



Virginia  
Regulatory  
Town Hall

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Proposed Regulation  
Agency Background Document

<b>Agency Name:</b>	25
<b>VAC Chapter Number:</b>	21
<b>Regulation Title:</b>	Auctioneers Board Rules and Regulations
<b>Action Title:</b>	Amending
<b>Date:</b>	October 19, 2000

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.*

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The Auctioneers Board has identified several changes that need to be made to its regulations to ensure that they accurately reflect the intent of the Board and to ensure that any unnecessary requirements are removed.

## 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.*

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§ 54.1-602 of the Code of Virginia requires the Auctioneers Board to develop and administer a regulatory system to regulate individuals and businesses in Virginia that practice auctioneering. While the Board is mandated to establish regulations, the content of the regulations is up to the discretion of the Board.

## 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.*

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The regulations are essential to comply with state mandates. In order to protect the public, the Board is clarifying its regulations that disciplinary action in another jurisdiction relating to auctioneering may prevent licensure in Virginia and that Board approved auction schools will have to include the Board's regulations in their curriculum, periodically certify that they continue to comply with the Board's requirements and clarify that the Board may withdraw approval for a school failing to comply with the Board's requirements. The remainder of the changes are to ensure that the Board's intent is clearly reflected in the regulations and to remove unnecessary or outdated items from the regulations.

## 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.*

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The purpose of the proposal is to make the following changes:

18 VAC 25-21-10 – delete the following definitions as they are either not utilized in the body of the regulations or are already contained in the Code of Virginia:

- Auction – already contained in §54.1-600;

- Auctioneer - already contained in §54.1-600;
- Auction Firm - already contained in §54.1-600;
- Board - already contained in §54.1-600;
- Director - already contained in §54.1-600;
- Person - already contained in §54.1-600;
- Absolute Auction – not utilized in the regulations;
- Estate Auctions – not utilized in the regulations;
- Regular Business – not utilized in the regulations; and
- Reserve Auction – not utilized in the regulations.

18 VAC 25-21-20.2 – clarify that disciplinary action in another jurisdiction relating to auctioneering may prevent licensure in Virginia.

18 VAC 25-21-20.3 - remove the option of substituting 25 auctions in lieu of education as this option was deleted when §54.1-603.B.3 of the Code of Virginia was last amended.

18 VAC 25-21-30 – clarify language.

18 VAC 25-21-40 – clarify language.

18 VAC 25-21-50 – clarify language.

18 VAC 25-21-60.2 – modify to reflect changes in the Code of Virginia.

18 VAC 25-21-90.A – clarify language to reflect lower fee.

18 VAC 25-21-90.B – modify the reinstatement requirements so that:

- Anyone may reinstate within one year of expiration by completing the required application and submitting it with the required fee and bond;
- Anyone whose license has been expired for more than one year, but less than two years may reinstate by completing the required application, submitting it with the required fee and bond, and either sitting for and passing the examination or applying via reciprocity; and
- Anyone whose license has been expired for two years or more shall be required to apply as a new applicant and meet the entry requirements that are in place as of the date that they make application.

18 VAC 25-21-110.1.b – clarify language.

18 VAC 25-21-180.A – clarify language.

18 VAC 25-21-200 – modify to require that the schools seeking Board approval comply with the following:

- Include the Board’s regulations in their curriculums;
- Periodically certify that they continue to comply with the Board’s requirements; and
- Clarify that the Board may withdraw approval for a school failing to comply with the Board’s requirements.

## 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.*

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The primary advantage to the public is that the Board is clarifying its regulations that disciplinary action in another jurisdiction relating to auctioneering may prevent licensure in Virginia. Further, the proposed changes will help ensure that the Board's regulants will have a clearer set of regulations that do not contain unnecessary items. In addition, the Board will be better able to protect the public by being able to ensure that Board approved schools continue to comply with the Board's requirements, and if they do not, the Board's approval may be withdrawn. The only disadvantage is that individuals whose license has been expired for more than two years would have to retake the examination unless they are licensed in another state with which Virginia has a reciprocity agreement. This is expected to be a rare occurrence.

## 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.*

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### Fiscal Impact Analysis

The Board of Auctioneers regulates individuals who work as Auctioneers as prescribed in Title 54.1, Chapter 6 of the Code of Virginia. The Board consists of five members, and generally meets quarterly in Richmond. The Department of Professional and Occupational Regulation supports the Board by performing a variety of tasks including: assisting applicants seeking a license, assisting licensees with the renewal process, and helping consumers file and resolve complaints against a licensee who has violated regulations. All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. The following analysis explains the types of costs incurred by the department in support of the Board's operations, and provides estimates of revenues expected to be generated on behalf of the Board.

### Auctioneers Board

#### Analysis of Expenses by Category

#### Background

All Boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of indirect costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The following explanations provide a description of the types of costs included in each category of expenditure.

The financial data and projections provided are current as of 01/12/1999 when the most recent financial analysis was presented to the board. The department tracks the board's revenues and expenditures on a monthly basis. Current revenues and expenditures are consistent with the board's projected financial position. The Department will review the board's financial position in accordance with the Callahan Act after the close of the current biennium.

**Expenses**

***Direct Board Expenses***

Board expenses are those costs incurred directly by the Board for conducting meetings and public hearings, conducting regulatory review, and providing information to licensees and the public. Specific expenditures charged in this category include travel and per diem expenses incurred by board members while conducting board activities, printing, and postage for regulations, newsletters, and other information.

1996-98	\$21,120
1998-00	\$14,636
2000-02	\$15,518
2002-04	\$16,434

***Board Administration***

Board Administration expenses include the costs of department staff who directly support board operations by administering the regulatory program, reviewing applications, issuing licenses, responding to questions, conducting board meetings, and providing assistance to licensees and the public. Charges are allocated based on each board's percentage of licensees.

1996-98	\$17,416
1998-00	\$19,543
2000-02	\$20,722
2002-04	\$21,946

***Administration of Exams***

Examinations expenses represent the costs of department staff who work with boards to develop examinations, manage and administer examinations, and contract with vendors for the development and/or administration of examinations. Costs are allocated based on percentages of time and effort given to each board by Examination staff, and the number of exams given for each board.

1996-98	\$14,233
1998-00	\$20,394
2000-02	\$21,624
2002-04	\$22,901

***Enforcement***

Enforcement expenses represent the costs associated with complaint processing, investigation of allegations against licensees, and adjudication of cases. These costs are allocated to each board based on activity involved in investigations and caseloads.

1996-98	\$35,759
1998-00	\$42,953
2000-02	\$45,544
2002-04	\$48,233

***Legal Services***

Legal Service charges include billings from the Office of the Attorney General for hourly support provided to each board, and the costs of court reporters and hearing officers. Charges are allocated based on actual usage.

1996-98	\$7,768
1998-00	\$7,858
2000-02	\$8,332
2002-04	\$8,824

***Information Systems***

Information Systems expenses include costs associated with systems processing, maintaining information systems, maintaining licensee record information, and investment in technology to make the information system more efficient and useful. Charges are allocated based on each board’s percentage of licensees.

1996-98	\$16,805
1998-00	\$13,351
2000-02	\$14,157
2002-04	\$14,992

***Facilities Management and Support Services***

These are costs associated with facilities management, procurement and contracting activities, and the mailroom. Charges are allocated based on each board’s percentage of licensees.

1996-98	\$10,304
1998-00	\$16,928
2000-02	\$17,949
2002-04	\$19,008

***Agency Administration***

Agency Administration expenses include the department's general administrative support and overhead costs, including the office of the Agency Director, personnel, administration, and finance. Charges are allocated based on each board’s percentage of licensees.

1996-98	\$12,091
1998-00	\$15,704
2000-02	\$16,652
2002-04	\$17,635

***Transfers/Other***

The Transfers/Other category includes transfers to the General Fund of the Commonwealth as mandated in the Appropriations Act, generally to pay the department's share of central state processing and support costs. Charges are allocated based on each board's percentage of licensees.

1996-98	\$1,691
1998-00	\$ 369
2000-02	\$ 391
2002-04	\$ 414

**Revenues**

All program revenues consist of monies collected from various licensing fees approved by the Board. The program receives no general fund support.

1996-98	\$331,625
1998-00	\$138,195
2000-02	\$138,195
2002-04	\$138,195

**Cash Flow**

	<u>Beginning Cash</u>	<u>Revenues</u>	<u>Expenditures</u>
1996-98	\$ 67,857	\$331,625	\$137,187
1998-00	\$262,295	\$138,195	\$151,736
2000-02	\$248,754	\$138,195	\$160,889
2002-04	\$226,060	\$138,195	\$170,687

**Callahan Calculation**

Actual and projected Callahan percentages for each biennium are provided below. The combined total of revenues and accumulated cash collected on behalf of the board is expected to be adequate to support all operating expenses for the next two biennia.

At the close of the 1996-98 biennium, the Callahan percentage for the Board was 191.2%. This high percentage resulted from the Board's accumulated cash balances. The fee decrease approved by the board became effective November 1, 1999, which will begin to reduce this percentage. With this fee reduction, revenues collected are expected to be less than expenditures incurred in support of Board operations. The Board will rely on its accumulated cash balance to cover its operating expenses until that cash balance is gradually reduced to an appropriate level and the Callahan percentage reaches 10%. At that point, fees will need to be adjusted to ensure adequate revenue is collected in accordance with the provisions of the Callahan Act.

1996-98	191.2%
1998-00	163.9%
2000-02	140.5%
2002-04	113.4%

**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.*

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**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.*

Failure to adopt these changes will allow unnecessary requirements to remain in the regulations and would allow unclear language to remain in the regulations; neither of which is desirable so there is no alternative other than to modify the regulations as proposed. In addition, the Board approved schools need to periodically verify continued compliance with the Board’s requirements in order to ensure that students are receiving the necessary education. Otherwise, several years could go by with a school not complying with the Board’s requirements and harming applicants who are not receiving the education that the school informed the Board they would be providing.

The Board will certainly consider any and all comments received during the comment period and as to any proposed alternatives. In addition, anyone may petition the Board to consider a proposed regulatory change at any time in accordance with the Board’s Public Participation Guidelines.

**Public Comment**

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

No comments were received.

**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.*

Based on the fact that no comments have been received regarding this issue, and based on the Board's review, the regulation is clearly written and easily understandable by the affected individuals.

### 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.*

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The regulations will be reviewed during the Board's normal course of regulatory review that in no case shall exceed three years from the effective date of these regulations. Fees are evaluated at the end of every biennium and if fee adjustments are necessary, then the regulatory review process is initiated which could include this review. Otherwise, within 24 to 36 months of the effective date of these regulations, this matter will be placed on the Board's agenda for consideration.

The Board's regulations will be evaluated based on comments received in writing and at public hearings scheduled to receive comments on the Board's regulations. Any other items noted by the Board that need to be addressed during the course of the Board conducting its business will be noted and retained on file by staff for consideration by the Board during regulatory review.

### 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.*

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The contemplated changes are expected to have no impact on families.