



Virginia
Regulatory
Town Hall

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Proposed Regulation Agency Background Document

Agency name	Board for Hearing Aid Specialists and Opticians
Virginia Administrative Code (VAC) citation	18 VAC 80-30
Regulation title	Optician Regulations
Action title	Fee Adjustment
Date this document prepared	November 14, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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 proposed changes in the regulations will adjust licensing fees for optician 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.

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 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 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 opticians; 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 opticians 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 almost 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 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.)

The existing regulations are being amended to adjust the fees related to obtaining and maintaining licensure as an Optician.

18VAC80-30-50. Fees.

- 1) The optician licensure new applicant fee is adjusted from \$100 to \$85.

- 2) The optician licensure renewal fee is adjusted from \$100 to \$115.
- 3) The optician licensure late renewal fee is adjusted from \$25 to \$35.
- 4) The optician licensure reinstatement fee is adjusted from \$100 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 the regulatory action poses 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 opticians 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.

There are no disadvantages to the public or the Commonwealth in raising the Board's fees as proposed here.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

Small business impact review report of findings

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

- 1) There is a continued need for regulation of the optician profession. Due to the personal and physical nature of these professions, at least minimal competency of those engaged in the profession is necessary to protect the health, safety, and welfare of the public. Since the vast majority of regulants either are or work for small businesses, this necessitates the continued regulation of small businesses. The proposed amendments balance the need for minimally competent professionals with the need for simple and clear regulations. The amendments add clarity to the regulations, and where possible, regulations are repealed or incorporated into other regulations.
- 2) The public comments either supported the fee change or wanted assistance locating the specific change.
- 3) This regulatory action is a simple fee adjustment.
- 4) The Board has no knowledge of the proposed regulations overlapping, duplicating, or conflicting with any federal or state law or regulation.
- 5) The last fee related regulatory change was made in 2012.

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 Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Demetrios J. Melis, Executive Director, Board for Hearing Aid Specialists and Opticians, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233. Telephone: (804) 367-8590, Fax: (866) 245-9693, e-mail: HASOPT@dpor.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). 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. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Board for Hearing Aid Specialists and Opticians

**Financial Status and Projections
Current Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulators</u> as of 9/1/2014
2010-12	138,521	288,840	306,511	120,850	39.4%	1,965 – Opticians 668 – Hearing Aid Specialists
2012-14	120,850	289,704	326,153	84,401	25.9%	
2014-16	84,401	276,485	343,181	17,705	5.2%	
2016-18	17,705	276,485	359,890	-65,700	-18.3%	
2018-20	-65,700	276,485	374,430	-163,645	-43.7%	

Fee History \$

<u>Major Fee Type</u>	<u>1995</u>	<u>1999</u>	<u>2003</u>	<u>2005</u>	<u>Proposed</u>
Optician Application	100	80	55	100	85
Hearing Aid Specialist Application	130	30	30	30	85
Optician Renewal	75	65	60	100	115
Hearing Aid Specialist Renewal	175	20	20	20	115

Board for Hearing Aid Specialists and Opticians

Financial Status and Projections Proposed Regulations

<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u> as of 9/1/2014 1,965 - Opticians 668 – Hearing Aid Specialists
138,521	288,840	306,511	120,850	39.4%	
120,850	289,704	326,153	84,401	25.9%	
84,401	276,485	343,181	17,705	5.2%	
17,705	382,633	359,890	40,448	11.2%	
40,448	382,633	374,430	48,651	13.0%	

Fee History \$

<u>Major Fee Type</u>	<u>1995</u>	<u>1999</u>	<u>2003</u>	<u>2005</u>	<u>Proposed</u>
Optician Application	100	80	55	100	85
Hearing Aid Specialist Application	130	30	30	30	85
Optician Renewal	75	65	60	100	115
Hearing Aid Specialist Renewal	175	20	20	20	115

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	All licensed opticians and applicants are affected by this regulatory proposal.
Agency's best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	<ol style="list-style-type: none"> 1) As of September 1, 2014 there are 1,965 current regulants affected by the regulatory change. Additionally, there were 74 Optician applications in Fiscal Year 2014. 2) No small businesses are affected by the regulatory change unless the business chooses to pay the individual license application or renewal fee for an employee.
Benefits expected as a result of this regulatory proposal.	The increase in revenue expected from the fees increased in the regulatory change will ensure that

	revenues in future years will be sufficient but not excessive to cover the Board’s ongoing operating expenses.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	No costs to Virginia, the Department, or the Board are expected from this regulatory change.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	There are no projected costs to localities as a result of implementing or enforcing the amended regulations.
All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	The two year license renewal fee for licensees will increase \$15 or \$7.50 per year. The late renewal fee will increase from \$25 to \$35. Applicants will pay \$15 less for the initial application fee. No other costs to individuals or other entities are expected.

	FY 2015	FY 2016	FY2017	FY2018
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	\$0	\$0	\$0	\$0
Ongoing Costs	\$0	\$0	\$0	\$0
Total Fiscal Impact	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

Summary:

The proposed amendments to the Optician Regulations will adjust fees for the Board for Hearing Aid Specialists and Opticians, to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses. The Board’s most recent fee change for Opticians was in 2005. Without the proposed fee adjustments, the Board will not collect sufficient revenue to pay for operations.

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. 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 agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

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 has considered the following alternatives to increasing fees for the Board:

Reduce services: Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to citizen’s ability to work, and would decrease the Department’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety and welfare.

Obtain a Treasury loan to fund operations: The Department could request a loan from the general fund to cover the Board’s deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for repayment of the loan.

Supplement Board activities with general funds: The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. The Department’s boards are intended to be self-funding per §§ 54.1-113, 54.1-201, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support board operations does not appear to be an appropriate use of taxpayer dollars.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, 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.

The adjustment of fees is mandated by statute. Consequently, there is no flexibility.

Public comment

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

Commenter	Comment	Agency response
Sandy Breeden	Did not see what the specific fee changes would be and would like to know the new fees.	There will be four fee changes: The application fee is decreased from \$100 to

		<p>\$85.</p> <p>The renewal fee is increased from \$100 to \$115.</p> <p>The late renewal fee is increased from \$125 to \$150.</p> <p>The reinstatement fee is increased from \$225 to \$235.</p>
Douglas Blaylock	Fully supports an increase in fees to support the Virginia Board for Hearing Aid Specialists and Opticians. The existence of the Board alone is a great protector for our citizens in Virginia and is under appreciated. Thanks the Board for its service.	The Board thanks the commenter for participating in the public comment period.

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.

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

Detail of changes

Please list 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. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency regulation** and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
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<p>18VAC80-30-50</p>		<p>The application for licensure fee is \$100.</p> <p>The fee for renewal of license is \$100.</p> <p>The fee for late renewal of license, including the renewal fee, is \$125.</p> <p>The fee for license reinstatement, including the lat renewal fee, is \$225.</p>	<p>The application fee is decreased from \$100 to \$85 to facilitate compliance with the Callahan Act.</p> <p>The renewal fee is increased from \$100 to \$115 to facilitate compliance with the Callahan Act.</p> <p>The late renewal fee is increased from \$125 to \$150 to facilitate compliance with the Callahan Act.</p> <p>The reinstatement fee is increased from \$225 to \$235 to facilitate compliance with the Callahan Act.</p>
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