



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Board of Veterinary Medicine/Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 150-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Veterinary Medicine
<b>Action Title:</b>	Fee increase
<b>Date:</b>	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Amendments to regulation are adopted in order to increase certain fees for the regulants of the Board, including veterinarians, veterinary technicians and facilities, as necessary to provide sufficient funding for the licensing, inspection and disciplinary functions of the Board. An annual renewal fee for a veterinarian would be increased from \$125 to \$140, for a veterinary technician from \$25 to \$35 and for a veterinary facility from \$50 to \$150. Other fees would be increased correspondingly, and some miscellaneous fees will remain the same.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes*

exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

**Chapter 24** establishes the general powers and duties of health regulatory Boards including the responsibility to promulgate regulations and levy fees.

*§ 54.1-2400. General powers and duties of health regulatory Boards.--The general powers and duties of health regulatory Boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such Board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory Boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such Board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory Board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
- 10. To appoint a special conference committee, composed of not less than two members of a health regulatory Board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate Board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the*

*practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the Board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the Board or a panel of the Board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

11. *To convene, at their discretion, a panel consisting of at least five Board members or, if a quorum of the Board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full Board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The specific statutory mandate for an increase in fees is found in § 54.1-113:

**§ 54.1-113. Regulatory Boards to adjust fees.**

*Following the close of any biennium, when the account for any regulatory Board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the Board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.*

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory Board shall be performed. It is necessary that each Board have sufficient revenue to cover its expenditures. It is projected that by the close of the 2000-2002

biennium, the Board of Veterinary Medicine will incur a deficit and that the Board will continue to have a deficit through the next biennium. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential.

The purpose of the proposed amendments is to establish fees sufficient to cover the administrative, inspection and disciplinary activities of the Board. Without adequate funding, the licensing of practitioners and facilities by the Board and the inspections required for opening or remodeling a veterinary facility could be delayed. Sufficient funding is essential to continue with routine and opening inspections, investigation of complaints, and disciplinary proceedings against practitioners who are accused of substandard care, impaired practice or unsanitary facility conditions in order to protect the public health and safety.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

Section 100 is being amended to comply with a statutory mandate for the Board to provide sufficient funding to cover expenses related to licensing, inspections, investigations and disciplinary proceedings. Annual renewal fees for a veterinarian would be increased from \$125 to \$140, for a veterinary technician from \$25 to \$35 and for a veterinary facility from \$50 to \$150. Most of the fees charged to applicants, licensees and facilities are being increased accordingly as required in the Principles for Fee Development adopted by the Department. Miscellaneous fees, such as the late renewal fee for technicians, the duplicate license fee and the returned check charge are not being amended.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.*

### **1) The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:**

Fee increases proposed by the Board of Veterinary Medicine should have no disadvantage to the consuming public. There is no projection of a reduction in the number of applicants for licensure or the number of licensed persons available to provide veterinary services to the public. For example, an increase in the renewal fee will result in an additional \$15 per year for a veterinarian license and \$10 per year for a veterinary technician. It is not anticipated that the proposed fee increases will have any effect on prices for consumers.

There would be considerable disadvantages to the public if the Board took no action to address its deficit by increasing its fees to cover expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of candidates to sit for examinations. Likewise, the cost of a delay in issuing a facility permit would far exceed the additional application cost of \$100. If an opening is delayed, the veterinary facility would lose revenue from patients but would still incur costs for leasing, personnel and promotional advertising.

Potentially, the most serious consequence would be a reduction in or reprioritization of inspections intended to detect unsanitary or unsafe conditions in facilities and of investigation of complaints against veterinarians and veterinary technicians. In addition, there may be delays in adjudicating cases of substandard practice, resulting in potential danger to animals in the Commonwealth.

Practitioners and facilities licensed by the Board of Veterinary Medicine will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a special-fund agency, renewal fees pay the vast majority of the expenses of Board operations, which include inspections, investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

## **2) The primary advantages and disadvantages to the agency or the Commonwealth:**

As is stated above, the consequence of not increasing fees of the Board of Veterinary Medicine would be a reduction in services and staff, resulting in delays in licensing, reductions or delays in the cases investigated and brought through administrative proceedings to a hearing before the Board and fewer inspections of veterinary facilities by the Department. The fees charged to applicants and licensees solely fund the Board and the Department of Health Professions. If higher fees are not adopted, the agency would have to cut its staff, both within the Board of Veterinary Medicine and within other divisions of the Department of Health Professions.

## **3) Other pertinent matters of interest to the regulated community, government officials, and the public:**

During the development of the NOIRA and proposed regulations, representatives of Virginia Veterinary Medicine Association have been present. While the regulated community will not welcome any increase in fees, the Board believes that it will recognize that there has not been an increase in fees for 14 years, during which time the consumer price index has risen more than 37.4 percent. For the past several years, expenditures of the Board have exceeded revenue, but surpluses of previous years have delayed the need for a fee increase. By the conclusion of FY 02, the carry-over income will be exhausted and the Board will experience a deficit that will carry over to FY 03 and beyond.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

### **Projected cost to the state to implement and enforce:**

(i) Fund source: As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

### **Projected cost on localities:**

There are no projected costs to localities.

### **Description of entities that are likely to be affected by regulation:**

The entities that are likely to be affected by these regulations would be veterinarians, veterinary technicians, and veterinary facilities or hospitals.

### **Estimate of number of entities to be affected:**

Currently, the following are licensed or registered by the Board:

Veterinary facilities (full-service)	620
Veterinary facilities (restricted)	179
Veterinarian (active)	2183
Veterinarian (inactive)	722
Veterinary technician (active)	784
Veterinary technician (inactive)	3

### **Projected costs to the affected entities:**



The cost for compliance will depend on the type of license or registration held and the particular fee being paid. For example, if a veterinarian pays his renewal before the expiration date, he will pay \$140 or an increase of \$15; if the renewal fee is late, he will owe an additional \$45. For the projected costs to each of the affected entities and a projection of the number of persons or entities that will be affected, see a description of the changes below.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

### **18 VAC 150-20-100. Fees.**

Amendments are proposed to establish the fees for licensees as follows:

- The annual renewal or initial licensure fee for an active veterinarian license will increase from \$125 to \$140.
- The annual renewal fee for an inactive veterinarian license will increase from \$50 to \$70 or approximately  $\frac{1}{2}$  of the active license.
- The fee for a late veterinarian renewal within the first 30 days will increase from \$25 to \$45 or approximately  $\frac{1}{3}$  of the renewal fee.
- The reinstatement application fee for a veterinarian whose license has been revoked or suspended indefinitely will increase from \$200 to \$300 to more accurately reflect the actual cost of an investigative report and hearing.
- The annual renewal or initial licensure fee for an active veterinary technician license will increase from \$25 to \$35
- The annual renewal fee for an inactive veterinary technician license will be set at \$20 or approximately  $\frac{1}{2}$  of the active license.
- The fee for a late technician renewal within the first 30 days will remain at \$15 or approximately  $\frac{1}{3}$  of the renewal fee.

Fees for facility registrations are proposed as follows:

- The renewal fee for a veterinary facility will increase from \$50 to \$150 to cover the cost of inspections that routinely occur every three years and cost \$300 to \$350 per inspection.
- Late fees for renewal of a facility permit will be approximately  $\frac{1}{3}$  of the renewal fee or \$50.
- The fee for reinstatement of a facility permit lapsed beyond 30 days remains at \$100 (in addition to the renewal fee).
- The fee for initial application, reinspection or a change of location (which involves an inspection) is increased from \$150 to \$200 to cover costs charged to the Board.

- Miscellaneous fees to verify a license to another state or record a change of veterinarian-in-charge are increased, consistent with other Boards within the Department and with the actual costs.

**Alternatives**

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

In the Code of Virginia, § 54.1-2400 requires the Board to: “levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory Boards” and § 54.1-3804 mandates the Board to “regulate, inspect and register all establishments and premises where veterinary medicine is practiced.” In order to carry out its statutory mandates to protect the public and to levy sufficient fees to cover the direct expenses of the Board of Veterinary Medicine and the departmental expenses allocated to the Board, an increase in fees was necessary.

**Renewal Fees and Consumer Price Index (CPI) Adjustments 1990 - 2000**

During the period from 1990 to January 2001, the CPI has increased approximately 37.4 percent while fees for veterinarians, veterinary technicians and veterinary facilities in Virginia **have not been increased** during that same period of time. **In fact, fees charged by the Board have not increased for at least 14 years**, but renewal fees were temporarily decreased to reduce a surplus the Board had accumulated and other fees were permanently reduced.

**Annual Renewal Fees for regulants of the Board of Veterinary Medicine**

Occupation	Current fee	FY '98	FY '96*
Doctors of veterinary medicine	\$125	\$125	\$60
Veterinary technicians	\$25	\$25	\$5
Veterinary facilities	\$50	\$50	\$25

\*Graduated fee reduction to spend down an accumulated surplus

**Comparison of renewal fees in other states**

Virginia’s renewal fee for veterinarians is similar to neighboring states; the fees are \$150/year in NC; \$80/year in MD; \$125/ year in TN; and \$125/year in WV. In CA and NY, the renewal fee is \$600 every 2 years. However, the facility renewal fee in Virginia is below other states and does not even cover the cost of a routine inspection every three years. In NC, the renewal fee for an animal facility is \$75 plus \$75 for a facility inspection; in West Virginia, there is a \$200 facility inspection fee and a \$250 re-inspection fee.



### Need for Fee Increases

Fee increases are related to increased need for funds for staff pay and related benefit increases over the past few years and for the general costs of doing business, such as operation of the DHP data system and the health practitioner intervention program. Other costs are specifically related to the Board of Veterinary Medicine. For example, in the '98-'00 biennium the Board overspent its budget for enforcement (which includes inspections of facilities) by \$44,286. Routine inspections have been established on a regular three-year schedule for all veterinary facilities and are now conducted without prior notice, so there was a 22% increase in the number of inspections from 1999 to 2000. Likewise, there was an 18% increase in the number of inspections required for remodeling or changes to the facility. The annual renewal fee for a veterinary facility is set at \$50; it costs approximately \$300 to \$350 to conduct a routine inspection every three years. Therefore, the facility renewal fee only pays about half the inspection cost and none of the administrative cost of licensing, investigations, or disciplinary proceedings.

Fee increases for licensees regulated by the Board of Veterinary Medicine are necessary in order for the Board and the Department to continue performing essential functions of licensing new veterinarians, veterinary technicians, and animal facilities and of protecting the public from unsafe, unsanitary facilities and from continued practice by incompetent or unethical practitioners.

### Renewal Schedule

Veterinarians licensed by the Board of Veterinary Medicine renew their licenses every year by February 28th. Therefore, it is essential to have an increased fee in place in 2002 in order to prevent a deficit from occurring by the time licenses are again renewed in the year 2003.

### Options for fee increases

The Board considered three options in addressing the imbalance in revenues and expenditures. The bulk of the income is derived from renewal fees, and the renewal fee is used as the basis for calculating the appropriate amount of other fees including those for applications, late renewal and reinstatement. Option I was to maintain the current fee schedule, which would result in compounding the deficit to -\$226,865 in FY03 and -\$354,144 in FY04. That was not an acceptable option to the Board or the Department.

Option II would increase the renewal fee for a veterinarian from \$125 to \$150, a veterinary facility from \$50 to \$300 and a veterinary technician would remain at \$25; other fees would be increased correspondingly. With Option II, the resulting **deficit** at the end of FY03 would be approximately -\$52,865; and at the end of FY04, it would be -\$769. The Board was concerned about the total amount of the renewal fees that would be required for a veterinarian and a facility (most of which are owned by the veterinarians), so it considered another option with lower fees.

Option III would increase the renewal fee for a veterinarian from \$125 to \$140, a veterinary facility from \$50 to \$150 and a veterinary technician from \$25 to \$35. With the fee increase, the

revenue of the Board for FY03 is projected to be \$595,820. However, since the anticipated move of the Department was factored in 03 budget, projected expenditures of the Board would increase to approximately \$625,224 for that year, resulting in a continuation of the deficit (-\$71,670). In FY04, the revenue is anticipated to exceed expenditures (\$624,475 in revenue versus \$591,504 in expenditures). Since the Board will carry forward a deficit from the previous two fiscal years, it is projected to continue to have a deficit of approximately -\$38,699 by the end of FY04.

Even with the projected continuation of the deficit, two factors influenced the Board decision to adopt Option III. While the direct and allocated budget for FY02 is \$589,735, the Board is on target to underspend its budget. Secondly, the Department may not have to spend as much as was anticipated in moving its offices in FY03, so the projected costs to the Board may be somewhat reduced. With a combination of those factors, the Board was advised that Option III could produce sufficient income to eliminate the deficit by the end of FY04 and that it was the recommended choice.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

An announcement of the Board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the Board. Public comment was received until November 21, 2001. During the 30-day comment period, there was one comment from the Virginia Veterinary Medical Association. The VVMA requested that the current fee schedule be maintained through 2002 and that any fee increase not exceed 5% per biennium. *(Note: If the Board had adopted a 5% increase per biennium since the last fee increase, the projected fee in 2002 would be \$195)*

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

The proposed regulations were considered in an open meeting with persons representing veterinary medicine present. There were no questions or comments about the need for clarification. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable*

*regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations are currently under review and will be reviewed again during the 2004-05 fiscal year.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.*

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. There will be a modest impact on disposable family income, as veterinarians and veterinary technicians will experience a modest increase in the cost of licensure. Compared to other costs of doing business, licensure fees are relatively insignificant.