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Final Regulation 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	Amending Renewal/Reinstatement Requirements
Date this document prepared	September 29, 2021

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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The intent of this regulatory action is to amend the regulations by extending the license and reinstatement periods currently in place. This amendment will eliminate the requirement that licenses be renewed annually and, by extending the reinstatement period, provide a longer amount of time a licensee may be late with a payment and not have the license terminated.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

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

Statement of Final Agency Action

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.

The Director of the Department of Professional and Occupational Regulation approved this final action on Monday, September 27, 2021.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The Department of Professional and Occupational Regulation (DPOR) initiated this action in order to decrease the regulatory burden on licensed polygraph examiners when complying with the renewal or reinstatement requirements, pursuant to the policies and principles enumerated in E.O. 14 (2018).

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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

Currently, the majority of regulatory boards housed at DPOR and its companion agency, the Department of Health Professions, issue licenses on a two-year cycle. Polygraph licensees are one of the exceptions in that they must renewal annually, which can prove burdensome to some licensees. A two year license cycle is conducive to assisting the development of fees based on the biennial budget currently in place in the Commonwealth; it provides a reasonable amount of time for an individual to be licensed to perform an activity without having to verify demographic and eligibility information with the licensing source; and makes the renewal requirements more in line with other regulatory boards in Virginia.

Since 2014, there have been multiple instances where 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 the entry criteria again (including the examination) in order to become “relicensed.” In one instance, the individual had been licensed for nearly twenty years. In many of the instances, there were mitigating circumstances outside the control of the licensee that resulted in the license not being reinstated during the six-month window.

In reviewing the instances where an individual lost their license simply for being late with a payment, a review of the reinstatement regulations of other licensing boards was conducting. This review found that most regulatory boards have a minimum of a one-year reinstatement period, double that currently in place for polygraph examiners. Extending the reinstatement period to one year would have eliminated virtually all of the situations experienced since 2014 where an individual had to reapply for their license.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

Section 18 VAC 120-30-100. Fees. – DPOR will review current renewal and reinstatement fees to ensure compliance with §54.1-113 of the Code of Virginia, and adjust as necessary.

Section 18 VAC 120-30-120. Renewal Required. – The Board will amend this section to increase the license period to two years from the last day of the month in which the license was issued.

Section 18 VAC 120-30-140. Fees for renewal. – The Board will repeal this section and move pertinent language to other sections

Section 18 VAC 120-30-150. Department discretion to deny renewal. The Board will repeal this section and move pertinent language to other sections.

Section 18 VAC 120-30-160. Qualifications for renewal. This section is amended to incorporate provisions of Section 18 VAC 120-30-150.

Section 18 VAC 120-30-170. Reinstatement required. – The Board will amend this section to increase the reinstatement period to twenty-four calendar months.

Section 18 VAC 120-30-180. Department discretion to deny reinstatement. This section is amended to change the name to Qualifications for reinstatement and to clarify language to include the same provisions as those in 18 VAC 120-30160.

Section 18 VAC 120-30-190. Status of a license during the period before reinstatement. This section is amended to increase the reinstatement period to two years.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

1. This regulation change is the direct result of feedback received from applicants as well as input from the licensing staff, which provided anecdotal data of interaction they have had with licensees. As a result, the Board clarified issues involving the reinstatement timeframe. Other amendments clarify renewal and reinstatement requirements and all consistent language.

2. There are no disadvantages seen by these regulations to the Board, the Department of Professional and Occupational Regulation, or the Commonwealth. The advantages would include a less burdensome path for polygraph examiners to reinstate an expired license without having to meet a requirement of re-examination.

3. During 2018, 21 polygraph licensees entered into reinstatement, however only 5 were reinstated. The other 16 individuals did not reinstate their license in the appropriate timeframe, resulting in these individuals having to reapply for license, which would require re-examination. Often times, for those examiners employed by local governments, the delay in renewing the license could be caused by delays in the processing of the payment to DPOR. While there is no exact number of those that have experienced this issue, anecdotally staff can recall approximately six in the last two years.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no requirements that are more restrictive than those currently in place on a federal level.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other State Agencies particularly affected.

Localities Particularly Affected

There are no other Localities particularly affected.

Other Entities Particularly Affected

There are no other entities particularly affected.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
N/A	No comments received	N/A

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
No Changes Made since previous stage.	No Changes Made since previous stage.	No Changes Made since previous stage.	No Changes Made since previous stage.	No Changes Made since previous stage.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
18 VAC 120-30-100		This section lists fees for application, examination, renewal, and reinstatement of polygraph examiner and intern license. The fees listed are for a license that is valid for one year.	The proposed amendments will extend the licensure period from one year to two years, with the exception of the intern license, which will remain unchanged. The fee per year rate remains the same, amending the \$45

			<p>for a one year license to \$90 for two years, and so forth.</p> <p>18 VAC 120-30-50 addresses the registration of interns and will remain at one year. Generally, internship programs for polygraph examiners are six to twelve months long, depending on the number of supervised exams that must be completed by the intern to satisfy the intern supervisor that the individual is ready to sit for the licensing exam and to conduct unsupervised exams.</p>
18 VAC 120-30-120		This section sets the licensing period of 12 months.	<p>The proposed amendments will extend the licensure period from one year to two years. This will bring the polygraph licensing program in line with the majority of other programs for boards housed at the Department of Professional and Occupational Regulation.</p> <p>Additionally, the requirement to renew a license on an annual basis can, at a minimum, be a nuisance or, in some instances, even rise to the level of being burdensome, especially in the polygraph industry. A large number of polygraph examiners are employed by local law enforcement agencies, meaning renewals and reinstatements are generally handled by the finance or procurement offices of those localities. By extending the licensing term, it will eliminate the need for those localities that process renewal payments to submit annual fees.</p>
18 VAC 120-30-130		This section provides the procedures for renewal.	The section was amended to add the requirement that licensees must submit a renewal payment on or prior to the expiration date or be required to apply for reinstatement. This requirement was amended and moved from section 18 VAC 120-30-140.
18 VAC 120-30-160		This section provides for the qualifications for license renewal.	The proposed amendments reformat the section for clarity and continuity.
18 VAC 120-30-170		This section currently lists the requirements for reinstatement of an expired license.	The proposed amendments remove the one-month grace period for the payment of the reinstatement fee and

			<p>extend the reinstatement period to twenty four months.</p> <p>The removal of the one-month grace period will actually make the regulations less burdensome to the average licensee. The grace period is nothing more than an extension of the time that a renewal payment may be submitted before license reinstatement is required. The “grace” is from having to submit the additional reinstatement fee. While, conceptually, it would appear to be advantageous to licensees, in reality it causes confusion and facilitates unlicensed activity. The majority of licensees that utilize the grace period are actually of the belief that it is an extension of the license expiration date, which would allow them to continue to practice without a valid license. This can be often be problematic, even though the reinstatement procedure essentially “backdates” the renewal and, from a regulatory standpoint, is as if there was never a gap in licensure. Even with the grace period there are many instances of licensees submitting payments that are not received by the agency prior to the expiration of the period, which then requires the submission of the reinstatement fee, delaying the renewal/reinstatement of the license.</p> <p>The current system requires the licensees to be aware of three dates, the expiration date, the month long grace period, and the date that reinstatement is required. This proposed amendment simplifies that by only having to remember one date, the expiration date. If the renewal payment is received by the agency before the expiration date, no reinstatement is required; after the expiration date, reinstatement would be required.</p> <p>The implementation of this proposal would also result in faster processing of reinstatement requests. Currently, because of the general misunderstanding of the grace period, licensing staff is required to submit</p>
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			<p>payment adjustment requests to the agency's finance section in order to ensure that the monies received for renewal are categorized properly. These requests can delay the processing of a reinstatement by as much as two to three working days, which can be a burden to the licensees and, often, their employers.</p>
18 VAC 120-30-180		<p>This section provides the authority of the Department to deny reinstatement under certain circumstances.</p>	<p>The section was renamed <i>Qualifications for reinstatement</i> and reformatted similar to 18 VAC 120-30-160. This clarifies the section and provides for continuity of the regulations.</p>
18 VAC 120-30-190		<p>This section current provides that the reinstatement period is one year from the expiration date of the license.</p>	<p>The proposed amendments will extend the reinstatement period to two years.</p>