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Proposed Regulation Agency Background Document

Agency name	Virginia Board of Accountancy
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC5-22
VAC Chapter title(s)	Board of Accountancy Regulations
Action title	Amend Regulations Following Periodic Review
Date this document prepared	December 3, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Following a periodic agency review of the regulations, several areas were identified as sections that could be clarified for the public and for CPAs alike. In general, language is undergoing minor tweaking to more accurately reflect proper definitions and make the word choice and phrasing more consistent throughout the Code of Virginia. The following sections are being amended in a more substantial manner: 18VAC5- 22-90 (Continuing professional education), 18VAC5-22-170 (Communication with the board), 18VAC5- 22-180 (Issuance, renewal, and reinstatement of licenses).

In 18VAC5-22-90 specifically, three subsections are removed in order to be put in a completely new section that is more logical. This new section is 18VAC5-22-91 (Documentation of continuing professional education). The language remaining in 18-VAC5-22-90 is also tweaked for clarification.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

VBOA = Virginia Board of Accountancy
CPA = Certified Public Accountant
CPE = Continuing Professional Education
AICPA = American Institute of Certified Public Accountants
VSCPA = Virginia Society of Certified Public Accountants

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

These regulatory changes follow a completed periodic review that identified areas in the Board of Accountancy regulations that could be clarified.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

VBOA regulations are promulgated under the general authority of Title 54.1, Chapter 44 of the Code of Virginia.

Subsection 3 of § 54.1-4403 of the Code of Virginia gives the VBOA the power and duty to “[p]romulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by licensees, and to effectively administer the regulatory system.” Subsection H of § 54.1-4402 of the Code of Virginia states that the VBOA “shall have the responsibility of enforcing [Chapter 44 of Title 54.1] and may by regulation establish rules and procedures for the implementation of the provisions of this chapter.”

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

The VBOA regularly receives informal and formal feedback about the agency’s processes and rules. Feedback received includes concerns that the regulations in their present form may seem confusing. By simplifying the language where possible and making minor tweaks where appropriate, the complete regulations should be more comprehensible. This includes making word choice and phrasing more consistent throughout the regulations.

By making these changes, the public and CPAs should be better able to understand the statutes and regulations associated with the VBOA.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

Simple corrections and/or additions to the language are made for the purpose of clarity and consistency in 18VAC5-22-40, 18VAC5-22-50, and 18VAC-5-22-70.

The following sections are being amended in a more substantial manner: 18VAC5-22-90 (Continuing professional education), 18VAC5-22-170 (Communication with the board), 18VAC5-22-180 (Issuance, renewal, and reinstatement of licenses).

In 18VAC5-22-90 specifically, three subsections are removed in order to be put in a completely new section that is more logical. This new section is 18VAC5-22-91 (Documentation of continuing professional education). The language remaining in 18-VAC5-22-90 is also tweaked for clarification.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The major advantage is that the amended regulations should be more clearly understood by the public, CPAs, and CPA applicants following the proposed changes that make the language more consistent. Another advantage is that by requiring the disclosure of disciplinary sanctions against CPAs and CPA firms within 30 calendar days (18VAC5-22-170), the public will be better protected and more informed when seeking services from a CPA or CPA firm. In addition, the section regarding the annual renewal of licenses (see 18VAC5-22-180) is greatly reduced and provides further clarification for renewal dates, particularly for new and recent licensees.

There are no known disadvantages to the public or businesses.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements to this section.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no known state agencies that will be particularly affected.

Localities Particularly Affected

No localities are anticipated to be particularly affected.

Other Entities Particularly Affected

There are no other known entities that will be particularly affected.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no projected changes in costs, savings, fees, or revenues.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no projected changes in costs, savings, fees, or revenues.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no projected changes in costs, savings, fees, or revenues.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no projected changes in costs, savings, fees, or revenues.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Clarification of regulations.</p>

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	CPAs and CPA firms with Virginia licenses and those recognized in other states by substantial equivalency provisions will be affected.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The approximate 30,000 CPAs and CPA firms in Virginia will be affected. There are over 1,000 firms in Virginia, but we do not have a way of knowing how many of those firms are considered small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no projected cost changes.
Benefits the regulatory change is designed to produce.	Greater clarification.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Changes were determined to be best suited to regulatory action in order to clarify the law.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the

proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The changes in this regulatory action simplify and clarify requirements, thereby reducing the burden on the public.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response

We did not receive any public comments during this forum.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The VBOA is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives

stated in this background document or other alternatives, and the potential impacts of the regulation. In addition, the agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to:

Elizabeth Marcello, Information and Policy Advisor
elizabeth.marcello@boa.virginia.gov
 (804) 367-2006 (phone)
 (804) 527-4409 (fax)
 9960 Mayland Drive Suite 402
 Henrico, VA 23233.

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
18VAC5-22-40		Points to statute to determine whether a person using the CPA title and with a Virginia license is providing services to the public or an employer.	Adds language to include those using the CPA title and providing services on behalf of an employer.

18VAC5-22-50		Identifies how a principal place of business is determined to be in Virginia.	Adds providing financial statement preparation services as a function to determine where the principal place of business is.
18VAC5-22-70		States that the 24 hours of accounting includes courses in auditing, financial accounting, management accounting, and taxation.	Clarifies that the 24 hours of accounting courses MUST include courses in auditing, financial accounting, management accounting, and taxation.
18VAC5-22-90	18VAC5-22-91	Includes subsections A, B, C, D, E, F, G.	Removes subsections E, F, and G from section 90 and moves them to a new section 91.
18VAC5-22-90 (A)		Describes the CPE requirements for someone with an active license in another state and their principal place of business is not Virginia.	Clarifies that if someone has an active license in another state and their principal place of business is not Virginia, that are exempt from meeting Virginia CPEs if they meet that other state's CPEs. If the other state has an ethics requirement, then they have satisfied Virginia CPE. If the other state does not have an ethics requirement, they will still need to take the ethics course prescribed by the board in Virginia to satisfy exemption requirements.
18VAC5-22-90 (C)		Describes eligibility for receiving an exemption from CPE for those not providing services to the public or to or on behalf of an employer.	Clarifies that this exemption must be granted in writing by the board. Clarifies that to be eligible for this exemption from CPE, a licensee cannot be providing services to the public or to or on behalf of an employer including on a volunteer basis.
18VAC5-22-90 (D)		Describes CPE requirements for a new licensee based on when the CPA examination was passed	Clarifies that if someone submits their application to become a CPA within the same calendar year that they passed the CPA examination, they do not need to obtain CPE for that calendar year.
18VAC5-22-90 (E)	18VAC5-22-90 (E)	The current E is being moved to the new section 91.	A new subsection E is added to 18VAC5- 22-90 that states any original application for a CPA license in Virginia will expire six years from the original application date and require a new application with the corresponding fees.
18VAC5-22-120		Supervision of firm personnel.	Clarifies that this section is applicable to those holding an active Virginia license.
18VAC5-22-170		Virginia licensees must notify the board within 30 calendar days of changes in the name, postal, and electronic addresses where the license holder may be reached.	Clarifies that a change in the legal name needs to be reported. Adds that the following changes must be reported: any administrative disciplinary action that the license holder is subject of or party to before any court, state/federal agency, branch of the armed forces of the United States of America, or before the AICPA, VSCPA or their successors; any felony or misdemeanor conviction; any guilty

			plea or plea of nolo contendere; any judgement rendered against the license holder in civil court; any receipt of a peer review report or PCAOB firm inspection report containing reported criticisms or defects. Adds that upon each renewal, reinstatement, or application for a Virginia license, these same actions/sanctions must be reported. In addition, current subsection C is being moved to section 180.
18VAC5-22-180		This section currently includes an outdated renewal calendar that served the purpose of providing instruction leading up to the implementation of the single annual renewal date, which began on June 30, 2019.	Removed the outdated calendar, so the language regarding the single annual renewal date on June 30 remains. Adds that persons/entities applying for initial licenses or reinstatements on or after March 1 of each calendar year, they will not have to do that calendar year's annual renewal. Language from section 170 regarding the responsibility to renew is placed in the new 180 (C).

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
18VAC5-22-91	New subsections D, E, and F currently exist in VBOA policy.		In practice, nothing is changing. Subsections E, F, and G from section 90 are simply moved to section 91 as A, B, and C. This selection of VBOA policy is simply becoming a regulation to reduce confusion.

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage

