



## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Accountancy
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 5 -21
<b>Regulation title</b>	Board of Accountancy Regulations
<b>Action title</b>	Changes incorporating recent statutory amendments about qualifications for, and issuance and maintenance of, a CPA license and firm permit.
<b>Document preparation date</b>	November 21, 2003

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://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](http://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](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) *Please explain why this is an “emergency situation” as described above.*
- 2) *Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

In accordance with Section 2.2-4011 (A) of the Administrative Process Act (APA) and Executive Order 21 (2002), the Board of Accountancy is desiring to propose emergency regulations entitled: 18 VAC 5-21-10 et seq. Board of Accountancy Regulations.

The enabling section in Chapter 291 of the 2003 Acts of the General Assembly (which amends and reenacts §§ 54.1-4400, 54.1-4402, 54.1-4409 through 54.1-4413 and 54.1-4417) provides that “the Board of Accountancy shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

These proposed emergency regulations are not otherwise exempt under the provisions of Section 2.2-4006 (A) (4).

Accordingly, the Board will propose amendments to revise and clarify its existing regulations related to the qualifications for, and issuance and maintenance of, a CPA license and CPA firm permits, as well as the standards of conduct and practice, and the continuing professional education (CPE) requirements. Such amendments are meant to be reasonable and prudent enhancements to the Board’s current regulations, which will implement the provisions of Chapter 291 (2003) without imposing an unnecessary burden on its regulants.

## Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

To fulfill its statutory mandate, the Board seeks to propose amendments to its existing regulations to revise and clarify the following sections: (i) definitions; (ii) fees; (iii) qualifications for licensure (including clarified language about the applicant’s right of appeal, the new 150-hour education requirement effective July 1, 2006, and community college credits); (iv) issuance of a license to initial applicants, through endorsement, and by substantial equivalency (including clarified language about CPE requirements, and international reciprocity); (v) registration of CPA firms (including clarified language about the peer review requirements); (vi) standards of conduct and practice; (vii) use of consultants in investigations; (viii) renewal requirements; and (ix) continuing professional education requirements for initial applicants and regulants. The Board also proposes new provisions governing: (i) the temporary practice of CPAs in the Commonwealth who have not been issued a Virginia CPA license; (ii) the requirements for non-CPA owners in CPA firms who live in the Commonwealth; and (iii) enforcement actions against regulants.

According to Chapter 291 (2003), the proposed emergency regulations are mandated to be in effect by April 5, 2004 and are essential to protect the health, safety and welfare of the citizens of the Commonwealth because the statute mandates that the Board shall certify and issue CPA certificates to persons to practice public accountancy, and restrict the practice of public accountancy to only those persons who are so certified and may call themselves CPAs. Further, such actions as may be authorized by this statute shall be taken to ensure the continued competence of such licensed CPAs and to aid the public in determining the qualifications of such persons who give assurances on financial statements. The Board shall also issue permits to CPA firms to engage in the practice of public accountancy in the Commonwealth as set forth in Section 54.1-4412 and take such actions as may be authorized by this statute to ensure that such registered firms and their CPAs adhere to standards of conduct and practice.

The Board shall have the responsibility of enforcing and implementing this statute through the promulgation of regulations.

Finally, Chapter 291 (2003) should not be construed as preventing any person from stating that he has prepared, compiled, assembled or drafted a financial statement, provided he does not use any additional language that comprises an assurance, make any claims or representations, or use any of the language prohibited by this statute.

**Legal Basis**

- 1) Please confirm that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.
- 2) Please indicate that the regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.

As required by Executive Order 21 (2002), the Board has been given the legal authority to promulgate the contemplated amendments to its regulations through Chapter 44 of Title 54.1 of the Code of Virginia, 1950, as amended. The Board received a memorandum dated September 23, 2003 from the Office of the Attorney General stating that the Board has the authority to promulgate these emergency regulations.

These proposed emergency regulations are not otherwise exempt under the provisions of Section 2.2-4006 (A) (4).

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 5-21-10		The current section lists the definitions of the terms used in this chapter.	<p><b>Amendment:</b> New definitions have been added that come from statutory language, while other definitions have been rewritten for clarity, but no substantive changes based on the new definitions. Other definitions have been deleted since they are no longer relevant.</p> <p><b>Consequences:</b> The reader of the regulations will have a better understanding and require less clarification.</p> <p><b>Essential Nature:</b> Definitions are required for an accurate understanding of how the words are used in the regulatory text.</p> <p><b>Issues:</b> None</p>
18 VAC 5-21-20		The current section lists all fees for the Board.	<p><b>Amendment:</b> In this section, the list of fees was revised to include those fees identified in other current subsections, so that the regulant will have easier access to them. Several current fees – “original CPA certificate application,” “CPA certificate by endorsement application,” and “Permit</p>

			<p>application” – were changed, and a new fee – “practice in Virginia pursuant to substantially equivalent provisions” – was added. In addition, the current late renewal fees to reinstate CPA and CPA firm licenses were revised to differentiate between those who were required to have a license during the time their license was expired and those who were not. Current language about the “noninteractive processing fee” was moved to subsection D, while language about the CPA exam fee was moved to subsection E, with no other substantive changes.</p> <p><b>Consequences:</b> Unless enacted, fee collections will not be accurately aligned with the costs of the work performed by the Board members and staff. The adjustment to current fees, and the new fees, if not implemented, will mean that the fees collected from Virginia regulants will have to be raised to cover the complaint investigations required for the CPAs from other states practicing in Virginia by substantial equivalency, and those who may have practiced under an expired license. The Board will continue to perform such services with the fee structure not properly aligned with the costs of the services.</p> <p><b>Essential Nature:</b> The “original CPA certificate application,” “CPA certificate by endorsement application,” and “Permit application” fees were adjusted to be more closely aligned with the costs of the work required of Board members and staff. The new fees are proposed to cover the registration application to be required by those who practice in Virginia pursuant to substantial equivalency provisions, and those seeking reinstatement to practice. The temporary interstate practice registration will enable the Board to investigate a CPA who is not licensed in Virginia but is practicing by substantial equivalency if a Virginia citizen files a complaint. At present, CPAs practicing by substantial equivalency do not have to register with the Board. So the Board cannot keep track of them should an infraction occur. Further, the new fees for reinstatement will more accurately reflect the costs born by the Board to investigate whether licensed or unlicensed activity occurred.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-30		The current section lists the entry requirements for	<b>Amendments:</b> The qualifications for a CPA certificate were clarified. Subsection A

		<p>the CPA certificate and firm permit and for CPA supervising services involving the practice of public accounting.</p>	<p>includes new language specifying the rights of appeal for an applicant who was refused a certificate because the Board found by “clear and convincing evidence” a “substantial connection” between his “lack of moral character” and the “professional responsibilities of the licensee.” Subsection B includes new language clarifying the requirements a candidate for the CPA exam must meet when the new 150-hour education requirement becomes effective in July 1, 2006. In addition, the acceptance of credits earned at a community college has been clarified to state that such credits shall be accepted if acceptable by any accredited institution to fulfill its baccalaureate degree requirements. Subsection D clarifies that an applicant’s experience may be “supervised and attested to by a non-CPA certificate holder.”</p> <p><b>Consequences:</b> Unless enacted, applicants for a CPA license in Virginia will not have specified rights for appeal should they be refused a certificate by the Board finding “clear and convincing evidence” that there is a “substantial connection” between their “lack of moral character” and the “professional responsibilities of the licensee.” If the new language about the education requirements for a candidate to sit for the CPA exam on or after July 1, 2006, the effective date of the new 150-hour education requirement, is not put into place, then such candidates, who qualified under the new requirements as well as the 120-hour requirements, will lose their credits and be unable to sit for the CPA exam. New language about the acceptance of credits earned at a community college is essential to eliminate unnecessary barriers for those candidates who successfully earned a degree or completed coursework that qualifies for degree requirements at accredited institutions, and to enable the Board to evaluate and accept such credits. By not clarifying that an applicant who has been supervised by a “non-CPA certificate holder” can have that supervisor attest to the applicant’s work experience, the current burden will continue and force the applicant to go to a CPA certificate holder who will not be familiar with his work.</p> <p><b>Essential Nature:</b> The new language about the right of appeal for an applicant who was refused a certificate based upon a finding of a “substantial connection”</p>
--	--	--	--

			<p>between his “lack of moral character” and the “professional responsibilities of the licensee” highlights for the public, and the applicant, the Board’s specific guidelines to resolve such a situation related to the qualifications for a CPA certificate. Since the Board’s new 150-hour education requirement will become effective on July 1, 2006, the new language ensures that exam candidates in Virginia are qualified, and meet the Board’s requirements. Similarly, the new language about the acceptance of credits earned at a community college ensures that exam candidates will meet the educational requirements to be certified by the Board. By requiring an applicant’s work experience to be “supervised and attested to by a non-CPA certificate holder,” the Board will ensure that the applicant’s work experience, already allowable under the supervision of a non-CPA certificate holder, can be attested to by that supervisor who has direct knowledge of the applicant’s work experience.</p> <p><b>Issues:</b> None.</p>
<p>18 VAC 5-21-40</p>		<p>The current section lists the requirements for issuing an original CPA certificate, and a CPA certificate by endorsement and by substantial equivalency.</p>	<p><b>Amendments:</b> This section was modified to clarify the current requirements for the issuance of an original CPA certificate and a certificate issued by endorsement. Information about the determination of substantially equivalent states was moved to a new section (18 VAC 5-21-51). Subsection A clarifies that an individual may practice as a CPA in Virginia only if he holds a “currently valid and unrestricted CPA certificate issued by the Board,” or “has met the temporary interstate practice rules” for the nonresident CPA to be found in a new section (18 VAC 5-21-52). In subsection B, concerning the original CPA certificate, new language was added to reflect a statutory mandate requiring an applicant to provide evidence of having obtained CPE credits. Subdivision B 3 details the subject matter and number of these credits, which includes the “most recent Ethics CPE course,” another mandate. Further, to ensure competence if the number of years between the successful completion of the CPA exam and the date of application exceed 10 years, and the “application is made after December 31, 2004,” the applicant “must pass the CPA exam described in 18 VAC 5-21-30 C.” Subsection C was modified to clarify that an individual must hold a “currently valid and unrestricted” license in another state to</p>

			<p>qualify for endorsement. Subsection D contains new language about “international reciprocity” that clarifies the process by which the Board accepts a “foreign country professional accounting credential” as substantially equivalent through evaluation and qualification examination, as well as the process for suspension or revocation of a CPA certificate based upon that foreign credential. The language in subsequent subsections have no substantive changes, except for subsection G, which alerts the regulant “who performs compilation services,” other than through a CPA firm, that he “shall undergo a peer review.”</p> <p><b>Consequences:</b> Unless enacted, an applicant who wants to practice as a CPA in Virginia will not have clarified requirements for an original CPA certificate or a certificate issued by endorsement, which includes the need to hold a “currently valid and unrestricted CPA certificate issued by the Board,” or to have “met the temporary interstate practice rules” for the temporary practice of a nonresident CPA. The new requirements for an applicant to provide evidence of having obtained CPE credits for each year beyond the year of successfully completing the CPA exam ensures that the applicant meets the Board’s competency requirements to be issued a CPA certificate. This is also true about the applicant being subject to reexamination if it has been longer than 10 years since passing the CPA exam. Further, the new language about “international reciprocity” is necessary to clarify the Board’s process to accept a “foreign country professional accounting credential” as substantially equivalent and, if necessary, to suspend or revoke the CPA certificate based on this credential. The other change offered here is important to alert the regulant who performs compilation services, other than through a CPA firm, that he “shall undergo a peer review.”</p> <p><b>Essential Nature:</b> Such clarification of the Board’s requirements to issue an original CPA certificate and a certificate issued by endorsement, as well as the requirements for an individual who wants to practice as a CPA in Virginia enables the applicants and the public to know the Board’s specific requirements. The CPE requirements for an applicant reflects the statutory requirement, which is here clarified so that individual who postpones his application for a CPA</p>
--	--	--	---

			<p>certificate after passing the CPA exam can be certified as competent before he practices public accounting for the public. The Board recognizes the international mobility of professionals through requirements, which are now listed here to assure an orderly process for an individual to get a CPA certificate in Virginia through "international reciprocity" as well as to discipline such an individual after he receives this certificate. Finally, the public, as well as the regulant, is assured that if a CPA "performs compilation services," other than through a CPA firm, he "shall undergo a peer review."</p> <p><b>Issues:</b> None.</p>
Not in current regulation.	18 VAC 5-21-41	The new section identifies when an individual qualifying for a CPA certificate is required to obtain a CPA certificate.	<p><b>Amendments:</b> This new section emphasizes the current statutory requirements that an individual who qualifies for a CPA certificate must obtain a CPA certificate if that individual wants to (i) practice "public accountancy in any capacity," (ii) use the "CPA title" and provide "services to the public," (iii) use the "CPA title" and perform or offer to perform "any services involving the application of accounting and auditing knowledge or experience, issuing reports on financial advisory or consulting services, tax returns, or furnishing advice on tax matters, for an employer or other organization and not for the public," or (iv) use the "CPA title" and perform or offer to perform "services as an educator in the field of accounting."</p> <p><b>Consequences:</b> This section is necessary for an individual who qualifies for a CPA certificate in Virginia to know the circumstances under which he must obtain a CPA certificate before practicing in Virginia. Otherwise, he may consider passing the CPA exam as sufficient, without gaining the proper professional competence and skills.</p> <p><b>Essential Nature:</b> This section is necessary for applicants and the public to know the circumstances under which an individual who qualifies for a CPA certificate in Virginia must obtain that certificate.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-50		The current section lists additional requirements for CPAs who supervise services involving the practice of public accountancy and who sign or authorize another to sign	<p><b>Amendments:</b> This section concerning "supervising CPAs" has no substantive changes except the current language in subdivision B 2 was divided into 4 easily readable parts.</p> <p><b>Consequences:</b> With no substantive changes, the creation of more easily</p>

		reports on financial statements.	readable subsections will enable the reader to have a better understanding and require less clarification. <b>Essential Nature:</b> The easier comprehension of the experience requirements enhances the supervising CPA's ability to provide better services to the public. <b>Issues:</b> None.
Not in current regulation.	18 VAC 5-21-51	The new section will provide information about how the Board determines substantial equivalency.	<b>Amendments:</b> This new section consists only of language to clarify how the Board currently determines substantially equivalent states, and provides a list of such states on its web site. <b>Consequences:</b> This section enables an individual who applies for a CPA certificate in Virginia to know how the Board determines whether a state meets the substantial equivalency provisions for nonresident CPA certificate holders, and how to obtain a list of such states. <b>Essential Nature:</b> Creating a new section on the Board's process to determine substantially equivalent states provides for a better understanding, and requires less clarification. <b>Issues:</b> None.
Not in current regulation.	18 VAC 5-21-52	The new section will address the requirements for temporary interstate practice by nonresident CPAs.	<b>Amendments:</b> This new section was created to identify the requirements for those CPAs, who are licensed in another state and do not reside in Virginia, to practice temporarily in Virginia. These requirements must be met prior to that CPA beginning work in Virginia. Specifically, the Board must be notified by the nonresident CPA within 30 days of "accepting an engagement or an assignment to render professional services" in Virginia. This section also includes the registration and fee requirements, and the exceptions from these requirements. <b>Consequences:</b> A nonresident licensed CPA, who wishes to practice public accountancy in Virginia temporarily, will come under the Board's requirements of notification, registration as well as exemptions for temporary interstate practice. <b>Essential Nature:</b> With interstate mobility, nonresident CPAs currently work in Virginia without informing the Board of their activity. To meet its statutory mandate to ensure the professional competence of CPAs practicing in Virginia, and to keep notified of such activity, the Board created specific registration requirements so information

			<p>about such CPAs can be available to the public should a need arise to file a complaint. Thus, the Board would have the ability to take action in such instances.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-60		<p>The current section identifies the process of registration of CPA firms.</p>	<p><b>Amendments:</b> This section on firm registration clarifies the requirements for a firm using the “CPA title,” even if “not engaged in the practice of public accounting,” to register with the Board, including the necessary information to be submitted with the application. A new requirement, which fulfills a statutory mandate requires the firm to submit an “affirmation that the firm has caused all non-CPA owners domiciled in Virginia, if any,” to complete the “most recent Ethics CPE course.” New language was added to clarify a requirement that the application for registration shall include a consent by the firm to “cooperate and comply with any request for testimony or the production of documents made by the Board.” Clarifying language has also been added about the conditions and manner in which firms must supply a peer review report to the Board.</p> <p><b>Consequences:</b> The clarifications provided in this section will assist firms to register with the Board. This includes providing the Board with an affirmation that all non-CPA owners living in Virginia meet the Board’s Ethics CPE requirement. In addition, to register as a firm, one must consent to cooperate with any investigation or request by the Board. Finally, the firm will have clarified information about the process of peer review.</p> <p><b>Essential Nature:</b> This clarification about firm registration is essential so that individual firms can meet the Board’s requirements. Further, it will provide information to the public about the conduct of firms and the standards to which they are held.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-70		<p>The current section establishes the requirements for a CPA firm or CPA certificate holder must undergo a peer review.</p>	<p><b>Amendments:</b> This section clarifies the conditions in which a firm or a CPA certificate holder must undergo a peer review, which shall be “no less stringent than the peer review program of the AICPA for firms that are not required to register with the PCAOB,” or one performed “under the auspices of the PCAOB for firms that are required to register with the PCAOB” (the PCAOB was added to comply with federal law—the Sarbanes-Oxley Act of 2002).</p>

			<p>New subsection C stipulates that a CPA certificate holder, who “provides compilation services to the public other than through a firm,” shall provide the “applicable peer review” and affirmation to the Board. New language has been added in subsection D about the conditions where a “report review is not required for engagements in which a CPA submits unaudited financial statements of non public entities.” No longer relevant language about affirmations has been deleted. There are no other substantive changes.</p> <p><b>Consequences:</b> The passage of the Sarbanes-Oxley Act of 2002 led to additional requirements that are to be incorporated in the Board’s regulations, reflecting the establishment of a national oversight board that will be involved in the process of peer review. Further, the language has been clarified so that CPA certificate holders, especially those who work for a non-traditional CPA firm and compile financial statements and those who provide “compilation services to the public other than through a firm,” are incorporated under the Board’s requirements. This language also states the conditions where a “report review is not required for engagements in which a CPA submits unaudited financial statements of non public entities.”</p> <p><b>Essential Nature:</b> With the Board’s focus on making CPA certificate and permit holders more accountable, clarified conditions about peer review were incorporated to ensure the competence of regulants and to protect the public.</p> <p><b>Issues:</b> None.</p>
<p>Not in current regulation.</p>	<p>18 VAC 5-21-72</p>	<p>The new section will list the grounds for enforcement actions against regulants.</p>	<p><b>Amendments:</b> This new section, which lists the “grounds for revocation and suspension of CPA certificates or permits and other disciplinary action against regulants,” is based upon language in the Uniform Accountancy Act.</p> <p><b>Consequences:</b> This new section will provide CPA certificate and permit holders with the grounds for any disciplinary action in a clearly accessible manner.</p> <p><b>Essential Nature:</b> The creation of this new section provides the public with the necessary information to evaluate the public accounting services provided, and to know whether to file a complaint against the regulant. The regulant will be able to understand these grounds for disciplinary</p>

			<p>action.  <b>Issues:</b> None.</p>
Not in current regulation.	18 VAC 5-21-73	The new section describes how the Board will use consultants in investigations.	<p><b>Amendments:</b> This new section, in accordance with § 54.1-4423 of the <u>Code of Virginia</u>, describes how the Board may “develop a roster of consultants,” and “contract with consultants to assist the Board in investigating and evaluating violations ... and to provide expert testimony as necessary.”</p> <p><b>Consequences:</b> Since this new section fulfills a statutory mandate, the Board includes it to provide the necessary information about the manner in which consultants may be used.</p> <p><b>Essential Nature:</b> This new section about consultants is essential because the Board is fulfilling its statutory mandate to identify how its consultants are to provide expert assistance to investigate and evaluate violations of the Board’s statutes and regulations, and expert testimony in any “subsequent administrative hearing or court proceeding.” Further, the Board identifies how it will be able to compensate the consultant, and provide the consultant with “immunity from civil liability resulting from any communication, finding, opinion or conclusion in the course of his duties unless such person acted in bad faith or with malicious intent.”</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-80		The current section identifies the requirements for renewal.	<p><b>Amendments:</b> The requirements for renewal were revised to incorporate (i) the deletion of no longer relevant requirements about permits issued to PCs and PLLCs in 1997 that became void on November 30, 1999; (ii) the sending of renewal notices by the most current e-mail or postal mail address of record; (iii) the necessity to meet the applicable CPE requirements prior to renewal; and (iv) the necessity of a CPA certificate holder to state whether he has “not compiled financial statements other than through a CPA firm that holds a permit” or “has compiled financial statements through a CPA firm and has complied with the peer review requirements.” There are no other substantive changes.</p> <p><b>Consequences:</b> If not revised, no longer relevant requirements about permits issued in 1997 that became void in 1999 would be maintained, thereby creating confusion about requirements that are no longer effective. Further, clarified renewal requirements about the sending of renewal</p>

			<p>notices, the necessity to meet the applicable CPE requirements, and the compilation of financial statements by a CPA certificate holder also would not be added.</p> <p><b>Essential Nature:</b> Not removing no longer relevant requirements about permits would create unnecessary confusion for the regulant and the public. By clarifying the requirements for a CPA certificate holder to renew their certificate, the Board will ensure the professional competence of its regulants for the public.</p> <p><b>Issues:</b> None.</p>
Not in current regulation.	18 VAC 5-21-81	The new section will identify the manner in which a CPA certificate holder does not have to renew his license and may use the designation of inactive status.	<p><b>Amendment:</b> This new section identifies that a CPA who is “not providing or offering to provide any services involving the application of accounting and auditing knowledge or experience, issuing reports on financial advisory or consulting services, preparing tax returns, or furnishing advice on tax matters for the public, an employer or other organization may discontinue renewal of his license and may use the designation CPA (Inactive) on business cards or letterhead.” Further, if this CPA should once again want to use the CPA title, he “shall meet the reinstatement requirements in 18 VAC 5-21-90.”</p> <p><b>Consequences:</b> If this section to enable non-practicing CPAs to use the inactive designation is not added, the public will not have a way to distinguish between those who are actively maintaining a license and those who are not. Further, the CPAs who must take some time away from practicing would not have a clarified procedure to maintain the CPA title by ‘inactive’ status and to begin practicing again.</p> <p><b>Essential Nature:</b> This new section is essential to provide clarified procedures for CPAs who should choose to no longer practice public accounting, and then later decide to practice again. Further, the public will be able to identify the difference between those CPAs who can practice from the ones who cannot.</p> <p><b>Issues:</b> None</p>
18 VAC 5-21-90		The current section identifies the requirements for reinstatement.	<p><b>Amendments:</b> New language has been added to clarify current reinstatement requirements for a CPA certificate or permit holder who has failed to renew within 12 months after the expiration date of their license. For example, language has been added that “no application for reinstatement shall be considered while the applicant is under sentence for criminal offense related</p>

			<p>to the practice of public accountancy, including any period during which the petitioner is on probation or parole for such offense.” Currently, the reinstatement application requires the applicant to provide an “explanation as to why the CPA certificate or permit was not renewed on a timely basis.” New language requires the applicant to provide a “description of services provided to clients since the expiration of his license.” Further, as in the section on original applications, the applicant for reinstatement is required, according to statutory mandate, to provide evidence of having obtained CPE credits. Subdivision A 8 details the subject matter and number of these credits, which includes the “most recent Ethics CPE course,” another statutory mandate. In addition, in the new subsection B, if a former CPA certificate holder “had not been licensed for the 10 years preceding the year application is made for reinstatement, and such application is made after December 31, 2004,” that individual “must pass the CPA exam described in 18 VAC 5-21-30 C.” After the firm permit is reinstated, the permit holder shall obtain a peer review within 2 years.</p> <p><b>Consequences:</b> This modification of the Board’s reinstatement requirements for a CPA certificate or permit holder will clarify such procedures for the applicant so that the process may be handled in a timely manner and to ensure that the applicant meets the Board’s competency requirements, including the requirement for CPE or peer review. Finally, the Board has imposed additional requirements for reinstatement, including the necessity to take CPE to ensure professional competence.</p> <p><b>Essential Nature:</b> The Board’s clarification is essential for the applicant to understand the specific requirements to reinstate a CPA certificate or permit, and for the public to understand that such applicants will be held to a high standard by the Board. The Board will be able to make a more informed judgment about an applicant’s competence through the additional information required by this clarification.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-100		The current section identifies the status of certificate holders during	<b>Amendments:</b> The only change in this section is the substitution of “permit” for “registration certificate.” There is no other

		the period prior to reinstatement.	<p>substantive change.</p> <p><b>Consequences:</b> In Section 54.1-4400, the term “registration certificate” was replaced by “permit.” Therefore, the statute mandates this change.</p> <p><b>Essential Nature:</b> The substitution of the term “permit” for “registration certificate” will not affect the public. Further, since this is a statutory change, there is no discretion.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-110		The current section states that individuals must notify the Board if there is a change of address or name, or if the Board makes a request, in 30 days.	There is no substantive change to this section.
18 VAC 5-21-120		The current section lists the standards of conduct for all regulants.	<p><b>Amendments:</b> This section includes new language clarifying that the CPA certificate and permit holder are “required to follow the applicable standards of conduct established by regulatory or professional standard setting boards,” or their successors, which are “effective at the time of the services.” Further, to clarify that the listed standards are not definitive, they were deleted except for the subsection on “commissions and fees,” which contains no substantive changes, and the subsection on “prohibited acts,” which are identified as being acts “described in § 54.1-4413 of the Code of Virginia, or 18 VAC 5-21-72 of this chapter.”</p> <p><b>Consequences:</b> This clarification ensures that the CPA certificate and permit holder will follow such standards of conduct that are “effective at the time of the services,” and remove any doubts about specific standards listed in current regulations.</p> <p><b>Essential Nature:</b> These changes are essential to clarify any confusion about the “applicable standards of conduct” for the regulants, and to enhance the understanding of the public, should they need to file a complaint with the Board.</p> <p><b>Issues:</b> None.</p>
Not in current regulation.	18 VAC 5-21-121	The new section lists the standards of conduct for CPA certificate and permit holders involved in the practice of taxation.	<p><b>Amendments:</b> The current language in 18 VAC 5-21-140 was moved to this new section and identified as “standards of conduct,” rather than “standards of practice,” that apply to CPA certificate and permit holders who practice taxation. There are no other substantive changes.</p> <p><b>Consequences:</b> By not moving the current language to this new section and not making these changes, the CPA certificate and permit holder would not have a clear</p>

			<p>understanding of the conduct required in the “practice of taxation.”</p> <p><b>Essential Nature:</b> These changes are essential to provide information about these standards of conduct in a single location for reference, and to enhance understanding by the regulants and the public, should they need to file a complaint with the Board.</p> <p><b>Issues:</b> None.</p>
Not in current regulation.	18 VAC 5-21-122	The new section identifies the standards of conduct for CPA certificate and permit holders providing consulting services.	<p><b>Amendments:</b> The current language in 18 VAC 5-21-150 was moved to this new section and identified as “standards of conduct,” rather than “standards of practice,” that apply to CPA certificate and permit holders who provide consulting services. There are no other substantive changes.</p> <p><b>Consequences:</b> By not moving the current language to this new section, and not making these changes, the CPA certificate and permit holder would not have a clear understanding about the conduct required to provide consulting services.</p> <p><b>Essential Nature:</b> These changes are essential to provide information about these standards of conduct in a single location for reference, and to enhance understanding by the regulants and the public, should they need to file a complaint with the Board.</p> <p><b>Issues:</b> None.</p>
Not in current regulation.	18 VAC 5-21-123	The new section identifies the standards of conduct for firms holding permits.	<p><b>Amendments:</b> The current language in 18 VAC 5-21-160 was moved to this new section and identified as “standards of conduct,” rather than “standards of practice,” for CPA permit holders. Subsections A through F come from current language in 18 VAC 5-21-160 with no substantive changes, while subsections G through I come from current subsections N and O in 18 VAC 5-21-120. The only substantive change in subsection H is that a firm “may continue to use a name that includes the name of a retired or former member,” and “may use the maiden name of a member rather than the member’s married name.” Subsection J includes new language about the “destruction, alteration, or falsification of records in governmental investigations” that is based upon language about criminal penalties for altering documents in federal law (the Sarbanes-Oxley Act of 2002).</p> <p><b>Consequences:</b> This clarification ensures that permit holders will follow such standards of conduct that apply to them, including the new requirements about firm</p>

			<p>names, and remove any confusion about specific standards listed in current regulations and federal law.</p> <p><b>Essential Nature:</b> These changes are essential to clarify any confusion about the applicable standards in current regulation and federal law, including the flexibility to change the firm’s name. Passage of the Sarbanes-Oxley Act of 2002 has led to an increased focus on the accountability of CPA firms, which is reflected in the Board’s new language about the destruction, alteration, or falsification of records in a governmental investigation, so the public, should they need to file a complaint, would know that a firm could not hinder any investigation.</p> <p><b>Issues:</b> None.</p>
<p>18 VAC 5-21-130</p>		<p>The current section identifies the standards of practice for CPA certificate and permit holders involved in the practice of public accounting or compiling financial statements.</p>	<p><b>Amendments:</b> This section was clarified to indicate that the standards of practice for those involved in the “practice of public accounting or compiling financial statements” apply to CPA certificate and permit holders. Further, language was revised to emphasize that regulants shall follow the standards “applicable under the circumstances and at the time of the services,” and “issued by any successor to the entities referred to” in this section. Thus, the dates of these listed documents were removed to avoid any confusion. Subdivision 8 was corrected to indicate that the Auditing Standards Board of the AICPA issues the Statements on Standards for Attestation Engagements. Subdivision 9 was revised to incorporate standards “issued by the PCAOB,” which was added to comply with federal law (the Sarbanes-Oxley Act of 2002). Subdivisions 10 and 11 were added to include the Statements on Standards for Consulting Services, and for Tax Services, issued by the AICPA. Finally, subdivision 12, which is new language, clarifies that the regulant is also required to comply with standards issued by “other professional or governmental bodies.”</p> <p><b>Consequences:</b> This clarification about the standards of practice for those involved in the “practice of public accounting or compiling financial statements” ensures that both CPA certificate and permit holders will follow such standards, which are “applicable under the circumstances and at the time of the services,” and “issued by any successor to the entities referred to” in this section.</p> <p>The removal of the dates on these reference</p>

			<p>documents will further remove any doubts about the applicability of these specific standards in current regulations and federal law.</p> <p><b>Essential Nature:</b> These changes are essential to clarify any confusion about the standards of practice for CPA certificate and permit holders, should they wish to maintain their professional competence, and for the public, should they wish to file a complaint with the Board.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-140		The current section identifies the standards of practice for CPA certificate holders providing tax compliance and advice.	<p><b>Amendments:</b> Current language was deleted from this section and moved to 18 VAC 5-21-121. See above for specific changes.</p> <p><b>Consequences:</b> By not making these changes, there would be confusion about the “standards of conduct” for CPA certificate and permit holders that provide tax services.</p> <p><b>Essential Nature:</b> Such changes are essential to provide an easily referable list of the standards of conduct for the regulant and the public.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-150		The current section identifies the standards of practice for CPA certificate holders providing consulting services.	<p><b>Amendments:</b> Current language was deleted from this section and moved to 18 VAC 5-21-122. See above for specific changes.</p> <p><b>Consequences:</b> By not making these changes, there would be confusion about the “standards of conduct” for CPA certificate and permit holders that provide consulting services.</p> <p><b>Essential Nature:</b> Such changes are essential to provide an easily referable list of the standards of conduct for the regulant and the public.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-160		The current section identifies the standards of practice for firms holding registration certificates.	<p><b>Amendments:</b> Current language was deleted and moved to 18 VAC 5-21-123. See above for specific changes.</p> <p><b>Consequences:</b> By not making these changes, there would be confusion about the “standards of conduct” for permit holders.</p> <p><b>Essential Nature:</b> Such changes are essential to provide an easily referable list of the standards of conduct for the regulant and the public.</p> <p><b>Issues:</b> None.</p>
18 VAC 5-21-170		The current section identifies the CPE requirements for CPA certificate applicants and	<p><b>Amendments:</b> This section on CPE requirements was clarified so that CPA certificate applicants and certificate holders may choose only courses that maintain or</p>

		<p>for CPA certificate holders.</p>	<p>improve their professional competence. Subdivision A 2 was deleted since it is no longer relevant. A new subsection B about using the CPA title and planning to perform services for the public was added from current language in subdivisions A 3 (which was deleted) and A 4, where the CPA certificate holder “shall obtain 120 CPE credits during the 36 months prior to” the time such services “are commenced.” The subject matter and number of these credits is also identified and include the “most recent Ethics CPE course.” New subdivision C 1, from current language in B 1, pertains to those using the CPA title and performing services other than for the public. This subdivision was clarified due to statutory changes to reflect that the commencement date of each three-year reporting period is January 1<sup>st</sup>, not July 1<sup>st</sup>. New subdivision C 2, from current language in subdivision B 3, was only changed to state that an individual who “obtained his CPA certificate at a time when he did not intend to provide services for the public and subsequently decides to provide for the public the services” must, before performing such services, meet the CPE requirements of subdivision A 1. New subsection E states that a CPA certificate holder, who “has not obtained 120 CPE credits by the end of a CPE reporting cycle or has not met the minimum 20 CPE credits per CPE reporting year requirement for a year,” shall have an “automatic 31-day grace period after the end of the CPE reporting cycle or after the end of a year to make up the deficiency.” New subsection F contains language about how a CPA holding “a currently valid CPA certificate from a state in which he has his principal office is not required to meet the Board’s CPE requirements so long as that state has a CPE requirement of at least 120 CPE credits during a three-year reporting period.” New subsection G states that an individual “failing to meet the CPE requirements may be subject to re-qualification, including possible retesting and experience requirements.” New subsection H states that the Board, “at its discretion,” may “waive or defer CPE requirements so long as such waiver or deferral is in the public interest.” New subsection I, about retaining records, consists of language from current subsection D with no substantive change.</p>
--	--	-------------------------------------	---

			<p>Subsection J consists of language from current subsection E about CPE credit. The new language in subdivision J1 clarifies how to measure the program length of CPE courses for credit. The language in subdivision J 2 comes from current language in subdivision E 2, but clarifies that an instructor will receive CPE credit for teaching as long as the course (i) “qualifies for CPE credit for participants;” (ii) is the “first presentation of the course;” and (iii) its activities “maintain or improve the CPA certificate holder’s professional competence.” Additional language was included to clarify that instructors will receive “CPE credit for presentation time plus preparation time up to two times the presentation time” as long as the instructor maintains “evidence to support the request for CPE credit.” Such credit will “not exceed 30 CPE credits per CPE reporting cycle.” The language in subdivision J 3, which comes from current language in subdivision E 3, was changed so that participants in self-study programs must now “complete a final exam” to receive CPE credit. However, current language about how CPE credits “will be determined by the CPE program sponsor based on pre-tests to determine average completion time” was kept. Specific mention is made about Quality Assurance Service (QAS) credits being accepted for “self-study courses.” Subdivision J 4 contains new language about “CPE credit ... given for researching and writing articles, books, or CPE programs that are reviewed by an independent party, are published, and maintain or improve the CPA certificate holder’s professional competence.” This language also clarifies the type of documentation the regulant must supply to receive CPE credits.</p> <p><b>Consequences:</b> These modifications are essential to clarify the CPE requirements for CPA certificate applicants to be able to meet the Board’s requirements before offering public accounting services, and for CPA certificate holders to continue to maintain or improve their professional competence. The clarifications made to the Board’s commencement date of the three-year reporting cycle must be made due to statutory change, so it is mandatory. Further, the Board has provided CPA certificate holders with a 31-day grace</p>
--	--	--	--

			<p>period after the end of the CPE reporting cycle and the end of a reporting year to make up a deficiency, so regulants who currently take CPE courses at the end of a reporting cycle, or year, and receive their credits at the beginning of the next, can apply them to the appropriate cycle or year. Other changes are essential to clarify how to measure the program length of CPE courses for credit; how an instructor receives CPE credit for teaching; how participants in self-study programs earn CPE credit; and how to earn “CPE credit ... given for researching and writing articles, books, or CPE programs that are reviewed by an independent party, are published, and maintains or improves the CPA certificate holder’s professional competence.”</p> <p><b>Essential Nature:</b> Recent instances of alleged fraudulent accounting and financial reporting by certain large companies and the apparent failure of the audit firm to prevent such occurrences led the Board to modify their CPE requirements for CPA certificate applicants and certificate holders. By making these modifications, the Board will ensure that a regulant who provides public accounting services for the public, or for an employer or other organization, and not for the public, or as an educator in the field of accounting, will meet the Board’s requirements for continuing professional education and will maintain and improve his professional competence. The change of the beginning date of the three-year CPE reporting cycle is a statutory mandate, so there is no discretion.</p> <p><b>Issues:</b> None.</p>
--	--	--	---

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

Regulations governing the practice of CPAs in the Commonwealth are intended to qualify persons to work in a profession that requires specific knowledge and skills as well as experience in a number of very complex areas. These emergency regulations have been developed to implement Chapter 291 of the 2003 Acts of the General Assembly. Every effort has been made to implement only those changes mandated by the statute and every effort has been made to minimize its impact on the public.

In every case, the Board of Accountancy considered whether there was a less burdensome alternative. Alternatives that failed to meet this consideration were rejected. Throughout the process of preparing

these emergency regulations, the Board considered the costs of each provision in achieving its essential purpose and statutory mandate.

Due to the provisions of Chapter 291 (2003), the Board had little discretion in promulgating its regulations.

### Family impact

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

---

The amendments proposed by the Board of Accountancy will not have an impact on the institution of the family and family stability. The proposed amendments will not strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children. They will not 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. These amendments will not strengthen or erode the marital commitment. The effect of amendments on disposable family income will be minimal.