



[townhall.virginia.gov](http://townhall.virginia.gov)

## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board for Hearing Aid Specialists and Opticians
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC80-20-80
<b>VAC Chapter title(s)</b>	Hearing Aid Specialists regulations
<b>Action title</b>	Passing Exam Score Validity
<b>Date this document prepared</b>	June 15, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The proposed amendment to the 18 VAC 80-20 is needed to allow applicants more time to pass all sections of the exam. Currently, applicants must pass all portions of the hearing aid specialist exam within nine months, or their passing scores expire and they must retake all portions of the exam. Under the new requirement, passing scores will remain valid for two years, which is consistent with other occupations, including opticians.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

"Department" means the Department of Professional and Occupational Regulation.

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

### Statement of Final Agency Action

*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.*

---

On August 12, 2020, the Board for Hearing Aid Specialists and Opticians approved the proposed amendment to the 18 VAC 80-20-80.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

---

The proposed regulatory changes were prompted by a finding of the Hearing Aid Specialist Training Committee, a subcommittee of the Board for Hearing Aid Specialists and Opticians. The hearing aid specialists regulations concerning examinations were last amended January 1992 pursuant to a periodic review. The Department expects the proposed amendments to be noncontroversial because the changes will give applicants more time to obtain and provide passing exam scores to the Board with their application for licensure. The direct effect of the Boards regulatory changes will be limited to those who are candidates for examination and applicants for licensure as hearing aid specialists.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

---

Code of Virginia § 54.1-201.5 gives authority to the Board to promulgate regulations. It states, in part, that the Board has the power and duty “To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

---

This regulation is being amended for consistency in laws and regulations and to reduce the regulatory burden on licensees. The Board currently allows licensed opticians two years to obtain passing exam scores, while hearing aid specialists, functionally, must pass within nine months (three successive examinations offered by the Department). The wording of the current regulations frequently has an unintended negative consequence, where individuals who inadvertently miss a testing window or miss their exam due to illness or accident, are not afforded extra time, and lose passing scores from a previous exam. The Board determined this change would reduce the regulatory burden on hearing aid specialist applicants. There is no additional risk to the health, safety, or welfare of the citizens by allowing applicants for licensure more time to obtain and provide passing exam scores to the Board.

### **Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

---

Section 18 VAC 80-20-20. Examinations. The proposed amendment updates this section allow applicants for licensure two years to obtain passing exam scores on all sections.

### **Issues**

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

---

The primary advantage of allowing applicants two years to obtain passing exam scores is that it may lead to additional economic growth opportunities by allowing applicants to avoid having to retake portions of the exam they have already passed, and thereby obtain their license faster, with less expense. This reduces the economic burden on applicants, as well as affords them the opportunity to enter the profession sooner, including increased wages that come along with the license. Additionally, implementing this change requires no additional training for candidates or applicants. There are no disadvantages to the public or individual private citizens or businesses.

The primary advantage to the Commonwealth is that the regulatory program will be more accessible to qualified applicants. Currently, qualified applicants face difficulty in providing valid passing exam scores to the Board due to the short period each exam score will remain valid. There are no identified disadvantages to the agency or Commonwealth.

### **Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

---

There are no requirements in the proposed regulations that would be more restrictive than those currently required in Federal Law.

**Agencies, Localities, and Other Entities Particularly Affected**

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

No other state agencies will be particularly affected.

Localities Particularly Affected

No localities will be particularly affected.

Other Entities Particularly Affected

No other entities will be particularly affected.

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

The Board for Hearing Aid Specialists and Opticians is updating the Hearing Aid Specialists Regulations by establishing a two year time period for candidates to pass all parts of the exam. There is no economic or fiscal impact to state agencies or businesses. Some individuals will realize an economic benefit from this change.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation (DPOR) and funded through fees paid by applicants and regulants. All boards within DPOR 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 agency operating costs. DPOR allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail;</p>	<p>The Board may experience a slight decrease in revenue as a result of fewer candidates needing to reapply to take the practical exam. The fee for practical exam is \$90 If an estimated 20 candidates do not need to retake this exam</p>
--	--

b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	portion, the revenue loss would be approximately \$1,800, which can be absorbed by the board. No effect is expected from the written portion of the exam. Written exam fees are paid directly to the exam vendor.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The change does not have a direct benefit to DPOR or other state agencies. The benefit is to the exam candidates who will not need to retake exam sections previously passed within a two year period.

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.
Benefits the regulatory change is designed to produce.	There are no benefits to localities resulting from this change.

**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The regulatory change will affect all license exam candidates applying to become Hearing Aid Specialists. Businesses that employ employee candidates for the Hearing Aid Specialist license may benefit by the candidate becoming licensed sooner and therefore able to perform the duties of a licensed Hearing Aid Specialist.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	On average, there are approximately 70 candidates approved to take the exam, with approximately 55 initial exam requests and 40 requests to retake the exam or parts of the exam.  There are estimated to be several dozen businesses that employ exam candidates that can be affected by this change.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Candidates pay \$155 initially when applying to sit for the Hearing Aid Specialist exam. The \$90 practical exam portion of the exam is included in this initial cost. The current cost of the written exam and rules and regulations portion of the exam that are paid directly to the exam vendor are \$225 and \$35 respectively.
Benefits the regulatory change is designed to produce.	The proposed amendment to the 18 VAC 80-20 is needed to allow applicants more time to pass

	<p>all sections of the exam. Passing scores will remain valid for two years and is consistent with other occupations, including opticians. The primary advantage of allowing applicants two years to obtain passing exam scores is that it will allow applicants to avoid having to retake portions of the exam they have already passed, and thereby obtain the license faster, with less expense. This reduces the economic burden on applicants, as well as affords them the opportunity to enter the profession sooner, including increased wages that come along with the license. Additionally, implementing this change requires no additional training for candidates or applicants.</p>
--	--

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

No viable alternatives could be identified.

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

There are no regulatory alternatives that would be less stringent. The amendment will allow for greater economic participation by future applicants than by those who currently meet the minimum requirements for licensure.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for*

*publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board for Hearing Aid Specialists and Opticians is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to [Stephen Kirschner / Board Executive Director, 9960 Mayland Drive, Suite 400, Richmond, VA 23233 Telephone: (804)367-8590 FAX: (866)245-9693 [hasopt@dpor.virginia.gov](mailto:hasopt@dpor.virginia.gov)]. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
18 VAC 80-20-80.C.2		Any candidate failing to achieve a passing score on all sections in three successive scheduled examinations must reapply as a new applicant for licensure and repeat all sections of the written and practical examination.	The change will extend the exam validity to two years. The “three successive schedule examinations” refers to exams scheduled by the Department. This requirement turns into a de facto nine-month period in which applicants must pass all sections of the exam. By amending the passing score requirement to a two year period to pass all sections of the exam, applicants will no longer be required to retake all sections of the exam after missing scheduled examinations through no fault of their own. The amendment allowing passing scores to remain valid for two years is

			consistent with other occupations, including opticians.
--	--	--	--