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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) 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	New Regulation for Issuance, Renewal, and Reinstatement of Licenses
Date this document prepared	February 27, 2018

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. This information is required for executive 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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

On February 26, 2018, the Governor signed into law emergency legislation that changes the term of licensure from 12 months to a term defined by the Board. The proposed new regulation sets the expiration date for all licenses as June 30th, and provides for the transition of existing licenses to the new proposed expiration date, including proration of fees during the transition.

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.
"CPE" means continuing professional education.

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

Chapter 45 (2018 Acts of Assembly) contains a third enactment clause that requires the Board to promulgate regulations with an effective date "no later than July 1, 2018." On February 8, 2018, the Board voted to take regulatory action to promulgate 18VAC5-22-180, *Issuance, Renewal, and Reinstatement of Licenses*, through the combined emergency/NOIRA regulatory process.

Legal basis

Other than the emergency authority described above, 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 number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

Va. Code § 54.1-4403 grants authority to the Board to:

> 1. Establish the qualifications of applicants for licensure, provided that all qualifications shall be necessary to ensure competence and integrity.
>
> 2. Examine, or cause to be examined, the qualifications of each applicant for licensure, including the preparation, administration and grading of the CPA examination.
>
> 3. 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.
>
> 4. Levy and collect fees for the issuance, renewal, or reinstatement of Virginia licenses that are sufficient to cover all expenses of the administration and operation of the Board.

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9. Revoke, suspend, or refuse to renew or reinstate a Virginia license for just causes as prescribed by the Board.

* * *

12. Establish continuing professional educational requirements as a condition for issuance, renewal, or reinstatement of a Virginia license.

* * *

15. Do all things necessary and convenient for carrying into effect this chapter and regulations promulgated by the Board.

The Board is the promulgating entity for regulations governing public accountancy.

Purpose

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

The subject matter of the emergency regulation is the establishment of a single expiration date for all licenses regulated by the Board, which includes a transitional period to shift existing licensees to the new date and to establish a transitional fee schedule. The intent is to reduce the number of licensees who fail to timely renew their licenses.

Need

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Failure to renew a license exposes expired licensees to potential disciplinary action by the Board if they engage in unlicensed activity during the time their license is expired. Reducing the number of untimely renewals will also decrease the burden on staff in managing the reinstatement of licensure process. Inadvertent unlicensed activity not only impacts the holders of expired licenses, but also the public that unknowingly relies on the work that they produce. Many financial institutions and government regulators will reject or refuse to accept work product if the person or firm that created it held an expired license.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
180	Subsection A mirrors one of	Va. Code § 54.1-4409.2	Intent: The intent of this section

	the enactment clauses that sets the expiration date of new, renewed, or reinstated licenses occurring between the effective date of the act and June 30, 2018 and that licensees that fall under this subsection should follow the existing fee schedule. Subsection B sets out the transition period schedule for existing licenses beginning July 1, 2018, including what a license's new expiration date will be based on the current expiration date and the prorated fee schedule for the transition. Subsection C sets out sets out the transition period schedule for new or reinstated licenses beginning July 1, 2018, including what a license's new expiration date will be based on the issuance or reinstatement date, and that licensees falling under this subsection follow the existing pay schedule. Subsection D sets out that beginning July 1, 2019, all license expire on June 30th of each calendar year and licensees that fall under this subsection should follow the existing pay schedule. Subsection E requires persons holding a license to attest to his compliance with the CPE requirements or to otherwise notify the Board if he cannot make such attestation. Subsection F requires firms holding a license to attest to its compliance with the ownership and voting equity interest requirements for licensure or to otherwise	(How a person may obtain a Virginia license) Va. Code § 54.1-4412.1 (Licensing requirements for firms) Va. Code § 54.1-4413.2 (Renewal and reinstatement of licenses and lifting the suspension of privileges) 18VAC5-22-20 (Fees) 18VAC5-22-90 (Continuing professional education) 18VAC5-22-140 (Persons who release or authorize the release of reports)	is to transition all licensees to a single annual expiration date. Likely Impact: This will impact all new licensees, current licensees, and expired licensees who wish to reinstate their license. All licensees will have a single expiration date of June 30th.

	notify the Board if it cannot make such attestation.		

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

A legislative mandate requires the Board to promulgate regulations to implement the provisions of Chapter 45 (2018 Acts of Assembly), to specifically include the "transition of current licenses to the new issuance and renewal requirements." Therefore, there are no alternatives that can be considered to achieve the essential purpose of the action.

Fees established in this regulation are consistent with the fees currently charged to applicants and licensees by the Board, and are prorated in recognition that during the transitional period, some applicants and licensees will be receiving a license with a duration less than the historical 12-month term.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail to Rebekah E. Allen, 9960 Mayland Drive, Suite 402, Henrico, VA 23233; by email at **rebekah.allen@boa.virginia.gov**; or by fax to (804) 527-4207. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

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.