



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Polygraph Examiners Advisory Board
Virginia Administrative Code (VAC) citation	18 VAC 120-30-10 et seq.
Regulation title	Polygraph Examiners Advisory Board Regulations
Action title	General Review
Date this document prepared	October 9, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The intent of this regulatory action is to conduct a review and, where necessary, amend the regulations to reflect statutory changes, industry changes (especially those that involve technological advances in equipment and training), and changes suggested by its regulants and members of the public during the Board's normal course of operations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 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.

18 VAC 120-30-30 provides the authority for the Director of the Department of Professional and Occupational Regulation to appoint a Board to advise the Department on any matters relating to the practice or licensure of polygraph examiners.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Changes in the industry warrant review and promulgation of regulations to ensure that they accurately reflect current requirements and standards that are consistent and clear. Ensuring that the regulations are as clear as possible will facilitate the regulations' compliance with the statutes and Board's requirements, which will better protect the health, safety, and welfare of the public. The Board has identified concerns regarding reciprocity of licensure and the polygraph examination procedures.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Board plans to review all the regulations, especially the provisions of Part V (Standards of Practice and Conduct), to ensure continuing compliance with federal regulations and procedures that may have been implemented by the introduction of computer-based polygraph devices. The Board will also review all provisions of the regulations to ensure they are compatible and enforceable with technological advances in equipment and training that have occurred since the regulations were last amended.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

While the primary authority for regulating polygraph examiners is based on provisions in the Code of Virginia, there are strict federal guidelines that must be followed in all states. The Board will review these sections of the United States Code and the Code of Federal Regulations to determine if there are viable alternatives.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated

in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Adrienne Mayo, c/o Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233; email: contractor@dpor.virginia.gov; fax (804) 527-4401. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

These regulatory amendments are not anticipated to have any significant impact on Virginia families.