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## Final Regulation Agency Background Document

<b>Agency name</b>	Board for Hearing Aid Specialists and Opticians
<b>Virginia Administrative Code (VAC) citation(s)</b>	18 VAC 80-20
<b>Regulation title(s)</b>	Hearing Aid Specialists Regulations
<b>Action title</b>	Fee Adjustment
<b>Date this document prepared</b>	May 23, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The proposed changes in the regulations will adjust licensing fees for hearing aid specialist regulants of the Board for Hearing Aid Specialists and Opticians (Board). The Board must establish fees adequate to support the costs of the Board's operations and a proportionate share of the Department of Professional and Occupational Regulation's (Department) operations. By the close of the next biennium, fees will not provide adequate revenue for those costs.

### 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.*

“Department” means the Department of Professional and Occupational Regulation.

“Board” means the Board for Hearing Aid Specialists and Opticians.

### Statement of final agency action

*Please 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.*

At its meeting on April 20, 2016, the Board for Hearing Aid Specialists and Opticians adopted these regulations as final amending the Hearing Aid Specialist Regulations (18 VAC 80-20).

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

§ 54.1-113 (Callahan Act) 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.

§ 54.1-201.4 describes each regulatory board's power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department.”

§ 54.1-304.3 describes the power and duty of the Director to “collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid.”

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

The above citations from the *Code of Virginia* mandate that the Board manage and periodically review and adjust fees. The referenced Code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and

- adjust fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- distinctly accounts for the revenue collected for each board;
- accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board;
- reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and
- recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion on how the fees are adjusted by determining the amount of adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The intent of the proposed changes in the regulation is to increase licensing fees for applicants and regulants of the Board. The Board must establish fees adequate to support the costs of Board operations and a proportionate share of the Department’s operations.

The Board provides protection for the health, safety and welfare of the citizens of the Commonwealth by ensuring that only individuals who meet specific criteria set forth in statute and regulations receive licensure as hearing aid specialists; by ensuring its regulants meet standards of practice and conduct set forth in the regulation; and by imposing penalties for not complying with the governing statutes and regulations. Without adequate funding, complaints against regulants, brought to the attention of the Board by citizens, cannot be investigated and processed in a timely manner. Ensuring that hearing aid specialists have at least the minimal competencies to perform work protects the health, safety and welfare of Virginia citizens.

The Department receives no general fund money, but instead, is funded entirely from revenue collected through applications for certification, licensure, renewals, examination fees, and other certification and licensing fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide adequate revenue. Fee revenues collected on behalf of the boards fund the Department’s authorized special revenue appropriation.

The Board has no other source of revenue from which to funds its operations.



## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.*

The existing regulations are being amended to adjust the fees related to obtaining and maintaining licensure as a hearing aid specialist.

18VAC80-20-70. Fees.

- 1) The hearing aid specialist new applicant fee is adjusted from \$30 to \$85.
- 2) The hearing aid specialist new applicant by reciprocity fee is adjusted from \$30 to \$85.
- 3) The hearing aid specialist new applicant temporary permit is adjusted from \$30 to \$85.
- 4) The hearing aid specialist licensure renewal fee is adjusted from \$20 to \$100.
- 5) The hearing aid specialist licensure reinstatement fee is adjusted from \$50 to \$85.

## 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

The *Code of Virginia* establishes the Board as the state agency that oversees licensure of hearing aid specialists providing services in Virginia. The Board's primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. Further, the *Code of Virginia* requires the Department to comply with the Callahan Act. The proposed fee adjustments will ensure that the Board has sufficient revenues to fund its operating expenses.

To the extent that the public, including disadvantaged populations, benefit from the Board regulating hearing aid specialists, they will benefit from the increase, which is necessary to support Board activities. Increasing fees will increase the cost of licensure for individuals and renewals for licensees. While a fee increase of \$55.00 for licensure and \$80.00 for renewal is not small, it is not clear that many, if any, licensees or applicants would choose to leave the profession due to the increased licensing and biennial renewal fees. There was no public comment regarding the fee change.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is 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.*

No federal requirements have been identified.

### Localities particularly affected

*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.*

No localities that will be particularly affected by the proposed increases in the fees have been identified.

### Family impact

*Please assess the impact of this 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.*

This fee adjustment is not anticipated to have any significant impact on Virginia's families.

### Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
18VAC80-20-70	The new applicant fee is \$85.  The new applicant by reciprocity fee is \$85.  The new applicant temporary permit fee is \$85.  The renewal fee is \$115.  The reinstatement fee is \$85.	The new applicant fee is \$85.  The new applicant by reciprocity fee is \$85.  The new applicant temporary permit fee is \$85.  The renewal fee is \$100.  The reinstatement fee is \$85.	When the Governor approved the proposed regulations, he requested the Board review the revenue projections for the later years to ensure that the fee adjustments requested continue to be needed. After a review of the revenue and expenditure projections, the Department determined a smaller fee adjustment would suffice.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.*

No public comment was received.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
18VAC80-20-70		The new applicant fee is \$30.  The new applicant by reciprocity fee is \$30.  The new applicant temporary permit fee is \$30.  The renewal fee is \$20.  The reinstatement fee is \$50.	The new application fee is increased from \$30 to \$85 to facilitate compliance with the Callahan Act.  The new application by reciprocity fee is increased from \$30 to \$85 to facilitate compliance with the Callahan Act.  The new application temporary permit fee is increased from \$30 to \$85 to facilitate compliance with the Callahan Act.  The renewal fee is increased from \$20 to \$100 to facilitate compliance with the Callahan Act.  The reinstatement fee is increased from \$50 to \$85 to facilitate compliance with the Callahan Act.