Form: TH-02



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Proposed Regulation Agency Background Document

Agency name	Board of Veterinary Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 150-20-10 et seq.
Regulation title	Regulations Governing the Practice of Veterinary Medicine
Action title	Increase in fees
Date this document prepared	11/22/09

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.*

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The Board of Veterinary Medicine is proposing amendments to increase fees charged to regulants and applicants. Annual renewal fees would be increased as follows: 1) For veterinarians, the increase is \$40 per year; 2) For veterinary technicians, the increase is \$20 per year; 3) For veterinary establishments, the increase is \$60 per year; and 4) For equine dental technicians, the increase is \$20 per year. Other fees are increased proportionally. For the renewal cycle ending January 1, 2013, there would be a one-time debt reduction assessment of \$100 for veterinarians, \$200 for veterinary establishments, and \$50 for veterinary technicians and equine dental technicians. Other fees set proportionally to the renewal fees would also be increased. Licensees would be allowed to renew a lapsed license for one year (one renewal cycle) with payment of the renewal fee and a late fee; thereafter, the licensee would be required to reinstate the license and pay the reinstatement fee.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Form: TH-02

There are no acronyms used in this document.

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., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

18VAC150-20-10 et seq. Regulations Governing the Practice of Veterinary Medicine are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

- § 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:
- 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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

The amended regulation is mandated by § 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.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The issue to be addressed is the need of the Board of Veterinary Medicine to increase their fees to cover expenses for essential functions of licensing, investigation of complaints against licensees and facilities, adjudication of disciplinary cases, and the inspections required for public safety in the care of animals in the Commonwealth.

Form: TH-02

Section 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. By the close of the 2008 fiscal year, the Board of Veterinary Medicine had incurred a deficit of \$148,069, and the board will continue to have deficits through the fiscal years going forward. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the board, a fee increase is essential. In order to begin to reduce the deficits and have sufficient funding for the operation of the board, it is necessary to promulgate amendments at the earliest possible date or by the renewal of licenses in December 2010, in order for the board to have sufficient funding to carry out its responsibilities. If there is no action on fee increases, the shortfall is projected to increase to \$1.4 million by FY2014, which would seriously impact the board's ability to investigate complaints, adjudicate disciplinary cases and issue new licenses.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

In section 75, an amendment will allow a license to be renewed with payment of a late fee for up to one year after the expiration date; thereafter, the license must be reinstated. Currently, a license must be reinstated after it is lapsed for 30 days. New language will stipulate that a license shall automatically lapse if the licensee fails to renew by the expiration date; and the practice of veterinary medicine without a current, active license is unlawful and may subject the licensee to disciplinary action by the board.

In section 100, the fees are listed with increased renewal fees as follows: 1) For veterinarians, the increase is \$40 per year; 2) For veterinary technicians, the increase is \$20 per year; 3) For veterinary establishments, the increase is \$60 per year; and 4) For equine dental technicians, the increase is \$20 per year. Other fees are increased proportionally. For the renewal cycle ending January 1, 2013, there would be a one-time debt reduction assessment as follows:

Veterinary license (active)	\$100
Veterinary technician license	\$50
Veterinary establishment	\$200
Equine dental technician	\$50

With the assumption that increased fees would be in effect by December 2010 and with the one-time assessment in place in renewal year 2012, the cash balances would be projected as follows:

 Cash Balance as of June 30, 2008
 \$ (148,069)
 Cash Balance as of June 30, 2011
 (394,286)

 FY09 Revenue
 652,360
 FY12 Projected Revenue
 915,925

Town Hall Agency Background Document

FY09 Direct and Indirect Expenditures	735,419	FY12 Projected Direct and Indirect Expenditures	918,405
Cash Balance as of June 30, 2009	(231,128)	Projected Cash Balance as of June 30, 2012	(396,766)
Cash Balance as of June 30, 2009	(231,128)	Cash Balance as of June 30, 2012	(396,766)
FY10 Budget Revenue	671,620	FY13 Projected Revenue (One-time Assessment)	1,491,475
FY10 Budget Direct and Indirect Expenditures	870,446	FY13 Projected Direct and Indirect Expenditures	932,160
Cash Balance as of June 30, 2010	(429,954)	Projected Cash Balance as of June 30, 2013	162,549
Cash Balance as of June 30, 2010	(429,954)	Cash Balance as of June 30, 2014	162,549
FY11 Projected Revenue	915,925	FY14 Projected Revenue	915,925
FY11 Projected Direct and Indirect Expenditures	880,257	FY14 Projected Direct and Indirect Expenditures	941,404
Projected Cash Balance as of June 30, 2011	(394,286)	Projected Cash Balance as of June 30, 2014	\$137,070

Form: TH-02

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) The primary advantage to the public would be that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the **shortfall** at \$231,128 at the end of FY09 and projected to increase to \$1.4 million in FY14, there could be significant delays in licensing new veterinarians and facilities and in the investigation and adjudication of complaints against licensees. There are no disadvantages; increases in annual renewal fees ranging from \$20 to \$60 should not impact the cost of veterinary care for Virginians.
- 2) There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, which is a requirement of the Code of Virginia.
- 3) There are no additional issues.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Form: TH-02

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. 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 be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	a) 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 for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines
	mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no additional on-going costs to the state relating to these regulations.
Projected cost of the new regulations or	There are no costs to localities.
changes to existing regulations on localities. Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	The entities that are likely to be affected by these amendments would be applicants, licensed veterinarians, licensed veterinary technicians, equine dental technicians, and veterinary establishments
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.	There are 3576 veterinarians, 1370 veterinary technicians, 938 veterinary establishments, and 23 equine dental technicians who would be affected. Almost all of the establishments would be classified as small businesses, although there are some large corporate practices. It is unknown how many applicants would be affected because the number varies.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	The costs would primarily be the increase in renewal fees: For veterinarians, the increase is \$40 per year. For veterinary technicians, the increase is \$20 per year. For veterinary establishments, the increase is \$60 per year. For equine dental technicians, the increase is \$20 per year. Other fees are increased proportionally.
Beneficial impact the regulation is designed to produce.	The agency should have sufficient funding to carry out its statutory responsibilities of licensing, investigations and disciplinary proceedings.

Form: TH-02

Alternatives

Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The Department of Health Professions could consider two possible solutions to the deficit of the Board of Veterinary Medicine; they are as follows:

Form: TH-02

1. Increase fees through the promulgation of regulations.

As required by law, the board is obligated to establish and collect fees that are necessary to fund operations of the board and the department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by consumers who use the services of providers, but licensure fees represent a miniscule percentage of the over-all costs of health care. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental affect on quality and availability of care.

2. Reduce department/board operations and staff and remain at current fee level.

In order to prevent deficit spending, the department would need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of the following responsibilities:

- Investigations and discipline
- Examinations leading to license
- License renewals
- Regulation
- Inspections and approvals of new facility permits

Delays in licensing and investigation could place the animal population in Virginia at health risk as veterinarians who should not be practicing would continue to practice and supply of new licensees and facilities needed for the animal health system would be delayed or curtailed. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

To avoid increases in fees, the board and the Department of Health Professions have delayed hiring of new positions and held some positions approved for hiring. Travel restrictions are in effect, and the agency has reduced the use of media services for recruitment.

Renewal Schedule

Veterinarians, technicians and veterinary establishments licensed by the Board of Veterinary Medicine renew their licenses every year by December 31st. Therefore, it is essential to have an increased fee in place by December 2010 in order to prevent the deficit from growing even larger and necessitating an even greater fee increase.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the

adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Form: TH-02

There are no alternative regulatory methods; the board has adopted fees that are expected to minimally cover its expenditures through FY2014.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published on September 28, 2009 and sent to interested parties on the board's Public Participation Guidelines list. There was no comment during the 30-day comment period ending October 28, 2009.

Family impact

Please assess the 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.

There is no impact on the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Current requirement	Proposed change, rationale, and consequences
75	Establishes the rules for renewal and payment of	Amendments would provide that a licensee or registrant may renew a lapsed license or registration for one renewal cycle or

	fees.	one year by payment of the renewal fee and a late year, the person or facility must reinstate the licer		
		1 7	ise oi	
		registration.	41	
		The Principles for Fee Development, adopted by		
		in 1999 as a Guidance Document to provide cons		
		setting fees, allow for renewal for one renewal cy		
		of the renewal fee and late fee; other boards at D		
		adopted that policy in regulation. This amendment would make		
		veterinary medicine consistent with the fee principles.		
		To ensure that regulants clearly understand that i		
		lapsed license or registration is unlawful and mag	y subject the	
		licensee to disciplinary action, the board has add	ed such a	
		statement (consistent with regulations of other bo	ards in the	
		department).		
Establishes the fee schedule for initial		The current and proposed fees are as follows:		
	applications, renewals,	Veterinary application for licensure	\$200	
	and all other transactions	Veterinary initial license or renewal (active)	\$135 <u>\$175</u>	
	conducted by the board.	Veterinary license renewal (inactive)	\$65 \$85	
		Veterinary reinstatement of expired license	\$175 \$255	
		Veterinary license late renewal	\$45 \$60	
		Veterinarian reinstatement after disciplinary	\$300 \$450	
		action	ψ300 <u>ψ430</u>	
		Veterinary technician application for	<u>\$65</u>	
			<u>405</u>	
		licensure Veterinary technician initial license or renewal	\$30 <u>\$50</u>	
		Veterinary technician license renewal	\$15 <u>\$25</u>	
		(inactive)		
		Veterinary technician license late renewal	\$15 <u>\$20</u>	
		Veterinary technician reinstatement of	\$50 \$95	
		expired license	, <u>,</u>	
		Veterinary technician reinstatement after	\$75 \$125	
		disciplinary action	+ · · · · 1 ·	
		Initial veterinary establishment permit	\$200 <u>\$300</u>	
		registration	Ψ200 <u>Ψ300</u>	
		Equine dental technician initial registration	\$100	
		Equine dental technician registration renewal	\$100 \$50 \$70	
		Equine dental technician late renewal	\$20 <u>\$70</u> \$20 \$25	
		Equine dental technician reinstatement	\$120	
			\$120 \$140 <u>\$200</u>	
		Veterinary establishment renewal		
		Veterinary establishment late renewal	\$45 \$75	
		Veterinary establishment reinstatement	\$100 \$350	
		Veterinary establishment reinspection	\$200 \$300	
		Veterinary establishment – change of	\$200 <u>\$300</u>	
		location	*** *	
		Veterinary establishment – change of	\$30 <u>\$40</u>	
		veterinarian-in-charge		
		Duplicate license	\$10 <u>\$15</u>	
		Duplicate wall certificate	\$25	

Form: TH-02

Returned check \$35 Licensure verification to another jurisdiction \$15 \$25

Form: TH-02

- Currently, the application fee is the same as a renewal fee. The Principles for Fee Development provide that an application fee should be inclusive of the renewal fee, plus the administrative costs for reviewing and approving the application, so the application fees are set out separately and set at an amount to be consistent with the principles.
- Other fees late fee, inactive fee, reinstatement fee are all based on a percentage of the renewal fee and are increased accordingly.
- The establishment initial application and renewal fees are set to cover the costs of inspections, both the initial inspection prior to opening and the routine inspections of existing facilities.
- A change in location requires an inspection, which typically costs the board at least \$300, so the fee is set to cover that cost.
- Miscellaneous fees are set to cover the estimated cost of handling the transaction.

B. For the renewal of licensees and registrations due by January 1, 2013, the following one-time debt-reduction fee will be assessed:

Veterinary license (active)	\$100
Veterinary technician license	<u>\$50</u>
Veterinary establishment	<u>\$200</u>
Equine dental technician	<u>\$50</u>
<u>Veterinary license – late fee on assessment</u>	<u>\$60</u>
<u>Veterinary technician license – late fee on</u>	<u>\$20</u>
assessment	
Veterinary establishment – late fee on assessment	<u>\$75</u>
Equine dental technician – late fee on assessment	<u>\$20</u>

In order to allow the board to have sufficient revenue to offset the accumulated shortfall, a one-time assessment has been proposed for the renewal ending December 31, 2012. The additional revenue, coupled with increased fees, should allow the board to operate with a modest surplus in FY13 and FY14. By 2012, the board should have more a even more definitive picture of its fiscal position, and it is hoped that the one-time fee assessment could be reduced by an action exempt from the Administrative Process Act.