



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 80-20
Regulation title	Hearing Aid Specialists Regulations
Action title	General Review
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 eliminate the examination fee cap in order to consider more modernized testing methods the Board for Hearing Aid Specialists and Opticians (the Board).

The proposed changes in the regulations will make clarifying changes, ensure compliance with current industry standards, and make other necessary changes to better protect the public health, safety and welfare.

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.

Code of Virginia § 54.1-201 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

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 Board seeks to amend its current regulations to ensure they are as least intrusive and burdensome as possible, in order to assist in providing an environment with unnecessary regulatory obstacles while still protecting the health, safety, and welfare of the public. Additionally, to ensure regulations are clearly written and easily understandable, and are representative of the current advancements and standards of the industries.

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.)

18 VAC 80-20-10. Definitions. The definitions of hearing aid specialist and licensee have been modified to bring them in line with the statutory definition found in *Code of Virginia* §54.1-1500.

18 VAC 80-20-30. Basic qualifications for licensure. The proposed amendments modify the description of the practice to reflect the *Code of Virginia* and changes in 18 VAC 80-20-10.

18 VAC 80-20-40. Qualifications for a temporary permit. The proposed amendments modify the description of the practice to reflect the *Code of Virginia* and changes in 18 VAC 80-20-10. The requirement that correspondence be sent to both the permit holder and sponsor is updated to expressly exempt correspondence protected by law.

18 VAC 80-20-50. Fees. The proposed amendments remove specific examination fees from regulation and replaced with language authorizing the fees to be set in accordance with the *Code of Virginia* §2.2-4300 (Virginia Procurement Act) and §54.1-201.4. Fees for wall certificates are removed and the licensure fee for reciprocity is consolidated with the initial license fee.

18 VAC 80-20-220. Purchase agreement. The proposed amendments require disclosure of non-refundable fees in accordance with the *Code of Virginia* and prohibit them from being a percentage of the purchase price of the hearing aid.

18 VAC 80-20-230. Fitting and sale of hearing aids for children. The proposed amendments modify the description of the practice to reflect the *Code of Virginia* and changes in 18 VAC 80-20-10.

18 VAC 80-20-250. Testing procedures. The proposed regulations expand the standard testing frequencies to 6000 – 8000 hertz.

18 VAC 80-20-270. Grounds for discipline. The proposed amendments expand the scope of discipline to include probation, refusal to renew, and to cover temporary permits as well as licensees. The proposed amendments also modify the description of the practice to reflect the *Code of Virginia* and changes in 18 VAC 80-20-10.

18 VAC 80-20-280. Accountability of licensee. The proposed amendments repeal this section.

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.

1) The primary advantage of the proposed amendments to the public is the Board will continue to approve applicants and license professionals with safeguards in place to ensure proper competency and standards of conduct. The change of scope of prohibited acts to include permit holders will reduce fraud and better ensure the regulant population is minimally competent. Further, regulants and applicants within these professions will be able to read the Board’s requirements with greater clarity and understanding. The added clarity of the language in the proposed regulations will facilitate a quicker and more efficient process for applicants and regulants by enhancing their understanding of their individual requirements. Further, consumers in the public, as well as regulators from related agencies, will have a better understanding of the Board’s requirements which will also allow them to conduct their business with greater efficiency.

2) The primary advantage to the Commonwealth will be the continued successful regulation of hearing aid specialists who meet the minimum entry standards. The proposed amendments strengthen the Department’s ability to investigate and discipline regulants who disregard the health, safety, and welfare of the public. No disadvantage has been identified.

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.

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

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 will be 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 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 Regulants</u> as of 9/1/2014 668 – Hearing Aid Specialists
2010-12	138,521	288,840	306,511	120,850	39.4%	
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%	

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 hearing aid specialist 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 668 current regulants affected by the regulatory change. Additionally, there were 70 Hearing Aid Specialist applications in Fiscal Year 2014. 2) No small businesses are affected by the regulatory change.
Benefits expected as a result of this regulatory proposal.	The benefits of the amendments are to ensure the regulations are the least intrusive and burdensome as possible, while still protecting the health, safety, and welfare of the public; are clearly written and easily understandable; and are representative of the industry’s current state of affairs.
Projected cost to the state 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 localities 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.	No costs to individuals or other entities are expected.
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	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 Hearing Aid Specialist Regulations for the Board for Hearing Aid Specialists and Opticians are being amended to clarify language in various sections, to ensure the regulations are the least intrusive and burdensome as possible, while still protecting the health, safety, and welfare of the public, are clearly written and easily understandable, and are representative of the industry’s current state of affairs. The amendments will also remove a maximum examination fee in order for the Board to consider more modernized testing methods. Examinations are provided by an examination vendor awarded under a competitive proposal process. No fiscal impact is expected from this regulatory change.

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.

In reviewing the regulations, the Board considered whether there were less burdensome alternatives. The Board weighed those alternatives against the burden to its own regulant population, especially small businesses. Alternatives that failed to meet this consideration were rejected.

The Board will consider all comments received during the public comment period as to proposed alternatives.

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.

1) The Board must promulgate regulations that provide an adequate level of protection to the public while, simultaneously ensuring that individuals and businesses are not unnecessarily burdened. The amendments are intended to further strengthen that protection, and specifically address changing technology in the industry and add clarity to the regulations. Although the majority of the proposed amendments simplify and clarify existing regulations, in some instances, compliance requirements have been increased. These amendments should not raise concerns within the regulated community, as they simply make explicit what was already implicit, and thus will not likely be looked at as being overly burdensome to most of the regulant population or the industry. The Board believes these amendments are the least stringent that can be promulgated that will still deliver protection to the public and address fraud being perpetrated against the Board.

2) The deadlines and reporting requirements have not been changed by the proposed amendments.

3) The proposed amendments systematically simplify and clarify existing requirements. The Board believes any new requirements are the least stringent that can be promulgated that will still deliver protection to the public.

4) Performance standards are utilized in all cases where the Board believes it can provide an adequate level of protection to the health, safety, and welfare of the public.

5) The overwhelming majority, if not all, of businesses licensed by the Board are small businesses, and similar proportion of individuals licensed by the Board are employed by small businesses. Thus, every regulatory action undertaken by the Board affects small businesses. Exempting small businesses from the Board's requirements would prohibit the Board from performing its basic function and leave the Board and the public exposed to further risk of licensed individuals and business that are not at least minimally competent.

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 hearing aid specialist 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) There were no comments or complaints received from the public.
- 3) One of the primary purposes and expected benefits of the proposed amendments is to simplify and clarify the regulations. The Board has approved regulations that are in plain English, and provide terms and instructions that should be easily understood by members of the profession and by the public.
- 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 non-fee related regulatory change was made in 2003. Since that time there have been changes to technological and economic conditions. The proposed amendments attempt to eliminate or modernize obsolete or outdated regulations.

Public comment

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

No public comment was received.

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.

- 1) The proposed regulations will have no impact on the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) The proposed regulations should encourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents through a simplified and clarified regulatory environment. The proposed amendments should make entering and engaging in the regulated professions more easily understood for individuals and businesses.
- 3) The proposed regulations will have no impact on marital commitment.
- 4) The proposed regulations should have minimal impact on disposable family income.

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
18 VAC 80-20-10		Establishes definitions of terms used throughout the chapter.	<p>“Hearing aid specialist” is amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500. This change brings the regulations in line with the statute, and should have no impact on the regulants.</p> <p>“Licensee” is amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.</p>
18 VAC 80-20-30		Establishes the general qualifications for hearing aid specialist licensure.	Subsection A.5 is amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.

<p>18 VAC 80-20-40</p>		<p>Establishes the general qualifications for hearing aid specialist temporary permit.</p>	<p>Subsection A.3 is amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.</p> <p>Subsection B.1 is amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.</p> <p>Subsection E is amended to add “not otherwise exempt from disclosure” the requirement that all correspondence be sent to both permit holder and sponsor. This change makes explicit the current Board practice that it will not disclose information that may be protected from disclosure by law, and will not result in a change of practice or impact regulants.</p>
<p>18 VAC 80-20-70</p>		<p>Establishes the licensing and renewal fees.</p>	<p>Subsection C is amended to remove references to examination and duplicate wall certificate fees, and consolidate the reciprocity fee into the new application fee. The latter change will result in more clear, succinct regulations. The board will no longer charge for duplicate wall certificates. The examination fee requirements are being replaced by Subsection D.</p> <p>New Subsection D states that the examination fees shall be established according to requirements of the Virginia Public Procurement Act. The exam fee changes in Subsection C and new Subsection D are necessary to allow the Board flexibility in exam selection and administration.</p>
<p>18 VAC 80-20-220</p>		<p>Establishes requirements for hearing aid purchase agreements.</p>	<p>Subsection A.6 is amended to reference the Code of Virginia section requiring disclosure of non-refundable fees and states that non-refundable fees shall not be a percentage of the purchase price. This amendment will add greater clarity to regulation and provide greater protection for hearing aid purchasers.</p>
<p>18 VAC 80-20-230</p>		<p>Establishes requirements for fitting and sale of hearing aids for children.</p>	<p>The section title and Subsection 1 are amended, replacing the language “fitting and dealing in hearing aids” with the statutory language “fitting or dealing in hearing aids”, as stated in <i>Code of Virginia</i> §54.1-1500.</p>
<p>18 VAC 80-20-250</p>		<p>Establishes testing procedures for hearing aid fittings.</p>	<p>Subsection 1 is amended to expand the standard frequencies to include 6000 and 8000 hertz. This amendment addresses</p>

			changing standards in the industry and enables the Board to ensure that it is licensing individuals who are minimally competent to engage in the profession.
18 VAC 80-20- 270		Establishes the grounds for discipline.	<p>The scope of this section is amended to include temporary permit holders and to provide for probation and refusal to renew. This change is meant to clarify that permit holders are subject to its requirements.</p> <p>Subsection 1.h is amended to read with better clarity.</p> <p>Subsection 6 is amended to include licensees and temporary permit holders. It also is amended, replacing the language "fitting and dealing in hearing aids" with the statutory language "fitting or dealing in hearing aids", as stated in <i>Code of Virginia</i> §54.1-1500.</p>
18 VAC 80-20- 280		Establishes that licensees are responsible for the actions of staff.	This section is repealed to provide greater clarity to the regulations.