



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

Agency name	Virginia Board of Accountancy
Virginia Administrative Code (VAC) citation(s)	18VAC5-22
Regulation title(s)	Board of Accountancy Regulations
Action title	Amendment to address delays in responding to the Board
Date this document prepared	December 8, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed amendment amends the occasions upon which a licensee or applicant has to respond to the Board to match the language of the Board's time restrictions on complaint filings found in Va. Code § 4425, and allows the Board discretion in determining whether a delay or failure to respond is a violation of subsection A. The proposed amendment also removes an out-of-date citation to the Code of Virginia found in subsection C.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

“The Board” means the Virginia Board of Accountancy.
“CPA” means Certified Public Accountant.

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.

On August 31, 2017, the Board voted to take regulatory action to amend 18VAC5-22 *et seq.*, Board of Accountancy Regulations, through the fast-track process.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Va. Code § 54.1-4403(3) grants authority to the Board to promulgate 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.” The Board is the promulgating entity for regulations governing public accountancy.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.

This amendment is intended to make the first subsection match the language of the Board’s time restrictions on complaint filings found in Va. Code § 54.1-4425, and to give the Board discretion in determining whether a delay or failure to respond is a violation. Currently, there is no discretion for the Board, and the intent is to give the Board more latitude in determining whether a delay or failure to respond is a willful violation of the regulation. It also removes a citation to the Code of Virginia in a separate subsection that is no longer accurate. The Board’s rationale is to ensure that its regulations match statutory language to reduce confusion about when a licensee or applicant is to respond to the Board. It also allows the Board to waive purported violations of this regulation if warranted.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This rulemaking is expected to be noncontroversial because its requirements are identical as those currently placed on licensees and applicants when responding to the Board. The proposed amendment will match the language of the existing time restrictions on complaint filings, and would allow the Board to waive violations of the requirement to respond, if warranted. This change is also supported by the Virginia Society of Certified Public Accountants.

Substance

Please 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.

The proposed amendment removes the list of occasions upon which a licensee or applicant has to respond to the Board and replaces it with a sentence that matches language of the Board’s time restrictions on complaint filings found in Va. Code § 54.1-4425. The proposed amendment also gives the Board discretion in determining whether a delay or failure to respond is a violation. Finally, it removes a citation to the Code of Virginia in the last subsection that is no longer accurate.

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) There are no primary disadvantages to the public. The primary advantage to the public would be reduced confusion between the differing language of the time restrictions on complaint filings and the occasions requiring response currently listed in the regulation.
- 2) There are no primary disadvantages to the Board or the Commonwealth. The primary advantages to the Board and the Commonwealth is the ability to waive purported failures to respond to the Board if warranted.
- 3) There is no restraint on competition as a result of promulgating this regulation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no alternative methods consistent with health and safety of the public.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	There are no projected costs.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no projected costs.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	The individuals, businesses, or other entities likely to be affected are persons who hold Virginia CPA licenses, and entities or sole proprietors that hold Virginia CPA firm licenses.
Agency’s best estimate of the number of such entities that will be affected. Please 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.	There are 27,728 persons who hold Virginia CPAs licenses as of August 31, 2017. There are 1,173 entities or sole proprietors that hold Virginia CPA firm licenses as of August 31, 2017.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other	There are no projected costs.

<p>entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>To improve consistency of language across regulation and statute, to provide the Board with discretion in waiving purported violations, and to remove an inaccurate citation to the Code of Virginia</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

There are no alternatives to the proposed action that is less burdensome and less intrusive.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.

This proposed action is not the result of a periodic review/small business impact review.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.

This proposed action will have no impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18VAC5-22-170	N/A	A list of three (3) occasions upon which a person or firm has to respond to the Board within thirty (30) calendar days. No discretionary language is included to waive violations.	<p>Change: Remove list of occasions requiring a response and replace with a sentence that matches the language of the Board’s time restrictions on complaint filings. Include discretionary language to permit the Board to waive purported violations if warranted. Remove citation to Va. Code § 54.1-4413.2.</p> <p>Intent: To improve consistency of language across regulation and statute, to provide the Board with discretion in waiving purported violations, and to remove an inaccurate citation to the Code of Virginia.</p> <p>Rationale: The current list found in subsection A does not entirely match to the Board’s time restrictions on complaint filings, which has led to outcomes where it is unclear what deadline, if any, a person or entity has in responding to the Board and whether the Board can waive the violation arising from a failure to respond. The removal of the code citation is to</p>

			<p>improve the accuracy of the regulation. Likely Impact: The parallel language in statute and the proposed amendment will lead to more consistency and the Board will have latitude to deal with unusual facts and circumstances. Reduced confusion by removing a Code of Virginia citation that is no longer accurate.</p>
--	--	--	--