






TO: The Honorable the Members of the Board of Regents

FROM: Douglas E. Lentivech 

SUBJECT: Proposed Amendment to Section 70.9 of the Regulations of the Commissioner of Education Relating to Continuing Education in the Profession of Public Accountancy

DATE: February 24, 2020

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt, as a second emergency action, the proposed amendment to subdivision (a) of Section 70.9 of the Regulations of the Commissioner of Education relating to continuing education in the profession of public accountancy?

Reason(s) for Consideration

Required by State statute (Chapter 413 of the Laws of 2018).

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the March 2020 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying the emergency action are attached.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the December 2019 meeting of the Board of Regents, effective January 1, 2020. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 24, 2019. Because the December emergency action will expire on March 8, 2020, a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be permanently adopted at the April 6-7, 2020

Regents meeting and take effect as a permanent rule. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

On December 21, 2018, Governor Cuomo signed Chapter 413 of the Laws of 2018 (Chapter 413), which, effective January 1, 2020, amends the Education Law to eliminate the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants and public accountants.¹

Currently, certified public accountants are exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed by the Department. However, as the pace of technology, proliferation of regulations and increasing specialization accelerates; one of the greatest challenges for all certified public accountants is the attainment, maintenance and advancement of professional competence. To meet this challenge and to maintain public confidence, it is critical that all certified public accountants are and remain current with the standards, knowledge, skills, and abilities in all areas in which they provide services. It is not enough that an individual is successful in completing an accountancy education and passing a licensing examination. In today's complexed and complicated world, all certified public accountants need to demonstrate that they are taking substantive steps to maintain their professional competency. Unprofessional and/or unethical practice of public accountancy causes harm to the public. Thus, by eliminating the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants, Chapter 413 will further increase public protection in the profession of public accountancy.

The proposed amendment to subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education implements Chapter 413 by deleting the three-year exemption from the mandatory continuing education requirement provisions for newly licensed certified public accountants.

Related Regent's Items

[December 2019: Proposed Amendment to Section 70.9 of the Regulations of the Commissioner of Education Relating to Continuing Education in the Profession of Public Accountancy](https://www.regents.nysed.gov/common/regents/files/1219ppca2.pdf) (https://www.regents.nysed.gov/common/regents/files/1219ppca2.pdf)

Recommendation

It is recommended that the Board of Regents take the following action:

¹ It should be noted that New York State no longer issues licenses for public accountants. In fact, no new public accountant licenses have been issued in this State in nearly sixty years. Thus, while Chapter 413's elimination of the three-year exemption from the mandatory continuing education requirement applies to both newly licensed certified public accountants and public accountants, there will be no newly licensed public accountants to apply it to.

VOTED: That subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 9, 2020, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Regulations of the Commissioner of Education to the requirements of Chapter 413 of the Laws of 2018, which eliminates the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants.

Timetable for Implementation

If adopted at the March 2020 Regents meeting, the emergency rule will become effective March 9, 2020. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the April 2020 Regents meeting, after expiration of the 60-day public comment period required under the State Administrative Procedure Act.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to section 207, 6504, 6507, 6509, 7401, and 7409 of the Education Law and Chapter 413 of the Laws of 2018

1. Subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education is amended, as follows:

Section 70.9. Continuing education

(a) Applicability of requirement.

(1) All licensees engaged in the practice of public accountancy in this State, as defined in Education Law section 7401, either full time or part time, and required under article 130 of the Education Law to register triennially with the Department, shall complete the continuing education requirements in accordance with this section, except those licensees exempt from the requirement pursuant to paragraph (2) of this subdivision.

(2) Exemptions and adjustments in the requirement.

(i) [New licensees shall be exempt from mandatory continuing education requirements for the triennial registration period in which they are first licensed by the Department.] A new licensee shall become subject to the mandatory continuing education requirements on the first January 1 that falls in his or her [second] first registration period.

8 NYCRR §70.9

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment to subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education is necessary to implement Chapter 413 (Chapter 413) of the Laws of 2018, which amends the Education Law, effective January 1, 2020, to eliminate the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants and public accountants.²

The proposed amendment to subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education implements Chapter 413 by deleting the three-year exemption from the mandatory continuing education requirement provisions for newly licensed certified public accountants.

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the December 2019 meeting of the Board of Regents, effective January 1, 2020. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the April 6-7, 2020 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at April meeting would be April 22, 2020,

² It should be noted that New York State no longer issues licenses for public accountants. In fact, no new public accountant licenses have been issued in this State in nearly sixty years. Thus, while Chapter 413's elimination of the three-year exemption from the mandatory continuing education requirement applies to both newly licensed certified public accountants and public accountants, there will be no newly licensed public accountants to apply it to.

the date the Notice of Adoption would be published in the State Register. However, the December emergency rule will expire on March 8, 2020. If the rule were to lapse, it would undermine the intent of Chapter 413, which is to increase public protection in the profession of public accountancy by eliminating the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants in order to ensure that all certified public accountants maintain their professional competency.

Therefore, a second emergency action is necessary at the March meeting for the preservation of the general welfare in order to immediately conform the Regulations of the Commissioner of Education to the requirements of Chapter 413, which became effective January 1, 2020 and to ensure that the emergency adoption taken at the December meeting remains in effect until the proposed rule can be permanently adopted.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the April 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings.