



Final Regulation Agency Background Document

Agency name	Board of Accountancy
Virginia Administrative Code (VAC) citation	18 VAC 5 -21
Regulation title	Board of Accountancy Regulations
Action title	Changes incorporating amendments about (i) the qualifications for, and implementation of, the current computerized CPA exam, and (ii) the requirements for Ethics CPE.
Document preparation date	September 30, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In accordance with Section 2.2-4013 (A) of the Administrative Process Act (APA) and Executive Order 21 (2002), the Board of Accountancy is proposing amendments to its regulations that include two changes: (1) the qualifications for, and implementation of, the current computerized CPA exam, and (2) the requirements for Ethics CPE. These amendments are also being filed in accordance with Section 2.2-4011 (A) of the APA because they must be promulgated within one year of the effective date of the emergency regulations, which was December 15, 2003.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At its meeting on July 26, 2005, the Board of Accountancy unanimously approved filing these amendments to the Board of Accountancy Regulations (18 VAC 5-21-10 et seq.) as final regulations, with no changes to the text of the proposed regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Board has legal authority to promulgate the proposed amendments to its regulations through (i) Sections 2.2-4011 (A) and 2.2-4013 (A) of the APA, (ii) Chapter 44 of Title 54.1 of the *Code of Virginia*, (iii) Chapter 291 of the 2003 Acts of the General Assembly, and (iv) Executive Order 21 (2002).

Upon the Board's unanimous approval to file these amendments as proposed regulations, the Office of the Attorney General issued a memorandum dated June 4, 2004, stating that the amendments to the regulations are consistent with state and federal law and are within the legal authority of the Board to promulgate.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

To fulfill its statutory mandate, the Board seeks to propose amendments to its existing regulations to revise and clarify the following sections: (i) qualifications for licensure including new language about the current computer-based CPA exam; and (ii) continuing professional education (CPE) requirements for initial applicants and regulants in ethics. Such amendments are being proposed to replace the emergency regulations.

The proposed regulations are essential to protect the health, safety and welfare of the citizens of the Commonwealth because the Board is mandated by statute to certify and issue CPA licenses to persons to practice public accountancy, and to restrict the practice of public accountancy to only those persons who are so licensed and may call themselves CPAs. Further, the Board can take such actions as may be authorized to ensure the continued competence of such licensed CPAs and to aid the public in determining the qualifications of such persons who give assurances on financial statements. The Board has the responsibility to enforce and implement such actions through the promulgation of regulations.

Finally, this action should not be construed as preventing any person from stating that he has prepared, compiled, assembled or drafted a financial statement, provided he does not use any additional language that comprises an assurance, make any claims or representations, or use any of the language prohibited by the Board's statutes.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

(1) The new computerized CPA exam.

The only provisions of the current regulations that will be changed are: (1) 18 VAC 5-21-10, to add new definitions about the current computerized CPA exam for clarity; (2) 18 VAC 5-21-20, to revise name of “Initial examination application fee” to “Initial CPA exam application fee,” and to clarify that this fee shall not exceed \$1,000; and (3) 18 VAC 5-21-30, to add new language about the computerized CPA exam. In addition, “CPA exam” is to be substituted for “examination” only where necessary in the regulatory text for clarification.

(2) The new requirements for Ethics CPE.

The only provisions of the current regulations that will be changed are: (1) 18 VAC 5-21-10, to add new definitions about CPE for clarity; (2) 18 VAC 5-21-40, to revise current licensing requirements to call for the applicant who applies for licensure three or more years after successfully completing the CPA exam to complete the most recent Ethics CPE course; and (3) 18 VAC 5-21-170, to add new language about the constitution of the new Ethics CPE course, and to insert the revised dates for the beginning of the CPE reporting cycles for CPAs who practice public accountancy for an employer and not for the public, or who serve as an educator in the field of accounting for clarity.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

(1) The new computerized CPA exam.

The Board finds that new regulations regarding the Uniform CPA exam are required since the computer-based CPA exam was implemented in April 2004. Not making these changes will create a negative impact on both the “Big Four” CPA firms and the small- and medium-sized CPA firms in Virginia that will result from approximately 1,200 new CPAs being prevented from entering the labor market. Each year, this many potential employees enter the labor market in Virginia as a result of passing the Uniform CPA exam. This in turn will affect the competent practice of public accounting in Virginia that directly impacts the public—both businesses and individuals.

This situation will occur because in April 2004 the American Institute of Certified Public Accountants (AICPA) ended its paper-and-pencil CPA exam and replaced it nationwide with a computerized CPA exam. This means that the Board’s provisions for exam requirements that are specifically meant for the

paper-and-pencil CPA exam will not be applicable to the current computerized CPA exam, should the changes put into place by emergency regulation not be promulgated.

In 2002, Virginia had a total of 4,470 candidates take the CPA exam; in 2003, well over 5,000 took the CPA exam in the Commonwealth. If the Board’s proposed changes about the conduct of the CPA exam fail to be promulgated as final regulations, then approximately 4,000 candidates will not be allowed to take the exam in Virginia annually. Further, Virginia is one of the last states to implement the 150-hour education requirement. Therefore, the majority of these exam candidates in Virginia will not qualify to take the CPA exam in most other states.

(2) The new requirement for Ethics CPE.

With thousands of audits being properly and competently performed each year by CPAs committed to rigorously following the letter, and the spirit, of the profession’s accounting and auditing standards and standards of conduct, the Board is extremely concerned about the implications of the well-publicized instances of alleged fraudulent accounting and financial reporting, and the apparent failure of audit firms to prevent this fraudulent accounting or financial reporting.

In the fall of 2002, the Board entered into an Executive Agreement with the Governor to implement regulations about continuing professional education (CPE) in ethics. The Board is currently meeting the Governor’s priority by requiring initial applicants and regulants to obtain two CPE credits in ethics each year. This requirement was implemented by emergency regulation that became effective on December 15, 2003, as a result of Chapter 291 of the 2003 Acts of the General Assembly.

The final regulatory action poses no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes were made to the text of the proposed regulation since the publication of the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Erin Collins, Government Affairs Director, Virginia Society of Certified Public Accountants	Ms. Collins suggested that regulation 18 VAC 5-21-170.D be amended to include a second paragraph as follows: “Effective January 1, 2006, any entity or person offering the Virginia Ethics CPE course must submit	At its meeting on June 20, 2005, the Legislative/Regulatory Committee recommended that the Board add one amendment to the final package about the Board approving the Ethics CPE course. At its meeting on July 26, 2005, the Board, agreeing that such a significant change

	to the Board for approval their content and instructor’s manual along with a processing fee as prescribed by the Board in 18 VAC 5-21-20. Such Board approval must be obtained before the course may be administered.”	would require more opportunities for public comment and should, therefore, go through the entire promulgation process as a separate package, unanimously approved the text of the proposed stage without any changes.
James M. Shepherd, CPA	Mr. Shepherd suggested that the Board’s Ethics CPE course be “approved on an annual basis by the Board ... to maintain the integrity and quality of the course material,” and “to preclude an ethics provider from taking the easy road for the purposes of profit over content.”	At its meeting on June 20, 2005, the Legislative/Regulatory Committee recommended that the Board add one amendment to the final package about the Board approving the Ethics CPE course. At its meeting on July 26, 2005, the Board, agreeing that such a significant change would require more opportunities for public comment and should, therefore, go through the entire promulgation process as a separate package, unanimously approved the text of the proposed stage without any changes.
Mark A. VanDeveer, CPA	Mr. VanDeveer suggested that the Board’s Ethics CPE course be “approved by the Board on an annual basis.” He also suggested that the Board “strongly consider the inclusion of various elements of the IRS Circular 230 as proper subject matter for the ethics course.”	At its meeting on June 20, 2005, the Legislative/Regulatory Committee recommended that the Board add one amendment to the final package about the Board approving the Ethics CPE course. At its meeting on July 26, 2005, the Board, agreeing that such a significant change would require more opportunities for public comment and should, therefore, go through the entire promulgation process as a separate package, unanimously approved the text of the proposed stage without any changes.
W. Barclay Bradshaw, CPA	Mr. Bradshaw expressed support for the Board “requiring any entity or person offering the Virginia Ethics CPE course to submit their course content to the Board for approval before the course may be offered or administered.”	At its meeting on June 20, 2005, the Legislative/Regulatory Committee recommended that the Board add one amendment to the final package about the Board approving the Ethics CPE course. At its meeting on July 26, 2005, the Board, agreeing that such a significant change would require more opportunities for public comment and should, therefore, go through the entire promulgation process as a separate package, unanimously approved the text of the proposed stage without any changes.
James W. Brackens, Jr., CPA	Mr. Brackens recommended that “developers of ethics CPE courses that wish to represent that their course fulfills Virginia requirements should be required to submit their course (and remit a fee to cover the costs) for approval by the BOA.”	At its meeting on June 20, 2005, the Legislative/Regulatory Committee recommended that the Board add one amendment to the final package about the Board approving the Ethics CPE course. At its meeting on July 26, 2005, the Board, agreeing that such a significant change would require more opportunities for public

		comment and should, therefore, go through the entire promulgation process as a separate package, unanimously approved the text of the proposed stage without any changes.
Heather N. A. White, CPA	Ms. White suggested that "before the regulations become final, there is wording added requiring ethics courses to be approved by the BOA."	At its meeting on June 20, 2005, the Legislative/Regulatory Committee recommended that the Board add one amendment to the final package about the Board approving the Ethics CPE course. At its meeting on July 26, 2005, the Board, agreeing that such a significant change would require more opportunities for public comment and should, therefore, go through the entire promulgation process as a separate package, unanimously approved the text of the proposed stage without any changes.
Joseph E. Strickler, CPA	Mr. Strickler commented that: (1) the standards of practice cited in regulation 18 VAC 5-21-130 "might be old and out-of-date, and not relevant;" and (2) that the CPE requirement in 18 VAC 5-21-170.A.2 was "out-of-date."	At its meeting on June 20, 2005, the Legislative/Regulatory Committee recommended that the Board submit these changes in the Board's next regulatory package. At its meeting on July 26, 2005, the Board, agreeing that such changes would be reviewed for the next regulatory package, unanimously approved the text of the proposed stage without any changes.

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 5-21-10		The current section lists the definitions of the terms used in this chapter.	<p>Amendment: New definitions have been added, while other definitions have been either rewritten for clarity or deleted, that directly relate to the computerized CPA exam and the CPE in ethics.</p> <p>Consequences: The reader of the regulations will have a better understanding and require less clarification about the CPA exam and CPE.</p> <p>Essential Nature: Clarified definitions are required for an accurate understanding of the words relating to the CPA exam and Ethics CPE that are used in the regulatory text.</p> <p>Issues: None</p>
18 VAC 5-21-20		The current section lists all fees for the Board.	<p>Amendment: In this section, the first change is from “Initial examination application fee” to “Initial CPA exam application fee.” The second change is to clarify that this CPA exam fee is assessed at the time of the initial examination, not for reexamination, and that it “shall not exceed \$1,000.”</p> <p>Consequences: Unless enacted, the fee established for the initial application for the CPA exam will not be clarified for candidates preparing to take the exam, which will create unnecessary confusion about the process.</p> <p>Essential Nature: Current regulations provide for a \$25 initial CPA exam fee to cover the costs of work performed by the Board members and staff. It is important that exam candidates understand that the total exam fee, which is assessed by the exam vendor, shall not exceed \$1000, and that this fee contains an initial exam fee of \$25 to pay for the work performed by the Board.</p> <p>Issues: None.</p>
18 VAC 5-21-30		The current section lists the entry requirements for the CPA certificate and firm permit and for CPA supervising services involving the practice of public accounting.	<p>Amendments: Subsection C contains new language clarifying the requirements of a candidate to sit for the exam, and the granting of conditional credit for the old “non-computer-based CPA exam,” and the current “computer-based CPA exam.”</p> <p>Consequences: The “non-computer-based CPA exam” was replaced by a “computer-based CPA exam” in April 2004. By not providing language</p>

			<p>to clarify the requirements to sit for the CPA exam and the granting of conditional credit, impediments would be created for candidates seeking to sit for the exam during and after the transition period.</p> <p>Essential Nature: The new language about the “computer-based CPA exam,” including the transition to this exam, is essential since the computer-based exam became the only one available beginning in April 2004. This is also essential to ensure that CPA exam candidates will meet the appropriate requirements prior to taking the CPA exam and being certified by the Board in Virginia.</p> <p>Issues: None.</p>
18 VAC 5-21-40		<p>The current section lists the requirements for issuing an original CPA certificate, and a CPA certificate by endorsement and by substantial equivalency.</p>	<p>Amendments: Subsection B contains new language requiring an original applicant who successfully completed the CPA exam three or more years before he applies for licensure to complete the “most recent Ethics CPE course.” According to statutory mandate, the only other alteration is changing “examination” to “CPA exam.”</p> <p>Consequences: The new requirements for an original applicant for licensure to provide evidence of having obtained Ethics CPE credits, if three or more years have passed beyond the year of successfully completing the CPA exam, ensures that the applicant meets the Board’s competency requirements to be issued a CPA certificate, and meets the Board’s statutory mandate to ensure the integrity of the profession.</p> <p>Essential Nature: Clarification of the Board’s requirements to issue an original CPA certificate is essential because it enables the applicants and the public to know the Board’s specific requirements. The new CPE requirements for an applicant who postpones his application for a CPA certificate after passing the CPA exam also ensures that the applicant is competent before he practices public accounting for the public. These changes are essential since they meet statutory changes, and comply with the Governor’s priority in the Executive Agreement signed with the Board.</p> <p>Issues: None.</p>
18 VAC 5-21-170		<p>The current section identifies the CPE requirements for CPA certificate applicants and for CPA certificate holders.</p>	<p>Amendments: This section on CPE requirements was revised so that CPA certificate applicants and certificate holders must complete the new Ethics CPE course. Such revisions also include language changes from “hours” to “CPE credits” for clarity. In subdivision B 1 the commencement date of each three-year CPE reporting period was changed due to statutory mandate to reflect that each period began on</p>

		<p>January 1st, not July 1st. New subsection D specifies the Ethics CPE course that will consist of one “self-contained course” about the standards of conduct, Code of Virginia statutes relating to public accountancy, and Board’s regulations that must be obtained each year. Each CPA to which the CPE requirements apply, who practice public accountancy either for the public, or for an employer and not for the public, or who serve as an educator in the field of accounting, must meet this requirement.</p> <p>Consequences: These modifications are essential to clarify the Ethics CPE requirements for CPA certificate applicants to be able to meet the Board’s requirements before offering public accounting services, and for CPA certificate holders to continue maintaining and increasing their professional competence. The clarifications made to the Board’s commencement date for the three-year reporting cycles identified are mandatory due to statute. Regulators are now required by statute to earn Ethics CPE, which is identified as one “self-contained course” about the standards of conduct, Code of Virginia statutes relating to public accountancy, and Board’s regulations that must be obtained each year “immediately subsequent to the year in which these regulations become effective.”</p> <p>Essential Nature: With recent instances of alleged fraudulent accounting and financial reporting by certain large companies and the apparent failure of the audit firm to prevent such occurrences, the Board entered into an Executive Agreement with the Governor to modify the CPE requirements for CPA certificate applicants and certificate holders. These Ethics CPE requirements are being added to the Board’s regulations due to statutory mandate. By making these modifications, the Board will help ensure that a regulator who provides public accounting services for the public, or for an employer or other organization, and not for the public, or as an educator in the field of accounting will meet the Board’s requirements for continuing professional education and will maintain and increase his professional competence. . The other change regarding the beginning dates of the three-year CPE reporting cycles represent statutory mandates, so there is no discretion.</p> <p>Issues: None.</p>
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Family impact

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

The amendments proposed by the Board of Accountancy will not have an impact on the institution of the family and family stability. These amendments will not strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children. They will not encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse and one's children and/or elderly parents. These amendments will not strengthen or erode the marital commitment. The effect of amendments on disposable family income will be minimal.