



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	5
VAC Chapter Number:	20
Regulation Title:	Virginia Board of Accountancy Regulations
Action Title:	Proposed
Date:	March 27, 2000

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board is currently operating under emergency regulations that implement the provisions of Senate Bill 926 (SB 926) passed by the 1999 Session of the Virginia General Assembly. The proposed regulations are necessary to replace the emergency regulations and to continue to implement the provisions of SB 926 (1999).

SB 926 (1999) established new requirements for education, examination and eligibility to receive a CPA certificate for candidates who will apply for an initial CPA certificate after July 1, 2006; replaced the two-tier regulation program (certificate of maintenance and license) with a single-tier program (CPA certificate); established new requirements for registration of CPA firms; established a peer review requirement for all firms practicing public accounting; amended the requirements for renewal and reinstatement of CPA certificates; established new standards of

practice and conduct for all regulants; and modified the continuing professional education (CPE) requirements.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Board's authority to promulgate the proposed regulations is contained in § 54.1-2002 of the Code of Virginia. The imperative form of the verb "shall" is used in the statute making the rulemaking provisions mandatory rather than discretionary.

Subsection B of § 54.1-2002 of the Code of Virginia specifically mandates that the Board certify and issue CPA certificates to individuals to practice public accounting and to restrict the practice of public accounting to those individuals who are so certified. The Board is further mandated to ensure the continued competence of those possessing CPA certificates.

Subsection B of § 54.1-2002 of the Code of Virginia also mandates that the Board issue registration certificates to firms that engage in the practice of public accountancy and to take the necessary actions to ensure that registered firms and the CPA certificate holders they employ adhere to the standards of conduct and practice established by regulation.

Subsection C of § 54.1-2002 of the Code of Virginia grants the Board the authority to establish, by regulations, the rules and procedures for implementation of the provisions of Chapter 20 of Title 54.1 of the Code of Virginia. Section 54.1-2002 of the Code is found at <http://www.state.va.us/dpor/CodeofVirginiaTitle54.pdf>.

In addition, SB 926 (1999) (Acts 1999,c. 950, cl. 2), provides: "That the Board of Accountancy shall promulgate regulations to implement the provisions of [the] act by October 1, 1999." SB 926 (1999) is found at <http://leg1.state.va.us/cgi-bin/legp504.exe?991+ful+CHAP0950>. By statute, emergency regulations may be in effect for only one year. Therefore, the proposed regulations must be in effect by October 3, 2000, which is the expiration date of the existing emergency regulations.

By memorandum dated March 20, 2000, the Office of the Attorney General stated that the agency has the authority to promulgate the proposed regulations under the authority granted the Board under § 54.1-201(5) of the Code of Virginia.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Board's proposed regulations are necessary to implement the requirements of SB 926 passed by the 1999 Session of the Virginia General Assembly. The Board was mandated by SB 926 (1999) to implement its provisions by emergency regulations no later than October 1, 1999. Emergency regulations may, by statute, be effective for no more than one year. For this reason, the Board must promulgate the proposed regulations in order to replace the emergency regulations that will expire on October 3, 2000. Failure to promulgate new regulations and have them in effect by October 3, 2000 will result in the Board's former regulations (effective April 1, 1997) coming back into effect. The former regulations do not contain the provisions necessary to implement SB 926 (1999) and would not provide the level of protection for the public health, safety or welfare currently in effect under the emergency regulations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The following is a summary of the revisions to the Board's April 1, 1997 regulations that are being proposed to implement SB 926 (1999). A number of these proposed revisions are already in effect under the emergency regulations that took effect on October 4, 1999.

Under section 18 VAC 5-20-10 of the proposed regulations, certain definitions have been added, modified or deleted to comply with the mandates established in SB 926 (1999). The definitions have been amended in accordance with the new requirements of Chapter 20 of Title 54.1 of the Code of Virginia.

Under section 18 VAC 5-20-11 of the proposed regulations, the fee schedule governing application fees, examination fees, renewal fees and reinstatement fees has been established in compliance with § 54.1-113 of the Code of Virginia. In addition, a prorated fee schedule has been established to accommodate the implementation of a staggered renewal system for all board regulants. This staggered renewal system replaces the current system in which every license issued by the board expires on September 30th of each year. The renewal fees are mandated in § 54.1-2004 of the Code of Virginia.

Under section 18 VAC 5-20-20 of the proposed regulations, new qualifications for education, examination and eligibility to receive a CPA certificate have been established for candidates who will be applying for an initial CPA certificate after July 1, 2006. SB 926 (1999) has amended

§ 54.1-2003 to establish more stringent standards for applicants who apply on July 1, 2006 and thereafter.

Sections 18 VAC 5-20-30 and 18 VAC 5-20-40 have been deleted in their entirety due to new provisions mandated by SB 926 (1999).

Section 18 VAC 5-20-41 of the proposed regulations is a new section that governs the issuance of original CPA certificates, certificates by endorsement and substantial equivalency qualifications; and supervising CPA qualifications. Specifically, SB 926 (1999) mandates that "certificate holders" and "licensees" will both become holders of CPA certificates – ending the current two-tier system. In order to obtain a CPA certificate, the applicant must complete the education, examination and experience requirements. Once all requirements are met, the individual may obtain a CPA certificate, which will act as a license. The certificate authorizes the individual to practice public accountancy.

SB 926 (1999) also mandates that each applicant for a certificate by endorsement submit an application documenting that the applicant holds a corresponding certificate as a certified public accountant issued after meeting examination and other requirements under laws of the state(s) from which the applicant is seeking endorsement.

CPA certificate holders will be required to meet additional experience requirements before supervising services involving the practice of public accounting, or before signing or authorizing another person to sign the accountant's report on the financial statements on behalf of the firm.

Sections 18 VAC 5-20-50 through 18 VAC 5-20-80 have been deleted in their entirety due to new provisions mandated by SB 926 (1999).

Section 18 VAC 5-20-81 of the proposed regulation is a new section that establishes additional requirements for Supervising CPAs. In addition to the one year of experience required to receive a CPA certificate, CPAs desiring to supervise shall have one additional year of experience in the practice of public accounting, as defined in section 18 VAC 5-20-10, beyond that required for the initial CPA certificate.

Section 18 VAC 5-20-90 has been deleted in its entirety due to new provisions mandated by SB 926 (1999).

Section 18 VAC 5-20-91 of the proposed regulations is a new section that establishes new requirements for the registration of CPA firms. To implement the amended provisions of § 54.1-2005 B of the Code of Virginia, any firm with one or more offices in the Commonwealth which practices, directly or indirectly, public accounting or which uses the term "Certified Public Accountant(s)" or the designation "CPA" in the name of the firm, shall register with the Board to obtain a registration certificate.

Section 18 VAC 5-20-95 is a new section that provides specific guidelines and requirements to implement the amended provisions of § 54.1-2005 C 5 and § 54.1-2005 D 2 of the Code of Virginia which now require public accounting firms with one or more offices in the Commonwealth engaged in public accounting or using the term "Certified Public

Accountant(s)” or the designation “CPA” in the name of the firm to undergo a peer review at least once every three years after becoming registered.

Under sections 18 VAC 5-20-100 and 18 VAC 5-20-110 of the proposed regulations, the requirements for renewal and reinstatement of CPA certificates have been amended to implement a staggered renewal system so as to result in an approximately equal number of certificates expiring each month.

Section VAC 5-20-112 has been added to replace sections 18 VAC 5-20-140 and 18 VAC 5-20-380 which have been deleted in their entirety.

Sections 18 VAC 5-20-120 through 18 VAC 5-20-440 have been deleted in their entirety due to new provisions mandated by SB 926 (1999).

Section 18 VAC 5-20-441 of the proposed regulations has been added to establish new standards of practice and conduct for all regulants in compliance with the new provisions of SB 926 (1999).

Sections 18 VAC 5-20-442 through 18 VAC 5-20-444 of the proposed regulations have been added to establish specific Standards of Practice for CPA certificate holders involved in various aspects of the practice of public accounting as identified by SB 926 (1999).

Section 18 VAC 5-20-445 of the proposed regulations has been added to establish new standards of practice for new firm regulants as established by SB 926 (1999).

Section 18 VAC 5-20-450 has been deleted in its entirety due to new provisions mandated by SB 926 (1999).

Section 18 VAC 5-20-451 has been added to clarify new CPE requirements as provided in § 54.1-2004 B and § 54.1-2004 C of the Code of Virginia.

Sections 18 VAC 5-20-460 through 18 VAC 5-20-500 have been deleted in their entirety due to new provisions mandated by SB 926 (1999).

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage to the public of implementing the new regulatory provisions is the enhanced protection to the public resulting from the additional oversight of a profession that has inherent qualities distinguishing it from ordinary work and that requires specialized skill and training. The primary advantage to the Board and to the Commonwealth is the reasonable implementation of an Act of the

General Assembly. No disadvantages to the public, the agency or the Commonwealth have been identified.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The Board of Accountancy regulates individuals in the practice of public accountancy as prescribed in Title 54.1, Chapter 20 of the Code of Virginia. The Board consists of seven members, and meets at least quarterly in Richmond. The Department of Professional and Occupational Regulation supports the Board by performing a variety of tasks including: assisting applicants seeking a license, assisting licensees with the renewal process, and helping consumers file and resolve complaints against a licensee who has violated regulations. 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. The following analysis explains the types of costs incurred by the department in support of the Board's operations, and provides estimates of revenues expected to be generated on behalf of the Board, for the current and next two biennia.

Board of Accountancy

Analysis of Expenses by Category

Background

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 indirect costs. The Department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The following explanations provide a description of the types of costs included in each category of expenditure.

Direct Board Expenses

Board expenses are those costs incurred directly by the Board for conducting meetings and public hearings, conducting regulatory review, and providing information to licensees and the public. Specific expenditures charged in this category include travel and per diem expenses incurred by board members while conducting board activities, printing, and postage for regulations, newsletters, and other information.

1998-00	\$ 102,961
2000-02	\$ 106,050
2002-04	\$ 109,231

Board Administration

Board Administration expenses include the costs of Department staff who directly support board operations by administering the regulatory program, reviewing applications, issuing licenses, responding to questions, conducting board meetings, and providing assistance to licensees and the public. Charges are allocated based on each board's percentage of licensees.

1998-00	\$ 367,159
2000-02	\$ 378,174
2002-04	\$ 389,519

Administration of Exams

Examinations expenses represent the costs of Department staff who work with boards to develop examinations, manage and administer examinations, and contract with vendors for the development and/or administration of examinations. Costs are allocated based on percentages of time and effort given to each board by Examination staff, and the number of exams given for each board.

1998-00	\$ 16,461
2000-02	\$ 16,955
2002-04	\$ 17,463

Enforcement

Enforcement expenses represent the costs associated with complaint processing, investigation of allegations against licensees, and adjudication of cases. These costs are allocated to each board based on the number of complaints and cases, as well as number of hours worked on behalf of each board.

1998-00	\$ 39,011
2000-02	\$ 40,181
2002-04	\$ 41,387

Legal Services

Legal Service charges include billings from the Office of the Attorney General for hourly support provided to each board, and the costs of court reporters and hearing officers. Charges are allocated based on actual usage.

1998-00	\$ 9,473
2000-02	\$ 9,757
2002-04	\$ 10,050

Information Systems

Information Systems expenses include costs associated with systems processing, maintaining information systems, maintaining licensee record information, and an allowance for investment in technology to make the information system more efficient and useful. Charges are allocated based on each board's percentage of licensees.

1998-00	\$ 140,975
2000-02	\$ 145,204
2002-04	\$ 149,560

Facilities Management and Support Services

These are costs associated with facilities management, procurement and contracting activities, and the mailroom. Charges are allocated based on each board's percentage of licensees.

1998-00	\$ 152,717
2000-02	\$ 157,299
2002-04	\$ 162,017

Agency Administration

Agency Administration expenses include the Department's general administrative support and overhead costs, including the office of the Agency Director, personnel, administration, and finance. Charges are allocated based on each board's percentage of licensees.

1998-00	\$ 138,941
2000-02	\$ 143,109
2002-04	\$ 147,403

Transfers/Other

The Transfers/Other category includes transfers to the General Fund of the Commonwealth as mandated in the Appropriations Act, generally to pay the Department's share of central state processing and support costs. Charges are allocated based on each board's percentage of licensees.

1998-00	\$ 2,645
2000-02	\$ 2,724
2002-04	\$ 2,806

Revenues

All program revenues consist of monies collected from various licensing fees. The program receives no general fund support. The board adopted a new fee structure in fiscal year 1999 in response to changes in the program's licensing structure and new regulatory requirements. Most of the revenue projected for the 1998-00 biennium reflects the previous fees, while projections for 2000-02 and 2002-04 reflect the fees currently in place.

1998-00	\$ 796,084
2000-02	\$ 911,352
2002-04	\$ 899,136

Callahan Calculation

Actual and projected Callahan percentages for each biennium are provided below. As required by the Callahan Act, fees were adjusted after the 1996-98 biennium, taking into account the need to reduce the Callahan percentage as well as expanded regulatory activities resulting from new statutory and regulatory requirements. Both revenues and expenditures are increasing as a result of new regulatory requirements, and under the new fee structure, the Callahan percentage will decrease. Revenues and cash collected on behalf of the board are expected to be adequate to support all operating expenses.

1996-98	103.3%
1998-00	69.5%
2000-02	58.7%
2002-04	29.1%

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Under section 18 VAC 5-20-10 of the proposed regulations, certain definitions have been added, modified or deleted to comply with the mandates established in SB 926 (1999). The definitions have been amended in accordance with the new requirements of Chapter 20 of Title 54.1 of the Code of Virginia.

Under section 18 VAC 5-20-11 of the proposed regulations, the fee schedule governing application fees, examination fees, renewal fees and reinstatement fees has been established in compliance with § 54.1-113 of the Code of Virginia. In addition, a prorated fee schedule has been established to accommodate the implementation of a staggered renewal system for all board regulants. This staggered renewal system replaces the current system in which every license issued by the board expires on September 30th of each year. The renewal fees are mandated in § 54.1-2004 of the Code of Virginia.

Under section 18 VAC 5-20-20 of the proposed regulations, new qualifications for education, examination and eligibility to receive a CPA certificate have been established for candidates who will be applying for an initial CPA certificate after July 1, 2006. SB 926 (1999) amended § 54.1-2003 of the Code of Virginia to establish more stringent standards for applicants who apply on July 1, 2006 and thereafter. In addition, applicants who pass two or more of the four sections of the CPA licensing examination will be given credit for the sections passed provided that certain conditions are met. Each applicant for initial issuance of a CPA certificate shall provide documentation of having at least one year of acceptable experience in accounting or a related field. The experience may include providing any type of service or advice involving the use of accounting, management, financial, tax, or consulting advisory skills or services. Acceptable experience shall include employment in government, industry, academia or public accounting or related services.

Sections 18 VAC 5-20-30 and 18 VAC 5-20-40 have been deleted in their entirety due to new provisions mandated by SB 926 (1999).

Section 18 VAC 5-20-41 of the proposed regulations is a new section that governs the issuance of original CPA certificates; certificates by endorsement and substantial equivalency qualifications; and supervising CPA qualifications. Specifically, SB 926 (1999) establishes that "certificate holders" and "licensees" will both become holders of CPA certificates – ending the current two-tier system. In order to obtain a CPA certificate, the applicant must complete the education, examination and experience requirements. Once all requirements are met, the individual may

obtain a CPA certificate, which will act as a license. This certificate authorizes the individual to practice public accountancy.

SB 926 (1999) also mandates that each applicant for a certificate by endorsement submit an application documenting that the applicant holds a corresponding certificate as a certified public accountant issued after meeting examination and other requirements under laws of the state(s) from which the applicant is seeking endorsement.

CPA certificate holders will be required to meet additional experience requirements before supervising services involving the practice of public accounting, or before signing or authorizing another person to sign the accountant's report on the financial statements on behalf of the firm.

Sections 18 VAC 5-20-50 through 18 VAC 5-20-80 have been deleted in their entirety due to new provisions mandated by SB 926 (1999).

Section 18 VAC 5-20-81 of the proposed regulation is a new section that establishes additional requirements for Supervising CPAs. In addition to the one year of experience required to receive a CPA certificate, CPAs desiring to supervise shall have one additional year of experience in the practice of public accounting, as defined in 18 VAC 5-20-10, beyond that required for the initial CPA certificate. At least 600 of these hours must be in the performance of audits or reviews. One year of experience shall consist of no fewer than 2,000 hours of full or part-time employment that extends over a period of no less than one year and no more than three years. The experience must have been gained under the direct supervision of a CPA certified in any state. Individuals who were issued a CPA license under the April 1, 1997 regulations will be deemed to have met this requirement provided their CPA license was still valid on October 4, 1999.

Section 18 VAC 5-20-90 has been deleted in its entirety due to new provisions mandated by SB 926 (1999).

Section 18 VAC 5-20-91 of the proposed regulations is a new section that establishes new requirements for the registration of CPA firms. To implement the amended provisions of § 54.1-2005 B of the Code of Virginia, any firm with one or more offices in the Commonwealth which practices, directly or indirectly, public accounting or which uses the term "Certified Public Accountant(s)" or the designation "CPA" in the name of the firm, shall register with the board. To implement the amended provisions of § 54.1-2005 C of the Code of Virginia, any firm with an office in the Commonwealth providing or offering to provide public accounting services shall be issued a registration certificate by the Board upon application and payment of the required fee. To implement the amended provisions of § 54.1-2005 D of the Code of Virginia, any firm that is not engaged in the practice of public accounting but uses the term "Certified Public Accountant" or the "CPA" designation in its name shall be issued a registration certificate by the Board upon its application and payment of the required fee provided the firm is in compliance with certain subdivisions of § 54.1-2005 C of the Code of Virginia. To implement the amended provisions of § 54.1-2005 C 3 of the Code of Virginia, all non-CPA owners must work in the registered firm. "Work in the firm" means that the non-CPA owner must be employed full-time by the firm, and those retiring have one year from the last day of

their full-time involvement with the firm to dispose of their interest. Heirs shall have two years in which to dispose of the ownership interest.

Section 18 VAC 5-20-95 is a new section that provides specific guidelines and requirements to implement the amended provisions of § 54.1-2005 C 4 and § 54.1-2005 D 2 of the Code of Virginia which now require public accounting firms with one or more offices in the Commonwealth engaged in public accounting or using the term "Certified Public Accountant(s)" or the designation "CPA" in the name of the firm to undergo a peer review at least once every three years after becoming registered with the Board.

Under sections 18 VAC 5-20-100 and 18 VAC 5-20-110 of the proposed regulations, the requirements for renewal and reinstatement of CPA certificates have been amended to implement a staggered renewal system so as to cause an approximately equal number of CPA certificates to expire each month. Each CPA certificate that expires on September 30, 2000 shall be renewed in a manner to implement the staggered renewal system. To implement the new entry standards for firm registration mandated by SB 926 (1999), all registration certificates issued to professional corporations and professional limited liability companies under the April 1, 1997 regulations became void on November 30, 1999. Those firms must apply for registration with the Board in compliance with the requirements of section 18 VAC 50-20-91. The November 30, 1999 deadline appears in the currently effective emergency regulations and is being retained even though the date has passed. Currently, a number of firms have not yet applied for the "new" registration and the Board feels the November 30, 1999 deadline has regulatory value. Section 18 VAC 5-20-110 also amends the time period for reinstatement. If regulants fail to renew within 12 months after the expiration date of the certificate or the registration, they must apply for reinstatement.

Section 18 VAC 5-20-112 has been added to replace sections 18 VAC 5-20-140 and 18 VAC 5-20-380 which have been deleted in their entirety.

Sections 18 VAC 5-20-120 through 18 VAC 5-20-440 have been deleted in their entirety due to new provisions mandated by SB 926 (1999).

Section 18 VAC 5-20-441 of the proposed regulations has been added to establish new standards of practice and conduct for all regulants in compliance with the new provisions of SB 926 (1999). Of note, as provided in § 54.1-2007 D 2 and 3 of the Code of Virginia, a CPA certificate holder shall not perform for a contingent fee (i) any services for, or receive such a fee from, a client for whom the CPA certificate holder or his firm performs services which involve the practice of public accounting, during the period when such services are being provided and during the period covered by the financial statements; or (ii) prepare an original tax return or claim for a tax refund for a contingent fee for any client. As provided in § 54.1-2007 D 1 of the Code of Virginia, a CPA certificate holder shall not recommend to a client any product or services for a commission, or, for a commission, recommend or refer any product or service to be supplied by a client, or receive a commission when the CPA certificate holder also performs for that client any service which involves the practice of public accounting. This prohibition applies during the period in which the CPA certificate holder is providing services which involve the giving of an assurance or during the period covered by any financial statements that were prepared by the CPA certificate holder as a part of such services. As provided in § 54.1-2007 E of the Code of

Virginia, a CPA certificate holder who is not prohibited from accepting a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the CPA certificate holder recommends or refers a product or service to which the commission applies. As provided in § 54.1-2007 F of the Code of Virginia, a CPA certificate holder who accepts a referral fee for recommending or referring any service of a CPA certificate holder shall disclose such payment to the client.

Sections 18 VAC 5-20-442 through 18 VAC 5-20-444 of the proposed regulations have been added to establish specific Standards of Practice for CPA certificate holders involved in various aspects of the practice of public accounting as identified by SB 926 (1999).

Section 18 VAC 5-20-445 of the proposed regulations has been added to establish new standards of practice for new firm regulants as established by SB 926 (1999).

Section 18 VAC 5-20-450 has been deleted in its entirety due to new provisions mandated by SB 926 (1999).

Section 18 VAC 5-20-451 has been added to clarify new CPE requirements. As provided in § 54.1-2004 B of the Code of Virginia, any person referring to himself as a "Certified Public Accountant" or "CPA," including the use of the "CPA" title on individual business cards, letterhead and all other documents and devices except the CPA certificate, and who is performing or offering to perform any services involving accounting skills or auditing skills, issuing reports on financial advisory or consulting services, preparing tax returns, or furnishing advice on tax matters, for the public, shall obtain 120 hours of continuing professional education during each three-year period with a minimum of 20 hours per year. The CPA certificate holder may choose the areas of study and courses. Any individual covered by this provision who previously was not required to obtain continuing professional education, shall obtain at least 20 hours of continuing professional education in each of the calendar years 2000, 2001 and 2002 and meet the 120 hour requirement for the three year period ending December 31, 2002. As provided in § 54.1-2004 C of the Code of Virginia, effective July 1, 2002, any person referring to himself as a "Certified Public Accountant" or "CPA," including the use of the "CPA" title on individual business cards, letterhead and all other documents and devices except the CPA certificate, and who is performing or offering to perform any services involving accounting skills or auditing skills, issuing reports on financial advisory or consulting services, preparing tax returns, or furnishing advice on tax matters, for an employer or other organization and not for the public, or who is employed as an educator in the field of accounting, shall meet the following CPE requirements as a condition of renewal of the person's CPA certificate: (i) for the three -year reporting period beginning July 1, 2002, a minimum of 45 credit hours with a minimum of 10 hours per year, (ii) for the three-year reporting period beginning July 1, 2005, a minimum of 90 credit hours with a minimum of 15 hours per year, and (iii) for the three-year reporting periods beginning on or after July 1, 2008, a minimum of 120 credit hours with a minimum of 20 hours per year. The certificate holder may choose the areas of study and courses.

Sections 18 VAC 5-20-460 through 18 VAC 5-20-500 have been deleted in their entirety due to new provisions mandated by SB 926 (1999).

Alternatives

Please describe the specific 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 newly proposed regulations contain a number of provisions that are less restrictive, burdensome and intrusive on the regulants of the Board of Accountancy than the regulations supplanted by the current emergency regulations.

Specifically, under the proposed regulations “certificate holders” and “licensees” will both become holders of CPA certificates – ending the current two-tier system. In order to obtain a CPA certificate, the applicant must complete the education, examination and experience requirements. Once all requirements are met, the individual may obtain a CPA certificate, which will act as a license. This certificate then allows the individual to practice public accountancy.

Firm ownership by CPAs has been decreased from 100% CPA ownership to a requirement of only 51% CPA ownership. (Note: Chapter 13.1 of the Code of Virginia sets higher ownership requirements for professional corporations and professional limited liability companies.)

A new provision for “Substantial Equivalency”, which will ease the burden on a CPA’s ability to practice across state lines, is implemented. “Substantial Equivalency” allows CPAs to practice in Virginia without a Virginia CPA certificate if (i) their state’s education, examination, and experience requirements are equal to or exceed those in Virginia; or (ii) they have personally met requirements which are comparable to or exceed Virginia’s new requirements.

In every case, the Board considered whether there was a less burdensome alternative. Alternatives that failed to meet this consideration were rejected. Throughout the process, the Board considered the costs of each provision in achieving the essential purpose.

Due to the provisions of SB 926, the Board had little discretion in promulgating its regulations. However, SB 926 is silent in the areas of fee amounts, application processing and procedure, and general standards of practice and conduct.

The fee structure adopted for the regulations is evaluated at the end of every biennium and adjusted in accordance with § 54.1-113 of the Code of Virginia.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

Comment received from:

Thomas J. Herr, CPA

I am writing this letter to express my concern over the new emergency regulations covering CPA Certificate holders. Specifically regarding the requirement for Peer Review. As a part time sole proprietor with a small practice consisting of compilations and tax return preparation I feel that this regulation places an unfair burden on my practice, both as to time and expense.

Due to the fact that in Virginia anyone can practice as an "accountant" and prepare financial statements and do tax returns, my competition for this market is not restrained by these new regulations. It is my opinion that if these regulations apply to my practice than they should apply to everyone who is practicing as an "accountant". I would hate to see CPAs' having to give up this market to Ma and Pa bookkeeping firms, because they can no longer financially compete.

Board Response

The peer review is required by the Code of Virginia. The Board of Accountancy cannot change that requirement through regulation.

Peer reviews serve to protect the public from substandard practice.

The CPA's reputation for adherence to standards of conduct and practice results in the public differentiating a CPA from non-CPAs and, thus, it is in the best interest of CPAs for the Board to take reasonable steps to ensure that firms are adhering to these standards.

Though "Ma and Pa bookkeeping firms" can compile financial statements, the Code of Virginia does not permit non-CPAs to compile financial statements in accordance with SSARS, to use the SSARS report language, or to refer to standards of the American Institute of Certified Public Accountants.

W. Franklin Pugh, Attorney

I am writing regarding the changes to Virginia Code §54.1-2005 whereby non-CPA's now are permitted to own interests in public accountancy firms licensed under Chapter 20 of Title 54.1 of the Virginia Code. Our firm represents an accounting firm licensed under this title and organized as a Professional Limited Liability Company under Chapter 13 of Title 13.1 of the Virginia Code.

The definition of the term "firm" in Virginia Code §54.1-2000 includes limited liability companies. Thus, §54.1-2005(C) permits non-CPA's to own equity interests in limited liability companies licensed to perform public accounting services. However §13.1-1111 [of the Code of Virginia] indicates that no professional limited liability company may have as a member any one other than an individual or a professional business entity that is duly licensed or "otherwise legally authorized" to render the same professional services as those for which the LLC was organized, (with an express exception for architects, surveyors, and other similar professions).

A similar problem appears to exist in Chapter 7 of Title 13.1 relating to ownership of professional corporations. Section 13.1-544 limits ownership of those entities to licensed professionals (again, with an express exception for architects, surveyors, and other similar professions).

Perhaps we are overlooking something obvious or latent, but it does not appear to us that the General Assembly made changes to §13.1-544 or §13.1-1111 to create exceptions for accountants

to parallel what it was creating under Title 54. 1. Please be so kind to advise us of what we might be overlooking and/or the Board's position on the matter. Otherwise, accountancy firms organized as professional limited liability companies or professional corporations are left in a quandary as to whether they can issue equity positions to non-CPA employees as outlined in §54.1-2005(C) and the new regulations promulgated with respect thereto.

Board Response

Although §54.1-2005 (C) appears to conflict with the Code requirements relating to P.C.'s and P.L.L.C's (§13.1-542B and §13.1-1102 respectively), this is not the case. Based on consultation with Board counsel, it is the opinion of the Board that these statutes can be read harmoniously so as to give the full effect to all of them.

First, before a firm can register with the Board under Chapter 20 of Title 54.1 either as a P.C. or a P.L.L.C. which practices public accountancy, the firm must already exist in that form. Therefore, it cannot lawfully be a P.C. or P.L.L.C. unless it has already complied with all of the requirements of Title 13.1. Consequently, a P.C. or P.L.L.C. seeking registration as a public accountancy firm must reflect ownership by CPA certificate holders to the extent required by Title 13.1. Obviously, such an applicant will exceed (and thus comply with) the ownership requirement set out in §54.1-2005 (C).

Because §54.1-2005 (C) includes registration requirements for all types of firms, including those not required by law to have any particular percentage of certified public accountants, it is not inconsistent with the statutes found in Title 13.1.

Nancy H. Dykeman, CPA
Rebecca E. McCoy, CPA

The one change, which concerns our firm directly, is the wording used in Board Regulation 18 VAC 5-20-81 related to the experience requirement for Supervising CPAs. Our firm does not perform audits but does provide financial statement presentation services in the form of compilations and reviews. According to the experience requirement for a Supervising CPA only those individuals with a minimum of 600 hours of audit experience will be eligible to sign the report letter required for compilations and reviews. I believe this a gross inconsistency since the Board has failed to recognize the ability to gain experience in performing compilation and review serves as being sufficient expertise to supervise this work process.

If the wording in the emergency regulations is adopted without change, the Board has effectively stopped the ability of my partner and I to perform succession planning in our firm by promoting from within our organization to the level of Supervising CPA. We would be forced to hire from outside of our firm for any managerial position to meet the regulatory requirement or tell current employees to work at another firm for their audit experience and return to us when they have completed this requirement. Given how competitive the accounting job market is currently, I doubt we would have any of our employees return to us.

Please reconsider your position in the wording of Board Regulation 18 VAC 5-20-81 and revise the requirements to acknowledge the additional attestation services provided by licensed CPA firms.

Board Response

The Board has proposed a modification to Regulation 18 VAC 5-20-81.B.2 to permit a Supervising CPA, who performs reviews but not audits, to meet the one year of additional experience in the practice of public accounting by obtaining 600 hours of experience in performing reviews or audits.

This proposed change would eliminate the succession planning issue by promoting from within the organization because, in this situation, both Ms Dykeman and Ms. McCoy meet the existing Supervising CPA experience requirement.

John V. O'Connell, CPA

As a practicing Certified Public Accountant, I was very disappointed to see where SB926 passed and has been enacted into law within the Commonwealth of Virginia. I do not believe that we have improved standards within our state by increasing the requirements to enter the public accounting profession. I have been very pleased with the four-year college requirement and the exam/experience requirements. I believe these are more than satisfactory. Unfortunately, I believe we have allowed the educators and large firms to once again strike a blow against small business by passing these new requirements. I support the concept of self-regulation within the profession. I am aware that a large majority of states have already enacted similar laws. I suggest this is one bandwagon we would be very smart in not joining.

I notice that the emergency legislation was passed during the first four months of this year, when most small firms are struggling to survive tax season. I would appreciate your considering a moratorium (possibly one-year) whereby small firms would be allowed to respond to the legislation through appropriate channels. I have made a similar request to Governor Gilmore's office. I am also aware that the Board of Accountancy has allowed until November 29, 1999 to respond to these new requirements.

Board Response

The 150 hour requirement, which goes into effect July 1, 2006, has been passed by substantially all of the states. Not having this requirement would place CPAs in Virginia at a competitive disadvantage for a number of reasons, including:

Because Virginia could never be considered to a substantially equivalent state by any other state, CPAs licensed in Virginia could never practice in other states without first obtaining a CPA certificate by endorsement, which requires the expenditure of time and money to obtain.

Graduates from Virginia universities would find themselves at a competitive disadvantage because they would not be able to obtain CPA certificates (licenses) in most of the other states.

The lack of equivalent education would lessen the ability of graduates from Virginia universities to compete with graduates from states that have adopted the 150 hour requirement.

The Board did not receive any pressure whatsoever from either educators or Big Five firms to adopt the 150 hour requirement. The seven-member Board of Accountancy

includes one educator and one CPA with a Big Five firm. Also, the Board did not perceive this issue as a small or large firm issue. This legislation was proposed by the Virginia Society of Certified Public Accountants (VSCPA), the majority of members of which are with non-Big Five firms, and the Chief Patron of the bill in the Senate is a CPA with a small firm.

The Board is not authorized to delay implementation of the Code of Virginia provisions.

With respect to the comments on the Board's regulations, the existing regulations are emergency regulations. The Board is now going through a due process that will result in the adoption of permanent regulations by September 30, 2000.

Robert L. Kelly, III, CPA

I would like the Virginia Board of Accountancy to consider the following before reaching its decision to propose final regulations to replace the existing emergency regulations, 18 VAC 5-20-10 through 18 VAC 5-20-451.

Regulation 18 VAC 5-20-91- Registration of firms addresses the following:

Item B states that this regulation applies to "any firm with an office in the Commonwealth providing or offering to provide services involving the practice of public accounting".

The "practice of public accounting" is defined in the regulation as "giving of an assurance, in a report or otherwise, whether expressly or implicitly, unless this assurance is given by an employee to his employer."

"Assurance" is defined as "any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards".

Item B 1.b.; however, states (among other things) that the peer review requirement applies "if the firm compiled financial statements but did not perform auditing, accounting or attestation engagements providing some level of assurance during the three years preceding the calendar year in which the application is received".

The compilation opinion specifically states "A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them."

As you can see, in a compilation engagement, not only is the CPA refusing to give assurance; he (she) is, in fact, expressly declining to give assurance. It occurs to me; therefore, that compilations like tax return preparation or general management advisory services do not involve the "practice of public accounting" and should not be subject to the peer review regulations.

In the market place for accounting services compilations and accounting engagements are nothing more than "bookkeeping" and record maintenance services. These services are also offered by uncertified accountants and businesses offering such related services as income tax preparation and payroll processing. There is currently no similar State regulation of these particular entities. Imposing the peer review requirement on this portion of a CPA's practice seems inconsistent with protecting the public when the public can and does freely choose between certified and non-certified service providers in this area.

Item B 1.b. states that each firm shall submit "A copy of a peer review report and the letter from the supervising entity (an organization that administers and supervises a peer review program for CPAs, such as the American Institute of Certified Public Accountants) accepting the report as evidence that it has undergone, no less frequently than once every three years, a peer review that expresses an opinion on the firm's system of quality control if the firm performed auditing, accounting or attestation engagements providing some level of assurance, or a report review if the firm compiled financial statements but did not perform auditing, accounting or attestation

engagements providing some level of assurance during the three years preceding the calendar year in which the application is received.”

On the other hand, item C.l.c. specifically states "If the firm has compiled financial statements in accordance with SSARS, a copy of a peer review report and the letter from the American Institute of Certified Public Accountants accepting the report".

The wording in item B 1.b. ("such as the American Institute of Certified Public Accountants") and item C.l.c. ("letter from the American Institute of Certified Public Accountants") effectively mandates membership in the AICPA as a condition for practicing public accounting in the Commonwealth of Virginia. This mandate effectively delegates regulation of CPAs in the Commonwealth of Virginia to an entity not answerable to the General Assembly.

I have been a member of the AICPA since the late 1970's and over the past 20 plus years I have watched that organization become increasingly arrogant in dealing with small firms and insensitive to the market forces affecting small firms. As a result, I am deeply disturbed that this organization will now effectively have regulatory authority in Virginia and I am highly suspicious of their motive.

As these regulations are currently written, it appears that CPAs in the Commonwealth of Virginia are not afforded the due process normally associated with regulation by a State agency; that is to appeal any adverse peer review opinion or to defend a position that may be a perfectly acceptable alternative to the position taken by the reviewer. Rather, the licensee must appeal to an organization located in New York City that, unlike a State agency, has no requirement to even consider the appeal on its merit and since its not controlled by the General Assembly, the CPA can not obtain relief by contacting his elected representative.

Furthermore; these regulations guarantee not only a steady stream of income to the AICPA but expose small practitioner to what may be capricious and excessive membership fee increases. After all; once membership is mandatory, leaving the organization is no longer an option. It occurs to me that this mandatory membership in "the supervising entity" not under the control of the elected officials of this Commonwealth and the related exposure to unregulated membership fee increases appears to be very much akin to taxation without representation.

In short, we are simply turning too much power over to the American Institute of Certified Public Accountants and that does not bode well for the small, independent CPAs in this State. Currently the continuing professional education (CPE) regulations are enforced by defining the acceptable level of CPE, identifying those entities that offer continuing education courses that qualify for CPE in the Commonwealth of Virginia, and randomly auditing licensees by requiring them to provide evidence of compliance with the CPE regulations. It would appear reasonable and consist that the same system of peer review should be established.

1. Peer review should cover only audit and review services, not "bookkeeping" or "compilation" services.
2. Those entities that wish to perform peer reviews should apply to and register with the Virginia Board of Accountancy and meet whatever standards the Board decides are appropriate.
3. The Virginia Board of Accountancy should identify and provide a list of those reviewers that qualify to perform peer reviews in the Commonwealth of Virginia.

4. The Virginia Board of Accountancy should randomly audit licensees, requiring them to provide evidence of compliance with the peer review regulations by submitting, upon request, a copy of the reviewer's opinion and disclosure of any corrective action in response to material deficiencies noted by the reviewer,

or

The Virginia Board of Accountancy could simply have each reviewer submit a copy of each report as part of the peer review. This report could then be filed for further review by the Board and any material deficiencies could be addressed by the licensee directly to the Board.

Board Response

The Board agrees with your understanding of the meaning of the terms “practice of public accounting” and “assurance.”

The Board is proposing certain changes to 18 VAC-50-91, which should eliminate the interpretive issues that you have raised.

The Board does not agree that “...compilations...are nothing more than bookkeeping and record maintenance services. The compilation of financial statements in accordance with SSARS, which CPAs are required to follow, requires a high degree of knowledge of generally accepted accounting principles in order to properly prepare such financial statements. Though non-CPAs may compile financial statements, the Code of Virginia does not permit non-CPAs to compile financial statements in accordance with SSARS, to use the SSARS report language, or to refer to standards of the American Institute of Certified Public Accountants.

With respect to the Board “effectively mandating membership in the AICPA as a condition for practicing public accounting in the Commonwealth of Virginia” or “effectively delegating regulation of CPAs in the Commonwealth of Virginia to an entity not answerable to the General Assembly, the Board was very careful to indicate that the peer review should be performed by an organization such as the American Institute of Certified Public Accountants (AICPA) and in accordance with standards that are at least comparable to the peer review program of the AICPA to avoid the very issue that you raise. The AICPA has absolutely no regulatory authority in Virginia. Likewise, membership in the AICPA is not mandated by the provisions of the Code of Virginia or the Board’s Regulations. On the other hand, the Board used the AICPA peer review program as a benchmark because it has been successfully used for many years. Also, the Board did not want to “get into the business” of performing such reviews and was looking for the simplest and most cost effective way for CPA firms to provide evidence of having a peer review.

In connection with the appeals process in the peer review program, we suggest that you discuss this with the AICPA or VSCPA as we do not believe your understanding of the process is correct. Our understanding is that the peer review process incorporates a very reasonable appeal process and that the process is administered in Virginia by the VSCPA.

It is true that the Board’s regulations specify the minimum number of hours of continuing professional education required in order to maintain a currently valid CPA certificate; however, the Board does not “identify those entities that offer continuing education courses that qualify for CPE in the Commonwealth of Virginia” as the current emergency regulations eliminated the

requirement for CPE providers to register with the Board. The Board does audit compliance with CPE by having a sample of CPA certificate holders confirm their CPE credits. The Board does not believe that determining whether a firm has had a peer review by a sampling method is workable or in the best interest of the CPA profession or the public it serves.

The Honorable Wm. Roscoe Reynolds, Senate of Virginia
Jim Lavinder, CPA

(Submitted in response to previous correspondence DPOR regarding the Firm Peer Review requirements)

(1) It is true that both federal and state taxing authorities have access to my clients' information but only through my client-not me. In fact, I would be in violation of board rules if I were to give any taxing authorities any information about my client without the client's permission. The taxing authorities must have a written, signed, power of attorney from the client in order to discuss anything with me. Both of these rules are designed to protect the clients' privacy. Surely an attorney in Mr. Wades' position should know this.

(2) It is also true that I choose the reviewer, but when I do this, I do not know which clients' files will be selected for review. Since I do not know the reviewers' clients, the reviewer may be the CPA for a competitor of my client. More importantly, my client does not choose the reviewer and does not even know that any CPA is reviewing his file. The fact that I choose the reviewer does not mean anything to the client.

The CPA's of Virginia have decided that their client's files should be open to inspection by any or all CPAs without ever informing them, let alone getting their permission. Don't you think the clients should have some say about this since they (not us CPAs) are the ones most affected by this legislation. It is their privacy that is being invaded, not the CPAs.

Mr. Wade is contending that the peer review is not different than the authority of the tax agencies. I beg to differ with his contention. All taxing authorities must go directly to the client unless they are instructed by the client to do otherwise. This means that the client has complete control of his private confidential information. Under peer review the client not only does not have control of his information, he does not even know that the information is being compromised.

Board Response

The Board will not get involved in the correspondence from DPOR. Instead, the Board will address the issues raised in the original correspondence from The Honorable Wm. Roscoe Reynolds to David Dick, Assistant Director of DPOR.

Senator Reynolds' correspondence described the following concerns about the peer review process as required by the Code of Virginia and elaborated on in the Regulations of the Virginia Board of Accountancy:

1. The people performing the peer review should have no conflict with the clients of the certified public accountant office being reviewed.
2. Protections are placed in the peer review process that will help make sure that confidentiality of clients is not violated in any way by the people who are involved in the review process. Every effort should be made to make sure that a client does not run the risk of having their confidentiality's exposed to competitors or in any way that could prove a detriment to the client.

Since these two issues are interrelated, the following information addresses both of these concerns.

The peer review process has many features that mitigate against the aforementioned concerns.

It is important to recognize that many CPAs have become qualified to perform the peer review and that the firm being reviewed selects the CPA to perform the peer review. Thus, for example, a firm that needs a peer review and has a concern about conflicts with the reviewed firm's clients may, if it is not national in scope, select a firm that is not located in its area. Reviews of firms that cannot select a firm outside its area have been performed for many years and, to the best of our knowledge, no conflicts have arisen.

The *Standards for Performing and Reporting on Peer Reviews* issued by the Peer Review Board of the American Institute of Certified Public Accountants (AICPA) ("Peer Review Standards") contains specific rules on confidentiality, independence, integrity, and objectivity.

The reviewed firm may inform the client in the engagement letter that (i) the firm participates in a peer review process; (ii) the client could be selected by the reviewer, and (iii) the client may inform the firm that it will not permit the working papers and report for that client to be subjected to the peer review process. It is our experience that clients rarely avail themselves of that opportunity because they appreciate the importance of the peer review process.

The *Guidance for Performing and Reporting on Peer Reviews* includes a specimen engagement letter for the peer review that, among other things, states: "The review will be performed in accordance with the AICPA *Standards for Performing and Reporting on Peer Reviews*, issued by the AICPA Peer Review Board. These standards require, among other things, that the review be conducted in compliance with the confidentiality requirements set forth in the AICPA Code of Professional Conduct. Information concerning the review[ed] firm is confidential. Such information shall not be disclosed by reviewer(s) to anyone not involved in carrying out the review or administering the peer review program or used in any way not related to meeting the objectives of the program. Also, no reviewer(s) will have contact with clients of your firm. If it is necessary to obtain the consent of your clients for review of files and records pertaining to them, you [the reviewed firm] will assume the responsibility for obtaining such consent."

Reviewed firms are encouraged to delete the client's name from any engagement selected by the reviewer.

Maintaining confidentiality is a hallmark of the CPA profession. In addition to the *Standards for Performing and Reporting on Peer Reviews*, the AICPA Code of Professional Conduct also contains provisions relating to confidentiality. Furthermore, the Code of Virginia section 54.1-2006, Unprofessional conduct; enforcement against holders of CPA certificates and registration certificates, states that:

“The Board may revoke any CPA certificate or registration certificate; suspend any CPA certificate or registration certificate or refuse to renew any CPA certificate or registration certificate for a period of not more than five years; reprimand, censure or limit the scope of practice of any CPA certificate holder or registered firm; impose a monetary penalty as provided in section 54.1-202 or place any CPA certificate holder or registered firm on probation, with or without terms, conditions and limitations, for any of the following reasons:”

Among the reasons listed is a violation of standards of conduct promulgated by the Board. The Virginia Board of Accountancy Regulation 18 VAC 5-20-441, Standards of conduct for all regulants, contains the following provision:

“J. Confidential client information. A regulant shall not disclose any confidential client information without the specific consent of the client. This rule shall not be construed to (i) affect in any way the regulant's obligation to comply with a validly issued and enforceable subpoena or summons, or to prohibit a regulant's compliance with applicable laws and government regulations, (ii) prohibit review of a regulant's professional practice by this board, (iii) prohibit a review in conjunction with a prospective purchase, sale or merger of all or part of a regulant's practice so long as the regulant takes appropriate precautions (e.g., through a written confidentiality agreement) so that the prospective purchaser does not disclose any information obtained in the course of the review, or prohibit a review in conjunction with a peer review of a firm as provided in 18 VAC 5-20-91. The reviewers of such information shall not use to their advantage nor disclose any regulant's confidential client information that comes to their attention.”(Emphasis added)

Thus, a CPA violating the requirement to maintain confidentiality is subjecting himself or herself to severe consequences.

In summary, the Board believes that there are many safeguards built into the peer review program that address the concerns that have been expressed. Obviously, no laws or rules can totally eliminate the possibility that someone will violate the standards and rules referred to above. In the unlikely event that such an action occurs, the reviewed firm may bring this matter to the Board. If the respondent is found to be guilty, he or she would be subject to severe penalties.

Mr. Thomas Berry, President and CEO of the Virginia Society of Certified Public Accountants submitted the following suggested changes

The Virginia Society of Certified Public Accountants ("VSCPA") proposes the following changes or additions to the Board of Accountancy Regulations, 18 VAC 5-20-10 through 18 VAC 5-20-451 effective October 4, 1999.

1. Section 18 VAC 5-20-11
Subsection B

We propose combining the CPA certificate renewal fee and the registration certificate renewal fee into one fee of \$25 for sole practitioners only. This is to provide some equity in the fees for sole proprietors who cannot distribute the firm cost among many individuals.

2. Section 18 VAC 5-20-11
Subsection G

Strike the last sentence of the paragraph stating "The examination shall not exceed a cost of \$ 300 to the applicant." It would be prudent to delete this in anticipation of the computerized CPA exam which is anticipated to have a higher cost for applicants.

3. Section 18 VAC 5-20-20
Subsection A

Add to the existing sentence "and shall pass an ethics exam that is deemed appropriate by the Board."

4. Subsection B.2.

Add the following: "An applicant with 120 hours of education who applies to sit for the exam prior to July 1, 2006 may retake parts of the exam at a date later than July 1, 2006 without obtaining 150 hours of education provided he meets the criteria set forth in section 18 VAC 5-20-20C.2."

5. 18 VAC 5-20-41

Add a new subsection A:

A. (new) "Only an individual who: 1) holds a valid CPA certificate, 2) holds a valid certificate by endorsement; or 3) meets the substantial equivalency requirements in this section may practice as a CPA in the Commonwealth of Virginia."

6. Subsection B

Specify when a CPA certificate by endorsement is required by adding a new section

1. When required. Each individual who is certified in a state other than Virginia and either 1) has moved his principal place of business to Virginia, or 2) does not meet the substantial equivalency provision outlined in section 18 VAC 5-20-41.F must obtain a certificate by endorsement prior to practicing as a CPA in Virginia."

7. 18 VAC 5-20-41
Subsection C

Add to the title of the section:

"Privileges of CPA certificate holders and holders of certificates by endorsement."

In the body of the section:

" Each CPA certificate holder or holder of certificate by endorsement shall have the privilege of using the CPA designation provided the CPA certificate holder or holder of certificate by endorsement complies with.... Upon expiration of the CPA certificate or certificate by endorsement, the CPA certificate holder or holder of certificate by endorsement shall cease displaying...."

8. Subsection D

We strongly suggest deleting the existing sentence and adding the following which is consistent with the UAA:

"Any CPA certificate holder who is responsible for supervising public accounting services or who signs or authorizes another to sign the accountant's report on the financial statements of public accounting services shall meet the experience requirements set out in the professional standards for such services."

This change is necessary in order to: 1) conform to the UAA; 2) allow CPAs who are currently supervising public accounting services (such as reviews only) to continue to supervise and sign reports for those services; and 3) require CPAs supervising and signing reports to have the necessary competencies needed for the engagement they are supervising rather than simply requiring them to have a fixed number of hours in audits and reviews.

9. Subsection F

Add a new section I that explains when substantial equivalency is applicable:

"1. When applicable: Any individual intending to practice as a CPA in VA who holds a CPA certificate from a state other than Virginia and has a principal place of business in a state other than Virginia must meet the substantial equivalency requirements of this section or must obtain a certificate by endorsement as outlined in subsection B above."

10. 18 VAC 5-20-81
Subsection A.

Make the following change: "...or signs or authorizes another person to sign the accountant's report on the financial statements of public accounting services on behalf of the firm,..."

11. Subsection B.2.

Strike the entire section and replace with the following:

"Any CPA certificate holder who is responsible for supervising public accounting services or who signs or authorizes another to sign the accountant's report on the financial statements of public accounting services shall meet the experience requirements set out in the professional standards for such services."

See comments in #8 above.

12.18 VAC 5-20-91
Subsection A

We strongly suggest the following language which will clarify an individual CPA's ability to practice as a CPA and to affix the CPA designation to his name without having to work in a registered firm:

"This requirement does not prevent a CPA certificate holder from using the CPA designation or from affixing the CPA designation to his name while working outside of a registered firm."

Also, we suggest extending, by emergency amendment, the deadline for firms to register under the new regulations to March 31, 2000, or administratively adopting a grace period through March 31, 2000 during which the Board would not impose late fees or penalties on firms that had not yet registered.

This is necessary due to the substantive and major changes in the new regulations that firms and CPAs must have time to learn and understand prior to meeting the requirements.

13. Subsection B.1.b

We suggest the following changes:

"A copy of a peer review ~~report and the acceptance~~ letter from the supervising entity (an organization that administers and supervises a peer review program for CPAs, such as the American Institute of Certified Public Accountants) ~~accepting the reports~~ as evidence that it has undergone, no less frequently than once every three years, a peer review ~~that expresses an opinion on the firm's system of quality control if the firm performed auditing, accounting or attestation engagements providing some level of assurance, or a report review if the firm compiled financial statements but did not perform auditing, accounting or attestation engagements providing some level of assurance during the three years preceding the calendar year in which the application is received.~~"

We propose striking the requirement to provide a copy of the peer review report, because we believe the acceptance letter is sufficient evidence and that submitting the reviewer's report may compromise the confidential nature of the peer review program. We believe it is also necessary to delete the existing language relating to types of peer reviews in order to conform with potential changes in AICPA peer review standards.

14. Subsection B.1.b.(2)

We strongly suggest deleting this entire section. We believe that the peer review program will ensure corrective action is taken when a firm's report reveals material deficiencies. This will also help ensure that confidentiality is preserved and that the Board does not become overburdened with administrative peer review tasks.

15. Subsection B.1.b.(3)

We suggest changing this section to extend the June 30, 2002 deadline to all firms.

It has become apparent that some firms have misplaced review documents (they did not know they would have to submit these documents to the Board) and are unable to provide these documents immediately to the Board. It is unfair to burden the firms that have voluntarily enrolled in peer review while allowing other firms an extended deadline of June 30, 2002. In fairness to all firms, we recommend extending the deadline to all firms.

16. Subsection C

Extend the deadline or give a grace period until March 31, 2000.

See #12 for comments.

17. Subsection C.1.c

Make following change:

"If the firm has compiled financial statements in accordance with SSARS, a copy of a ~~peer review report and~~ acceptance letter from the ~~American Institute of Certified Public Accountants accepting the report (or report and letter from other parties acceptable to the board)~~ administering entity as evidence that it has undergone a peer review, no less frequently than every three years, ~~an off site peer review.~~"

Same comments as #13 above.

18. Subsection C.1.c.(1)

Strike at the end of the sentence: "and the peer reviewer's report shall have expressed an unqualified opinion."

Same comments as #14 above.

19. Subsection C.1.c.(2)

Add a new section (2) and state: "All applicable firms must comply with this requirement by June 30, 2002." Move existing subsection (2) to a new subsection (3).

See comments in # 15 above.

20. 18 VAC 5-20-100 Subsection C.

Extend the firm registration deadline to March 31, 2000 or allow a grace period until March 31, 2000.

See #12 above for comments.

21. Subsection F.2.

We suggest the following changes:

~~"... and (ii) a copy of the peer review and the acceptance letter from the supervising entity accepting the report as evidence that it has undergone, within the three-year period immediately preceding the year in which the registration certificate renewal application is submitted, a peer review that expresses an opinion on the firm's system of quality control if the firm performed auditing, accounting or attestation engagements providing some level of assurance during the three years preceding the calendar year in which the application is received. Such reviews shall be performed and reported in accordance with standards that are at least comparable to the peer review program of the American Institute of Certified Public Accountants. If the peer review report describes material deficiencies, the firm must provide evidence from the reviewer or supervising entity that the firm has corrected any material deficiencies within the time period set forth in the aforementioned standards or one year from the date of the peer review report, whichever is shorter. If a firm does not provide evidence that it has corrected these deficiencies, the board shall implement a proceeding in accordance with the provisions of the Administrative Process Act (9-6-14:4.1 et seq. of the Code of Virginia). A firm in existence prior to October 4, 1999 that is subject to the aforementioned requirement but has not undergone such a review must comply with this requirement by June 30, 2002."~~

Again, we propose striking the requirement to provide a copy of the peer review report and only require firms to provide the acceptance letter from the administering entity because we believe the letter is sufficient evidence and this will further ensure the confidential nature of the peer review program. We believe it is also necessary to delete the existing language relating to types of peer reviews in order to conform with potential changes in AICPA peer review standards.

We suggest extending the deadline of June 30, 2002 to all firms as explained in # 15 above.

22. 18 VAC 5-20-442

Add to title of subsection:

"Standards of practice for CPA certificate holders involved in the practice of public accounting and in compiling financial statements."

Add to the first sentence:

"... in providing services involving the practice of public accounting and in compiling financial statements."

23. 18 VAC 5-20-445

Subsection A

Strike "or using CPAs to provide tax compliance and advice services"

This sounds as though a firm cannot allow CPAs to provide tax or advice services without complying with the firm registration requirement. This is contrary to the statute which allows CPAs to practice tax and consulting services in non-CPA firms.

24. 18 VAC 5-20-451
Subsection A. I

We suggest adding language that gives guidance to CPAs who begin providing services to the public and suddenly fall under the requirement to take CPE. We suggest either: 1) requiring CPAs who intend to provide services to the public to begin taking CPE prior to performing those services; or 2) requiring these CPAs to begin taking CPE and maintaining records of CPE the following January.

Board Response to Mr. Berry:

1. It is too late to change the fees for this year. We will consider this recommendation the next time we set fees.
2. Proposed change has been made.
3. Proposed change has been made, except it was placed in Subsection C. rather than Subsection A.
4. The following has been inserted in 18 VAC 5-20-20.B.

An applicant whose application is received under the requirements of 18 VAC 5-20-20.B.1 may retake the examination so long as the requirements of 18 VAC 5-20-20-C.2. are met.

5. Proposed change has been made, except we did not include the phrase “holds a valid certificate by endorsement” because, once a CPA certificate is issued as a result of the CPA certificate by endorsement process, the board does not make any differentiation between CPA certificate holders based on whether they received their CPA certificate by original issuance by the board or by endorsement..
6. Proposed change has been made.
7. We initially made this change. However, we later decided not to make the change as the CPA obtaining a CPA certificate from Virginia receives the same CPA certificate as the CPA obtaining an original certificate from Virginia. Thus, we make no differentiation once the CPA receives the CPA certificate.
8. We did not make this change as the board believes we should retain a specific hours experience requirement in order to protect the public. We have proposed a change to 5-20-81.B.2 so that the requirement of 600 hours of audit experience will be required if audits are performed and 600 hours of review or audit experience will be required if reviews, but not audits, are performed.
9. Proposed change has been made.
10. Proposed change has been made.

11. We did not make this change. See #8 above.
12. With respect to adding the proposed sentence, we did not make this change as we believe the proposed change would introduce ambiguity.

With respect to extending the registration deadline, see #20 below.

- 13.-19. The existing language relating to peer reviews has been deleted and a new section 18 VAC 5-20-95 has been added. This new section:
 - a. Requires the peer review report with the firm's application that is due in its renewal month of the year 2002.
 - b. Conforms the types of reviews to those required by the AICPA effective January 1, 2001.

The revised language will require a copy of the final acceptance letter rather than copies of the report, comment letters, etc.

With respect to confidentiality, registration applications are exempt from the Virginia Freedom of Information Act. Obviously, it could be subject of a subpoena but that is also true of the peer reviewer's, AICPA's and VSCPA's files.

20. The proposed change was not made because (i) 42 days should be sufficient time to complete the application, (ii) communications were mailed to individuals on October 19, which included an alert relating to firm registration, and to firms on October 20; and (iii) such an extension would be unfair to those firms that complied on a timely basis. The staff has been advising firms that indicated that they are missing a document to submit the application with a statement explaining the reason for the incomplete information. The board will be sympathetic to reasonable reasons for submitting an incomplete application or for not meeting the November 30 deadline.
21. See 13-19 above.
22. Proposed change has been made.
23. Proposed change has been made.
24. With respect to persons who become subject to the CPE requirements, Regulation 18 VAC 5-20-451 will be modified to read as follows:

Any person commencing such services after December 31, 2000 shall have obtained 40 hours of CPE within the year preceding the date such services are first offered to the public and obtain the remaining 80 hours of CPE within the ensuing two CPE reporting years with no less than 20 hours in each of these two years.

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

These proposed regulations modify and make permanent the regulations placed into effect on October 4, 1999 through the emergency regulation provisions of the APA. Both implement Senate Bill Number 926 passed by the 1999 Session of the Virginia General Assembly. As a result, both the emergency regulations and these proposed regulations implement a substantial change in the way the CPA industry is regulated.

Many of the changes in the proposed regulations reflect the experience gained under the emergency regulations. The experiences of DPOR staff, the Board members and the public expressed through their comments have been considered during the regulation development process and have resulted in a more easily understandable document. Considerable effort was made by both the members of the Board of Accountancy and DPOR staff to identify unnecessarily complicated language.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Board of Accountancy will enter into regulatory review two years following the date the final regulations are effective. The review will be conducted to determine if the regulations should be continued, amended, or terminated, including a description of specific and measurable goals the regulations are intended to achieve.

It should also be noted that § 54.1-113 of the Code of Virginia mandates regulatory boards to examine its fee structure at the end of the biennium. It is the Department's custom to encourage its affiliated boards to examine its regulations as described above at the same time the fee structure is examined for compliance.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

No impact on the families in Virginia has been identified as resulting from the proposed regulations.