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Regulatory
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Proposed Regulation Agency Background Document

Agency name	Board for Opticians
Virginia Administrative Code (VAC) citation	18 VAC 100 – 20 – 54 18 VAC 100 – 20 – 81
Regulation title	Board for Opticians Regulations
Action title	Amending
Document preparation date	April 9, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The purpose of the proposed action is to adjust fees as necessary in accordance with § 54.1-113 of the Code of Virginia (Callahan Act). Any other changes that may be necessary may also be considered.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, 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.

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.

Section 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.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-113>

Section 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..."

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>

Section 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..."

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-304>

Section 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.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-308>

Sections 54.1-113, 54.1-201.4, 54.1-304.3, and 54.1-308 of the Code detailed in the Purpose Section of this document 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
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- accounts for the revenue collected for each board distinctly.
- 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.
- 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 in how the fees are adjusted by determining the amount of the 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.

The Board for Opticians has no other source of revenue from which to fund its operations.

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 and the problems the proposal is intended to solve.

The intent of the proposed changes in regulations is to increase fees for applicants and regulants of the Board for Opticians (Board). The Board must establish fees adequate to support the costs of Board operations and a proportionate share of the Department of Professional and Occupational Regulation’s (Department) operations. By the close of the current biennium, fees will not provide adequate revenue for those costs. The Board has no other source of revenue from which to fund its essential functions required for public health, safety and welfare.

The Department receives no general fund money, but instead is funded almost entirely from revenue collected for applications, renewals, examination fees, and other 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 that revenue. Fee revenues collected on behalf of the boards fund the Department’s authorized special revenue appropriation.

The ability of the board to continue to process applications in a timely and accurate manner increases the level of public safety and welfare by ensuring that only those applicants that meet or exceed the requirements set forth in the statutes and regulations are granted licenses, certificates, or registrations.

Substance

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

Fees will be increased as necessary to comply with the § 54.1-113 of the Code of Virginia. Any other changes which may be necessary may also be considered.

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.

The primary issue for the proposed fee increase is the Department’s statutory requirement to comply with the Callahan Act.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to level of income.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures		FY 2003	FY 2004	FY2005	FY2006
	Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
	Program / Subprogram	560 44	560 44	560 44	560 44
	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
	One-time:	There are no one-time costs associated with the proposed regulations.			
	On-going:	There are no on-going costs associated with the proposed regulations.			

Projected cost of the regulation on localities	None anticipated.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Individuals engaged in the practice of opticianry.
Agency's best estimate of the number of such entities that will be affected	The Department currently regulates approximately 1,800 opticians.
Projected cost of the regulation for affected individuals, businesses, or other entities	The current cost to a regulated optician is approximately \$55 -\$60 per biennium. These proposed regulations will increase that cost to \$100 per biennium.

Opticians

Economic Impact of Proposed Regulation

Summary:

The proposed regulations will increase fees for the Opticians Board to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses.

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.

**Financial Status and Projections
Opticians**

Number of Regulants 1,800

Current Regulations

	<u>1998- 2000</u>	<u>2000- 2002</u>	<u>2002- 2004</u>	<u>2004- 2006</u>	<u>2006- 2008</u>
Beginning Cash Balance	67,761	63,704	51,997	-4,905	-70,580
Revenue	<u>130,563</u>	<u>127,303</u>	<u>128,497</u>	<u>131,215</u>	<u>133,839</u>
Expenditures:					
Board Expenditures	32,596	26,562	39,134	41,560	46,214
Board	14,772	23,317	28,540	30,309	33,703

Administration					
Examinations	25,858	32,457	35,889	38,113	42,382
Enforcement	2,745	238	246	261	291
Legal Services	3,907	2,503	4,125	4,381	4,871
Information Systems	15,888	18,941	29,932	31,787	35,347
Facilities/ Support Services	16,175	16,655	19,398	20,600	22,907
Agency Administration	14,228	17,862	21,207	22,521	25,044
Transfers/Other	337	475	6,928	7,357	8,181
Total Expenditures	126,506	139,010	185,399	196,890	218,941
Cash Balance	71,818	51,997	-4,905	-70,580	155,682
Callahan Percentage	<u>56.8%</u>	<u>37.4%</u>	<u>-2.6%</u>	<u>-35.8%</u>	<u>-71.1%</u>

NOTES:

The cost increase in Board Expenditures reflects increases in vendor expenses for examination services.

The increase in Information Systems reflects costs to develop and implement a new licensing and enforcement system.

Legal Services and Transfers to the General Fund are the board's share of these state expenses, based on the number of licensees for each board.

Financial Status and Projections Opticians

Number of Regulators 1,800

Proposed Regulations

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Beginning Cash Balance	67,761	63,704	51,997	-4,905	25,990
Revenue	130,563	127,303	128,497	227,785	232,341
Expenditures:					
Board	32,596	26,562	39,134	41,560	46,214

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Transfers/Other	337	475	6,928	7,357	8,181
Total Expenditures	126,506	139,010	185,399	196,890	218,941
Cash Balance	71,818	51,997	-4,905	25,990	39,390
Callahan Percentage	<u>56.8%</u>	<u>37.4%</u>	<u>-2.6%</u>	<u>13.2%</u>	<u>18.0%</u>

Note: The Callahan Percentage is expected to decrease again in 2008-10 to about 13%, and to less than 10% in the following biennium.

Fee History

<u>Fee Type</u>	<u>1995</u>	<u>1997</u>	<u>1999</u>	<u>Proposed</u>
Application	100	80	55	100
Renewal	75	65	60	100

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.

The Callahan Act requires that the Board’s fees be sufficient to cover its expenses so no alternatives exist which would allow the Board to remain in compliance with the requirements of the Callahan Act.

Public comment

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

No public comment was received following the publication of the NOIRA.

Commenter	Comment	Agency response

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

These fee increases are not anticipated to have any significant impact on Virginia's families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

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

For changes to existing regulations, use this chart:

Current section number	Current requirement	Proposed change and rationale
54 A	<p>The current administrative charge for the spectacle examination is \$10.00.</p> <p>The current maximum examination fee for examinations procured in accordance with the Public Procurement Act is \$300.00.</p>	<p>The proposed administrative charge for the spectacle examination is \$25.00. This change is made to achieve consistency with the administrative charge for the contact lens examination.</p> <p>The proposed maximum examination fee for examinations procured in accordance with the Public Procurement Act is \$1,000.00. The Board contracts with the American Board of Opticianry (ABO) for its written examination. The Board is proposing to raise the cap to ensure that any future examination costs that reflect increases in vendor charges that are established in accordance with the Virginia Public Procurement Act would be paid by the applicant and not subsidized by fees</p>

		paid by licenses and would not require an additional regulatory review action. New York and Florida both use the ABO examination and have fees of \$585 and \$800, respectively.
54 C	<p>The current application fee for licensure is \$55.00.</p> <p>The current application fee for contact lens certification is \$70.00</p> <p>The current renewal fee is \$60.00.</p> <p>The current regulations permit late renewal for up to 12 months after expiration with reinstatement required after 12 months.</p> <p>The current fee for a duplicate wall certificate is \$25.00.</p>	<p>The proposed application fee for licensure is \$100.00.</p> <p>The proposed application fee for contact lens certification is \$100.00</p> <p>The proposed renewal fee is \$100.00.</p> <p>The proposed fee changes are made to comply with § 54.1-113 of the Code of Virginia.</p> <p>The proposed regulations permit late renewal for up to 60 days after expiration with reinstatement required after 60 days. All reinstatement applicants must meet current requirements. Therefore, the proposed change will ensure that practicing opticians remain competent to practice in a manner that will protect public health, safety and welfare without being overly burdensome on the licensee.</p> <p>The proposal deletes the fee for a duplicate wall certificate because wall certificates are no longer issued.</p>
81	<p>The current regulations permit late renewal for up to 12 months after expiration with reinstatement required after 12 months.</p>	<p>The proposed regulations permit late renewal for up to 60 days after expiration with reinstatement required after 60 days.</p>