property. The proposed amendments do not appear to affect real estate development costs.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of

¹ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

² “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.