

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF ACCOUNTANCY [49 PA. CODE CH. 11] Continuing Professional Education

The State Board of Accountancy (Board) amends Chapter 11 to read as set forth in Annex A.

Description and Need for the Rulemaking

Under sections 8.2(b) and 9.2(d) of the CPA Law (act) (63 P. S. §§ 9.8b(b) and 9.9b(d)), an individual applicant for initial issuance of a license, renewal of a current license or reactivation of an expired or inactive license shall have completed 80 hours of continuing professional education (CPE) as prescribed by the Board during the relevant 2-year reporting period. Section 3(a)(10) of the act (63 P. S. § 9.3(a)(10)) empowers the Board to adopt regulations implementing CPE requirements and section 8.2(d) of the act further addresses considerations for the Board in promulgating regulations with respect to CPE requirements. The Board initially adopted CPE regulations in September 1979 and amended them in February 1985, December 1994 and January 2001. The last set of amendments dealt principally with the Board's requirements for CPE program sponsors.

The Board is reorganizing and updating the CPE requirements applicable to individuals who practice as certified public accountants (CPA) or public accountants. Specifically, the final-form rulemaking: clarifies applicable CPE reporting periods, acceptable sources of CPE hours and forms of CPE documentation, and permissible grounds for CPE waiver or modification; revises CPE subject areas, including the addition of a mandatory ethics component; simplifies CPE reporting requirements; and sets forth which forms of disciplinary action apply to which types of CPE violations. The final-form rulemaking also expands the categories of preapproved CPE program sponsors and makes editorial changes to other CPE program sponsor regulations.

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 41 Pa.B. 4541 (August 20, 2011) with a 30-day public comment period. The Board received comments from the Pennsylvania Institute of Certified Public Accountants (PICPA). Other members of the public did not submit comments. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

PICPA noted that the term “accounting and auditing” in § 11.63(a)(1) (relating to CPE subject areas; relevance to professional competence) was proposed to be revised to “accounting and attest,” yet the definition of “attest activity” was not proposed to be revised to match the act.

PICPA suggested revising the definitions to match those in the act. The HPLC and IRRC also recommended revising this definition. The Board agreed and revised the definition of “attest activity” in § 11.1 (relating to definitions) to match the act.

PICPA objected to the proposed deletion of “specialized knowledge and applications” in § 11.63(a)(5) as an acceptable area for CPE. Because significant portions of the profession are engaged in business, industry or educational vocations that are not solely public accounting, PICPA believes that allowing licensees to tailor their CPE around other educational opportunities will permit greater flexibility and therefore greater compliance to the benefit of licensees maintaining competence. The HPLC agreed with this suggestion and IRRC asked the Board to explain the need to omit this area of CPE. Upon further consideration, the Board agreed that it should not omit this area of CPE and deleted the proposed language from § 11.63(a)(5). Therefore, the Board will accept CPE hours in specialized knowledge and applications after January 1, 2012.

Additionally, in discussing the previous point, the Board considered the clarity of its regulations that permit a licensee to obtain CPE in “specialized knowledge and applications” and require that CPE “must be relevant to maintaining the professional competence of a certified public accountant or public account” as further provided in § 11.63(b). Because the term is used throughout the regulations and is not otherwise defined, the Board added to § 11.1 a definition for “professional competence” as “having requisite knowledge, skills and abilities to provide quality professional service as defined by the technical and ethical standards of the profession.” This definition is from the glossary of the Statement on Standards for CPE Programs (Appendix B of the Uniform Accountancy Act) issued jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA). The Board also revised § 11.63(b) to exclude practice building and office management from acceptable CPE subject matter, as are typical continuing education standards for other professional licensing boards within the Bureau of Professional and Occupational Affairs. Revised § 11.63(a) is consistent with general standard 04 of the Statement on Standards for CPE Programs of the AICPA and the NASBA. This standard provides “Acceptable subjects include accounting, assurance, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the CPA's professional competence.” By its use in the Statement on Standards for CPE Programs, “specialized knowledge and applications” is a term of art generally understood in the accounting profession. Because subsection (b) limits acceptable CPE to what is relevant to maintaining “professional competence” as that term is now defined and excludes practice building and office management, the Board determined that there is not a need to further define the term “specialized knowledge and applications” for which there is not a mandatory minimum amount of CPE required.

PICPA objected to the proposed deletion of authorship of writings as a basis for awarding CPE credits. In PICPA's view, the benefits to the accounting profession and to the public of having these types of articles and periodicals published outweighs the Board's difficulty in

verifying how much time practitioners have spent on research and writing. The HPLC agreed with PICPA. IRRC asked for further explanation justifying this change. Upon further consideration, the Board agreed that the value of maintaining this avenue of CPE outweighs the administrative challenge for this small portion of licensees who seek CPE credit for authorship. Accordingly, the Board deleted from § 11.64(4)(iii) (relating to sources of CPE hours) the limitation that CPE credit for authorship of articles, books and other publications relevant to maintaining professional competence is available only until January 1, 2012. The Board added § 11.64(4)(iv) to require a licensee seeking CPE credit for authorship to apply to the Board, provide necessary supporting documentation and submit a certification that the work is that of the licensee and that the licensee actually spent the time claimed for research and writing in support of the activity. Additionally, because approval is mandatory, the Board included a requirement that the licensee shall apply and receive approval prior to renewing the license in reliance upon CPE credit for authoring a publication. The alternative to this requirement would be to permit a licensee to wait until being audited to first show the publication and request credit. The Board rejected this alternative because this scheme would be analogous to permitting a CPE provider to wait until after the renewal period and during audit to seek approval of its courses.

Consistent with the existing regulation that permitted a maximum credit of 50% of the continuing education requirement for publications, the Board proposed, while this option remained available under § 11.64(4)(ii), to permit a licensee to obtain up to 40 CPE hours for authorship during each reporting period. Consistent with its existing regulation that permitted a maximum credit of 50% of the continuing education requirement for self-study, the Board also proposed, while this option remained available under § 11.64(2)(iv), to permit a licensee to obtain up to 40 CPE hours for self-study during each reporting period. The result is that a licensee would be able to satisfy the entire 80-hour CPE obligation by self-study and authoring publications. On further consideration, the Board concluded that the value of group-study and service as an instructor is too great to permit a licensee to wholly satisfy the CPE requirement without engaging in these activities at all. Accordingly, the Board revised § 11.64(2)(iv) and (4)(ii) to limit authorship of publications and self-study combined to a maximum 40 CPE hours in a reporting period.

As drafted, § 11.69a(b)(3) (relating to approval of CPE program sponsor) provides that an accredited college or university is deemed to be an approved CPE program sponsor and is not required to submit an application for approval. PICPA requested clarification as to whether § 11.69a(b)(3) includes CPE affiliates of the educational institution. IRRC also asked the Board to clarify the status of these CPE program sponsors. The Board did not intend to include in preapproval anything offered outside the educational institution's approved curriculum consistent with what is required for licensure under section 4.2(b)(3) of the act (63 P. S. § 9.4b(b)(3)). Accordingly, the Board revised this paragraph to limit preapproval to a college or university "accredited by a Nationally recognized accrediting agency recognized by the United States Department of Education when offered as part of its approved curriculum."

Finally, PICPA suggested revising § 11.69a(b) to exempt National and state recognized accounting organizations from the CPE approval process. The Board rejected

this suggestion. National or state accounting organizations that are members in good standing of NASBA's National Registry of CPE Program Sponsors are preapproved under paragraph (1) and those that have been approved as a CPE program sponsor by the accountancy regulatory body of another state that permits the practice of public accounting under principles of substantial equivalency are preapproved under paragraph (2). By demonstrating to a body adequate competence to provide CPE, a National or state accounting organization will become a preapproved sponsor in this Commonwealth. Otherwise, the organization will be required to apply for approval with the Board in accordance with this section.

The HPLC noted that throughout § 11.69a the Board used "individual or entity" to be a CPE program sponsor and suggested that the Board revise the definition of "CPE program sponsor" in § 11.1 to use the phrase "individual or entity" rather than "party." The Board revised the definition as suggested. The HPLC and IRRC also noted that in § 11.62(c) (relating to CPE requirement for issuance of license; waiver or extension) the Board provided that the requirement for demonstrating completion of a certain amount of CPE as a condition of reactivation of an inactive license does not apply to an applicant who is reactivating a license "that still has a current expiration date" and suggested that it would be less ambiguous to refer to reactivation of a license "within the same biennial period in which it was placed on inactive status." The Board revised this provision as suggested.

Because it could not find a provision in the text of the proposed rulemaking, the HPLC questioned the Board's statement in the proposed preamble that "Entry-level accounting courses are specifically excluded" from instructor CPE credit in § 11.64. IRRC also requested an explanation of this statement. This provision was in existing § 11.64(7)(iv) and inadvertently omitted from proposed § 11.64(3). The Board added it as § 11.64(3)(iv). The HPLC noted that the Board used "participant" throughout § 11.64 to refer to a licensee obtaining CPE but for consistency recommended replacing it with "instructor" in paragraph (3) when referring to CPE credit for service as an instructor. The HPLC and IRRC also recommended revamping § 11.64(3)(i) to provide that an instructor "will receive 3 CPE hours for each 50 minutes of instruction in a group study program which may include up to 2 hours of preparation time" rather than the proposed language which stated that an instructor "will receive 3 CPE hours, including 2 hours of preparation time, for each 50 minutes of instruction in a group study program." The Board revised § 11.64(3) as recommended. Additionally, in reviewing this language, the Board realized that it drafted proposed § 11.64(3)(ii) in a way that altered the requirements of existing § 11.64(7)(iv) other than the Board intended. Previously, an instructor would not be awarded credit for teaching unless, among other things, the instructor had not previously claimed credit for the course or could demonstrate that there was a substantial change in the subject matter; this limitation applied even in subsequent renewal cycles. As the Board did not intend to eliminate this limitation, the Board revised proposed § 11.64(3)(iii) to replace the restriction that this limitation applies only during the same renewal cycle with the description that the instructor previously claimed credit and to repeat the exception that it not apply if there has been a substantial change in the subject matter.

To be consistent with § 11.69a(b), the HPLC and IRRC recommended replacing “individual and entity” with “individual or entity” in § 11.69a(b)(1). The Board has done so.

The HPLC requested the number of licensed firms be included in the preamble. There are approximately 1,400 accountancy firms with current licenses.

If the revised CPE requirements are not effective until 2014, the HPLC suggested that the Board accept CPE completed by licensees in anticipation of the regulatory amendments becoming effective in 2012. CPE completed during the 2012-13 biennium in compliance with the new regulations will be acceptable to the Board. Because the Board proposed ending credit for certain CPE activities after January 1, 2012, and the final-form rulemaking could not be promulgated before that date, the HPLC also suggested that licensees who continued to engage in CPE activities after January 1, 2012, but prior to publication of the final-form rulemaking be given full credit. Similarly, IRRC recommended that the Board review the effective dates of the amended provisions of §§ 11.63(a)(5) and (7) and 11.64(4) in light of the actual promulgation date of the final-form rulemaking. As previously discussed, the Board determined that it should not terminate credit for CPE in specialized knowledge under § 11.63(a)(5) or credit for authorship under § 11.64(4). The Board determined that the requirement in proposed § 11.63(a)(7) to complete at least 4 CPE in ethics should begin as planned with the 2012-13 renewal cycle. As stated in the preamble of the proposed rulemaking, the Board anticipated implementing this requirement during the 2012-13 renewal cycle and previously notified each licensee to plan accordingly.

IRRC noted that proposed § 11.62(b) would require licensees to complete 80 CPE hours during each biennial renewal period and at least 20 CPE hours during each year of the 2-year period. By comparison, section 8.2(b) of the act requires licensees to complete 80 hours of continuing education during the 2-year reporting period immediately preceding renewal but does not require a minimum amount of continuing education during a specific portion of the reporting period. IRRC first questioned whether the 20 CPE hours during each year is in addition to the 80 CPE hours during the biennium. Under former § 11.62(a)(2), a minimum of 20 credit hours was taken each year of the biennial period; these hours were included in the 80-hour biennial requirement. IRRC also questioned why there is a need to complete a minimum amount of continuing education during each year of the biennium and pointed out that a licensee who completed more than 80 hours of continuing education during the first year of the biennium would have fully satisfied the statutory obligation but would not be able to qualify for renewal under the regulation without completing an additional 20 CPE during the second year of the biennium; a licensee who failed to complete at least 20 CPE during the first year of the biennium would not be able to qualify for renewal under the regulation regardless of how much continuing education the licensee completed during the second year, even though the statutory standard would apparently permit another full year to complete all 80 hours of continuing education. IRRC asked for an explanation of the need for and reasonableness of this requirement for annual continuing education and without an explanation suggested deleting the requirement.

The requirement that a licensee complete at least 20 CPE hours during each year of the biennial renewal period was in former § 11.62(a)(2) and the Board did not propose to alter it. This section has not been revised

since 24 Pa.B. 6559 (December 31, 1994). This requirement is consistent with the AICPA/NASBA Model Rules. Rule 6-4(a) provides that an applicant seeking triennial renewal shall complete 120 hours of CPE during the 3-year period (which is equivalent to 80 hours during a 2-year period) and requires a minimum of 20 hours of continuing education completed during each year. By means of adoption by the vast majority of state boards of accountancy, this 20-hour each year minimum has become standard across the country. The Board notes that deleting this requirement may jeopardize the ability of licensees to practice in another state under substantial equivalency as provided in provisions of other state licensure law analogous to sections 5.2, 5.3 and 5.4 of the act (63 P.S. §§ 9.5b, 9.5c and 9.5d). Under section 2 of the act (63 P.S. § 9.2), “substantial equivalency” requires that the education, examination and experience requirements for licensure in another jurisdiction are comparable to or exceed those of the act. In addition, section 8.2(d) of the act requires that when issuing regulations with respect to requirements for continuing education, the Board shall take into account impediments to interstate practice of public accounting which may result from differences in requirements in other states. The Board is retaining the requirement that licensees complete at least 20 CPE hours during each year of the reporting period as a condition for renewal. Because the AICPA and NASBA Model Rules require completion of 20 hours of continuing education during each year—not only as a requirement for completion, but also as a condition of renewal—the Board did not further consider permitting a licensee who has completed at least 80 CPE hours during the biennium to renew, despite not having completed at least 20 CPE hours during each of the two 1-year reporting periods, subject to disciplinary action. The Board notes that under § 11.62(d) the Board may grant a licensee a waiver of a CPE requirement upon a showing of individual hardship and, among other options, may extend the time period to complete CPE if the failure to timely comply was due to a reasonable cause. Moreover, a licensee who has not completed at least 20 CPE hours during each of the two 1-year periods of the biennium may permit the license to expire and, under § 11.62(c), apply for reactivation upon showing completion of 80 CPE hours in the required subject areas during the 2-year period preceding reactivation. While a licensee would not be in violation of § 11.62(b) and would not be subject to disciplinary action under § 11.68a(a) (relating to disciplinary action for failure to comply with CPE requirements) as a result of failing to complete at least 20 CPE hours during each year of the biennium, practice of public accounting in this Commonwealth prior to reactivation of the license would be in violation of section 12(q) of the act (63 P.S. § 9.12(q)).

Upon considering the previously discussed renewal issues, the Board recognized that proposed § 11.67(a) (relating to reporting of CPE hours) was insufficient as written. Proposed § 11.62(a) required an initial applicant for licensure to have completed CPE during the 2-year period preceding the filing date of the application, but explicitly excluded from this requirement an applicant who passed the CPA examination during the same renewal period in which the application is filed. The proposed rulemaking mistakenly stated this exclusion as applicable during the 2-year period preceding the filing date of the application. The Board revised § 11.62(a) to correct this mistake. Proposed § 11.67(a) required an applicant for initial licensure to submit a summary report of CPE hours but did not include the exclusion for an applicant who passed the examination during the preced-

ing relevant time period. The Board revised § 11.67(a) to apply only to an applicant who is required under § 11.62(a) to complete CPE during the 2-year period preceding the filing of the application.

Section 11.68a(a) provides for issuance of an Act 48 citation for certain violations of §§ 11.62—11.64, 11.67 and 11.68. The schedule of civil penalties was separately amended to accomplish this. The Commissioner of Professional and Occupational Affairs published the proposed rulemaking at 41 Pa.B. 4535 (August 20, 2011) and is contemporaneously promulgating a final-form rulemaking that, among other things, provides for an Act 48 citation for certain violations of the CPE requirements. However, the Board determined that formal action, rather than an additional citation, is appropriate for second offense violations of the CPE requirements. Accordingly, the Board revised § 11.68a(a) to refer only to first-offense violations under the schedule and to refer to second and subsequent offenses under section 9.1(a)(4) and (10) of the act (63 P. S. § 9.9(a)(4) and (10)).

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have fiscal impact on the regulated community or on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. Under § 11.63(a)(7), at least 4 of the CPE hours licensees will be required to complete during the January 1, 2012, through December 31, 2013, renewal cycle shall be in ethics.

Statutory Authority

The final-form rulemaking is authorized by section 3(a)(10) of the act.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 8, 2011, the Board submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 4541, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 17, 2012, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 18, 2012, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1404, st-accountancy@pa.gov.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 41 Pa.B. 4541.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 11, are amended by adding § 11.68a, deleting §§ 11.65 and 11.69 and amending §§ 11.1, 11.61, 11.62, 11.63, 11.64, 11.67, 11.68, 11.69a, 11.71, 11.71a and 11.72 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

PATRICK J. DUGAN, CPA,
Chairperson

(Editor's Note: See 42 Pa.B. 7275 (December 1, 2012) for a final-form rulemaking by the Bureau of Professional and Occupational Affairs relating to this final-form rulemaking.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 6969 (November 3, 2012).)

Fiscal Note: Fiscal Note 16A-5511 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 11. STATE BOARD OF ACCOUNTANCY GENERAL PROVISIONS

§ 11.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

AICPA—American Institute of Certified Public Accountants.

Act—The CPA Law (63 P. S. §§ 9.1—9.16b).

Attest activity—The provision of any of the following financial statement services together with the issuance of

a report expressing or disclaiming an opinion or other assurance on the information:

- (i) An audit or other engagement performed in accordance with Statements on Auditing Standards.
- (ii) A review or compilation of a financial statement performed in accordance with SSARS.
- (iii) An engagement performed in accordance with SSAE.
- (iv) An audit or other engagement performed in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

(v) Other engagement performed in accordance with attestation standards established by an organization granted authority by statute or regulation to establish attestation standards, such as the AICPA or the PCAOB.

Board—The State Board of Accountancy of the Commonwealth.

CPA—Certified public accountant.

CPE—Continuing professional education.

CPE program sponsor—An individual or entity that assumes responsibility for presenting a CPE program that is structured as a group study program, interactive individual study program or noninteractive individual study program.

Candidate—A person sitting for an examination.

Certificate of completion—A document prepared by a CPE program sponsor evidencing a participant's completion of a group study program, interactive individual study program or noninteractive individual study program.

Client—The person or entity which retains a licensee for the performance of professional services.

Contingent fee—A fee established for the performance of a service under an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of the service.

Engagement—An undertaking by a licensee embodied in an agreement between the licensee and the client which defines the scope and terms of the services.

Enterprise—A person or entity, whether organized for profit or not, with respect to which a licensee performs professional services.

Financial statement—

- (i) A statement and footnotes related to the statement that purport to show financial position which relates to a point in time or changes in financial position which relate to a period of time.
- (ii) The term includes statements which use a cash or other incomplete basis of accounting.
- (iii) The term also includes balance sheets, statements of income, statements of retained earnings, statements of changes in financial position and statements of changes in owner's equity.
- (iv) The term does not include incidental financial data included in management advisory services reports to support recommendations to a client, tax returns or supporting schedules.

Firm—A qualified association that is a licensee.

GAAP—Generally Accepted Accounting Principles.

GAAS—Generally Accepted Auditing Standards.

GAGAS—Generally Accepted Government Auditing Standards.

Group study program—A CPE program that is designed to permit a participant to learn a given subject through interaction with an instructor and other participants.

Inactive status—

(i) Status of a CPA or public accountant who has returned his license to practice public accounting to the Board and who has requested in writing that the Board place his name on the inactive roll.

(ii) The term does not apply to the status of a CPA or public accountant whose license to practice public accounting has expired for failure to comply with requirements for biennial renewal of licensure.

Instructional design—A teaching plan that considers the organization and interaction of program materials as well as the method of presentation such as lecture, seminar, workshop or program instruction.

Interactive individual study program—A CPE program that is designed to use interactive learning methodologies that simulate a classroom learning process by employing software, other courseware or administrative systems that provide significant ongoing interactive feedback to the participant regarding the learning process.

Licensee—

(i) An individual who is certified by or registered with the Board and holds a current license to practice under section 8.2 of the act (63 P. S. § 9.8b) or a qualified association that holds a current license to practice under section 8.8 of the act (63 P. S. § 9.8h).

(ii) The term does not include an individual who is on inactive status under section 8.2(a.1) of the act or who does not otherwise hold a current license.

NASBA—National Association of State Boards of Accountancy.

New candidate—A candidate who is taking the examination in this Commonwealth for the first time.

Noninteractive individual study program—A CPE program that is designed to permit a participant to learn a given subject without interaction with an instructor or interactive learning methodologies and requires the participant to achieve a 70% minimum grade on a written examination or workbook.

PCAOB—Public Company Accounting Oversight Board.

Professional competence—Having requisite knowledge, skills and abilities to provide quality professional service as defined by the technical and ethical standards of the profession.

Professional service—A service performed or offered to be performed by a licensee for a client in the course of the practice of public accounting.

Public accounting—Offering to perform or performing for a client or potential client:

- (i) Attest activity.
- (ii) Other professional services involving the use of accounting skills, including, but not limited to, management advisory or consulting services, business valuations, financial planning, preparation of tax returns or furnishing of advice on tax matters by a person holding out as a CPA, public accountant or firm.

Public communication—A communication made in identical form to multiple persons as to the world at large, such as by television, radio, motion picture, newspaper, pamphlet, mass mailing, letterhead, business card or directory.

Qualified association—An association as defined in 15 Pa.C.S. § 102 (relating to definitions) that is incorporated or organized under the laws of the Commonwealth or any other state or foreign jurisdiction if the organic law under which the association is incorporated or organized does not afford the shareholders, partners, members or other owners of equity interest in the association or the officers, employees or agents of the association greater immunity than is available to the shareholders, officers, employees or agents of a professional corporation under 15 Pa.C.S. § 2925 (relating to professional relationship retained).

SEC—Securities and Exchange Commission.

SSAE—Statement on Standards for Attestation Engagements.

SSARS—Statement of Standards on Accounting and Review Services.

CONTINUING PROFESSIONAL EDUCATION

§ 11.61. Scope.

Sections 11.62—11.64, 11.67, 11.68, 11.68a, 11.69a, 11.71 and 11.71a apply, as appropriate, to the following:

(1) An individual who needs CPE to obtain or maintain a license to practice public accounting.

(2) An individual that serves or desires to serve as a CPE program sponsor.

(3) An entity that serves or desires to serve as a CPE program sponsor.

§ 11.62. CPE requirement for issuance of license; waiver or extension.

(a) A regular or reciprocal applicant for an initial license shall have completed 80 CPE hours, in the subject areas in § 11.63 (relating to CPE subject areas; relevance to professional competence), during the 2-year period preceding the filing date of the application. This requirement does not apply to an applicant who passed the CPA examination during the same biennial renewal period in which the application was filed.

(b) An applicant for renewal of a current license shall have completed 80 CPE hours, in the subject areas in § 11.63, during the 2-year period preceding the start of the next license period. An applicant shall have completed a minimum of 20 CPE hours during each year of the 2-year period.

(c) An applicant for reactivation of an expired or inactive license shall have completed 80 CPE hours, in the subject areas in § 11.63, during the 2-year period preceding the filing date of the application. This requirement does not apply to an applicant who is reactivating a license within the same biennial renewal period in which it was placed on inactive status.

(d) The Board may, upon application, waive in whole or in part a CPE requirement upon a showing of individual hardship, such as for reasons of health, military service or other good cause. The Board, upon application, may extend the time period for completing CPE upon a showing that the failure to timely comply was due to reasonable cause.

§ 11.63. CPE subject areas; relevance to professional competence.

(a) The CPE hours required under § 11.62 (relating to CPE requirement for issuance of license; waiver or extension) must be in the following subject areas and with the following minimum hours as noted:

- (1) Accounting and attest—minimum of 16 CPE hours.
- (2) Advisory services—no minimum.
- (3) Management—no minimum.
- (4) Professional skills development—no minimum.
- (5) Specialized knowledge and applications—no minimum.
- (6) Taxation—minimum of 8 CPE hours.
- (7) Professional ethics—minimum of 4 CPE hours (effective as a condition of obtaining a license for the 2014-2015 license period and thereafter).

(b) The CPE hours required under § 11.62 must be relevant to maintaining the professional competence of a certified public accountant or public accountant. Practice building and office management are not acceptable CPE subject areas.

§ 11.64. Sources of CPE hours.

The following are the acceptable sources of CPE hours:

(1) *Group study programs offered by approved CPE program sponsors under § 11.69a (relating to approval of CPE program sponsor).*

(i) Except as provided in subparagraph (ii), a participant will receive 1 CPE hour for each 50 minutes of participation.

(ii) A participant in a credit course offered by an accredited college or university will receive 15 CPE hours for each semester credit hour earned and 10 CPE hours for each quarter credit hour earned.

(iii) A participant will not receive CPE credit for less than 50 minutes of participation.

(2) *Individual study programs offered by approved CPE program sponsors under § 11.69a.*

(i) A participant in a noninteractive individual study program will receive 1 CPE hour for each 100 minutes of participation. A participant will not receive CPE credit for less than 100 minutes of participation.

(ii) A participant in an interactive individual study program will receive 1 CPE hour for each 50 minutes of participation. A participant will not receive CPE credit for less than 50 minutes of participation.

(iii) An individual study program is considered complete on the date the program sponsor issues a certificate of completion.

(iv) A participant will not receive more than 40 CPE hours in individual study programs during a reporting period. A participant will not receive more than 40 CPE hours for authorship of publications and individual study combined during the period.

(3) *Service as an instructor during group study programs offered by approved CPE program sponsors under § 11.69a.*

(i) An instructor will receive 3 CPE hours for each 50 minutes of instruction in a group study program which may include up to 2 hours of preparation time. An instructor will not receive CPE credit for less than 50 minutes of instruction.

(ii) An instructor will not receive CPE credit for repeating instruction in a group study program for which the instructor has previously claimed credit unless there was a substantial change in the subject matter.

(iii) An instructor may receive up to 40 CPE hours as an instructor during each reporting period.

(iv) Entry-level accounting courses are excluded from eligibility for CPE credit for service as an instructor.

(4) *Authorship of articles, books and other publications relevant to maintaining professional competence.*

(i) An individual who authors an article, book or other publication that is relevant to maintaining the professional competence of a CPA or public accountant will receive 1 CPE hour for each 50 minutes of research and writing, up to 20 hours, unless the individual can demonstrate to the Board that the complexity of the subject matter merits the awarding of additional CPE hours. An individual will not receive CPE credit for less than 50 minutes of research and writing.

(ii) An individual will not receive more than 40 CPE hours for authorship of all publications combined during a reporting period. An individual will not receive more than 40 CPE hours for authorship of publications and individual study combined during the period.

(iii) CPE hours will be awarded for the year in which publication occurs.

(iv) An individual seeking to obtain credit for authoring publications shall apply to the Board on forms supplied by the Board and submit the documentation necessary to establish entitlement to CPE credit, including a certification that the work is that of the individual and that the individual actually spent the time claimed for research and writing in support of the activity. An individual may not renew a license in reliance upon CPE credit for authoring publications until the credit has been approved by the Board.

§ 11.65. (Reserved).

§ 11.67. Reporting of CPE hours.

(a) An applicant for an initial license who is required under § 11.62(a) (relating to CPE requirement for issuance of license; waiver or extension) to complete CPE during the 2-year period preceding the filing date of the application shall submit a summary report of CPE hours on a form provided by the Board together with the CPE documentation required under § 11.68 (relating to documentation of CPE hours).

(b) An applicant for renewal of a current license or for reactivation of an expired or inactive license shall certify on the application that the applicant has completed the requirements in § 11.62 and §§ 11.63 and 11.64 (relating to CPE subject areas; relevance to professional competence; and sources of CPE hours). In the event a licensee is later selected by the Board for an audit of CPE hours, the licensee shall submit a summary report of CPE hours on a form provided by the Board together with the CPE documentation required under § 11.68.

§ 11.68. Documentation of CPE hours.

(a) The following are acceptable forms of documentation of CPE hours:

(1) A certificate of completion issued by the CPE program sponsor. A consolidated certificate of completion for multiple CPE programs is acceptable as long as it includes the information in subparagraphs (i)—(vii). The certificate must set forth the following:

(i) The CPE program sponsor's name.

(ii) The CPE program sponsor's approval number issued by the Board, NASBA or another state's accountancy regulatory body, as applicable.

(iii) The title of the program.

(iv) The location of the program, if a group study program, or a statement indicating whether the program is an interactive or noninteractive individual study program.

(v) The recommended CPE hours and relevant CPE subject area (for example, accounting and attest, taxation or professional ethics).

(vi) The name of the participant.

(vii) The name and signature of the CPE program sponsor's representative.

(2) A certified academic transcript from an accredited college or university if the CPE hours claimed are in a course taken for credit at the college or university.

(3) If a certificate of completion from the CPE program sponsor is not available for a group study program, a participant may submit an attendance verification form, signed by the participant and containing the information in paragraph (1)(i)—(vi) together with copies of the program materials.

(4) A signed statement from the CPE program sponsor's representative, containing the information in paragraph (1)(i)—(vi), that verifies the participant's service as an instructor.

(5) A copy of each article, book or other publication for which an individual claims CPE hours as an author.

(b) An individual shall retain the documentation in subsection (a) for 5 years after the date of completion of each CPE program or the date of publication of each article, book or publication authored.

§ 11.68a. Disciplinary action for failure to comply with CPE requirements.

(a) Unless granted an extension or waiver by the Board under § 11.62(d) (relating to CPE requirement for issuance of license; waiver or extension), and except as provided in subsection (b), a licensee who fails to comply with §§ 11.62—11.64, 11.67 and 11.68 will be subject to disciplinary action in the case of a first offense under § 43b.10a (relating to schedule of civil penalties—accountants) or in the case of a second or subsequent offense under section 9.1(a)(4) and (10) of the act (63 P. S. § 9.9a(a)(4) and (10)).

(b) A licensee who knowingly provides false information on an application about compliance with CPE requirements will be subject to disciplinary action under section 9.1(a)(1)(iii) of the act.

(c) A licensee who is disciplined for failure to comply with CPE requirements shall make up a deficiency in CPE hours and submit documentation of the fact to the Board within 6 months after imposition of the disciplinary sanction. A licensee who fails to submit documentation of make-up CPE hours by the prescribed deadline will undergo suspension of the licensee's license and

underlying certificate of CPA or public accountant registration until the documentation is submitted.

§ 11.69. (Reserved).

§ 11.69a. Approval of CPE program sponsor.

(a) *Approval requirement.* Except as provided in subsection (b), any individual or entity desiring to offer a program for CPE credit under this chapter shall apply to the Board for approval as a CPE program sponsor.

(b) *Exemption from approval process.* The following are deemed approved CPE program sponsors and are not required to submit applications for approval to the Board:

(1) An individual or entity that is a member in good standing of NASBA's National Registry of CPE Program Sponsors.

(2) An individual or entity that is approved as a CPE program sponsor by the accountancy regulatory body of a state that permits the practice of public accounting under principles of substantial equivalency.

(3) A college or university accredited by a Nationally recognized accrediting agency recognized by the United States Department of Education when offered as part of its approved curriculum.

(c) *Contents of application for approval.* An application for approval as a CPE program sponsor shall contain the following information:

- (1) The name and address of the CPE program sponsor.
- (2) The sources of CPE hours as specified in § 11.64 (relating to sources of CPE hours).
- (3) A list of existing or planned program offerings, if known.
- (4) The total number of credit hours requested for each program.
- (5) The attendance certification method.
- (6) The program objectives.
- (7) The admission requirements.
- (8) The program outlines.
- (9) The instruction and evaluation methods.

(d) *Sworn statements.* Statements made in an application shall be sworn to be true and correct to the best of the applicant's knowledge.

(e) *Board review of application for approval.* An application will be reviewed by the Board's CPE Committee, which will make recommendations to the Board for approval or disapproval. If an application is disapproved, the Board will provide the applicant with written notification of the reasons for disapproval. An applicant may submit a revised application to address the Board's concerns. No Board member will review or vote upon an application in which he has a vested interest.

(f) *Approval number.* Upon approval by the Board, an applicant will be assigned a CPE program sponsor approval number.

(g) *Biennial renewal of approval.* An approved CPE program sponsor shall renew its approval by January 1 of each even-numbered year. A renewal application shall list the CPE program sponsor's planned program offerings for the upcoming renewal period.

§ 11.71. Responsibilities of CPE program sponsor.

In addition to meeting the requirements in § 11.69a (relating to approval of CPE program sponsor), a CPE program sponsor shall comply with the following:

(1) *Program level of difficulty.* A CPE program sponsor shall specify the level of knowledge to be imparted under the program. The levels of knowledge may be expressed in a variety of ways, all of which should be informative to potential participants. For example, a program may be described as having the objective of imparting technical knowledge at levels such as basic, intermediate, advanced or overview, which might be defined as follows:

(i) A basic level program teaches fundamental principles or skills to participants having no prior exposure to the subject area.

(ii) An intermediate level program builds on a basic level program in order to relate fundamental principles or skills to practical situations and extend them to a broader range of applications.

(iii) An advanced level program teaches participants to deal with complex situations.

(iv) An overview program enables participants to develop perspective as to how a subject area relates to the broader aspects of accounting or brings participants up-to-date on new developments in the subject area.

(2) *Recommendation of education and experience prerequisites.* A CPE program sponsor shall clearly identify what prerequisites are suggested for enrollment. If a prerequisite is not necessary, a statement to that effect shall be made. Prerequisites shall be specified in precise language so potential participants can readily ascertain whether the program would be beneficial to them or whether the program is above or below their level of knowledge or skill.

(3) *Development of the program.* A CPE program sponsor shall ensure that the programs are developed by individuals qualified in the subject matter and in instructional design. This subsection is not intended to require that any individual CPE program sponsor be both technically competent and competent in instructional design. Its purpose is to ensure that both types of competency are represented in the program's development, whether one or more persons are involved in that development. Mastery of the technical knowledge or skill in instructional design may be demonstrated by appropriate experience or educational credentials.

(4) *Program review.* A CPE program sponsor shall review the course materials annually to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued when appropriate, and obsolete material should be deleted. Between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes. If, for example, a new accounting standard is issued, a program will not be considered current unless the ramifications of the new standard have been incorporated into the materials or the instructor appropriately informs the participants of the new standard.

(5) *Disclosure to prospective participants.* A CPE program sponsor shall disclose in advance to prospective participants the objectives, prerequisites, experience level, content, required advanced preparation, teaching method and number of CPE hours involved in the program.

(6) *Selection and review of instructors.* A CPE program sponsor shall select and assign qualified instructors for the CPE program. A CPE program sponsor shall evaluate the performance of instructors at the conclusion of each

program to determine their suitability for continuing to serve as instructors in the future.

(7) *Number of participants and adequacy of physical facilities.* A CPE program sponsor shall ensure that the number of participants and the physical facilities are consistent with the teaching methods to be utilized. Because the learning environment is affected by the number of participants and by the quality of physical facilities, a CPE program sponsor has an obligation to pay serious attention to both of these factors. The maximum number of participants for a case-oriented discussion program, for example, shall be less than for a lecture program. The seating arrangement is also very important. For discussion presentation, learning is enhanced as seating is arranged so that participants can easily see and converse with each other. If small group sessions are an integral part of the program format, appropriate facilities shall be made available to encourage communication with a small group.

(8) *Program evaluation.* A CPE program sponsor shall provide a program evaluation in accordance with the following:

(i) Evaluations shall be solicited from both the participants and instructors. The objective of evaluations is to encourage the CPE program sponsor to strive for increased program effectiveness. Programs should be evaluated to determine whether:

- (A) Objectives have been met.
- (B) Prerequisites were necessary or desirable.
- (C) Facilities were satisfactory.
- (D) Instructors were effective.
- (E) Advanced preparation materials were satisfactory.
- (F) The program content was timely and effective.

(ii) Evaluations may take the form of pretests for advanced preparation, posttests for effectiveness of the program, questionnaires completed at the end of the program or later and oral feedback to the instructor or CPE program sponsor. Instructors shall be informed of their performance, and the CPE program sponsor shall systematically review the evaluation process to ensure its effectiveness.

(9) *Attendance records.* A CPE program sponsor shall maintain and retain accurate records of attendance for a 5-year period.

(10) *Course materials.* A CPE program sponsor shall retain a written outline of course materials for a 5-year period.

(11) *Certificate of completion.* A CPE program sponsor shall provide a certificate of completion to each participant who satisfactorily completes a program. A certificate of completion must contain the information in § 11.68(a)(1) (relating to documentation of CPE hours).

(12) *Promotional materials.* A CPE program sponsor shall identify the subject area of a program under § 11.63 (relating to CPE subject areas; relevance to professional competence) in the program's promotional materials.

§ 11.71a. Offsite review of CPE program sponsor.

A CPE program sponsor shall be subject to an offsite review of its CPE programs to ensure compliance with this chapter. The review will involve an in-depth audit of all course materials, documents and records maintained by the CPE program sponsor under this chapter, including:

(1) The information in § 11.69a(c) (relating to approval of CPE program sponsor).

(2) The dates and locations of programs.

(3) The program schedules (that is, title of subject, instructor, time allotted, excluding breaks and lunches).

(4) The names, titles and degrees of instructors.

§ 11.72. Withdrawal of approval of CPE program sponsor.

(a) The Board, following notice and hearing under 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies) may withdraw the approval of a CPE program sponsor that the Board finds guilty of:

(1) Having acquired the Board's approval by misrepresentation.

(2) Failing to comply with § 11.69a or § 11.71 (relating to approval of CPE program sponsor; and responsibilities of CPE program sponsor).

(3) Refusing to provide information requested by the Board pursuant to an offsite review under § 11.71a (relating to offsite review of CPE program sponsor).

(4) Indicating in any manner that it has been approved as a CPE program sponsor prior to a CPE program sponsor approval number having been issued to it.

(b) The Board's withdrawal of a CPE program sponsor's approval will not affect the CPE hours earned by persons who completed programs of the sponsor prior to the withdrawal of its approval.

[Pa.B. Doc. No. 12-2312. Filed for public inspection November 30, 2012, 9:00 a.m.]

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Accountants

The Commissioner of Professional and Occupational Affairs (Commissioner) amends § 43b.10a (relating to schedule of civil penalties—accountants) to read as set forth in Annex A.

Description and Need for the Rulemaking

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes agents of the Bureau of Professional and Occupational Affairs (Bureau) to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. It further provides that a penalty may not exceed the sum of \$1,000 per violation. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation have the right to a hearing and retain their due process right of appeal prior to the imposition of discipline. The State Board of Accountancy (Board) has had an Act 48 schedule of civil penalties since 1998. The Commissioner published a proposed rulemaking at 41 Pa.B. 4535 (August 20, 2011) to amend the schedule of civil penalties for various violations of the CPA Law (63 P. S. §§ 9.1—9.16b) and regulations of the Board. The rulemaking proposed to increase the Act 48 civil penalty for one continuing professional education (CPE) violation,

add Act 48 civil penalties for additional CPE violations, delete the Act 48 civil penalty for a CPE violation that is no longer recognized under the CPA Law, restrict the applicability of Act 48 civil penalties for certain violations involving the unauthorized use of professional designations and other unauthorized representations and make editorial changes to the descriptions of violations for which Act 48 civil penalties are assessed.

Consistent with the proposed rulemaking published at 41 Pa.B. 4541 (August 20, 2011), the Board is contemporaneously promulgating a final-form rulemaking that, among other things, requires a licensee to make up a CPE deficiency no later than 6 months after imposition of a disciplinary sanction for noncompliance and provides that a licensee's failure to make up that CPE deficiency will result in the automatic suspension of the licensee's professional credentials until the deficiency is satisfied.

Summary of Comments and Responses to Proposed Rulemaking

The Commissioner published the proposed rulemaking at 41 Pa.B. 4535 with a 30-day public comment period. The Board received comments from the Pennsylvania Institute of Certified Public Accountants (PICPA). Other members of the public did not comment. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

PICPA noted its strong belief that the civil penalty amounts provided for violations of section 12(a), (c) and (j) of the CPA Law (63 P. S. § 9.12(a), (c) and (j)) for holding out as a certified public accountant (CPA) or public accountant (PA) without having been licensed are not an effective enough deterrent. The HPLC recommended more stringent penalties for unlicensed persons and firms violating these protected titles. Although the Commissioner had not previously proposed changing the amount of this penalty, the Board agreed that a fine of \$500 is not a sufficient deterrent. Accordingly, the Commissioner revised the sanction to be \$1,000 for the first offense and formal action for all subsequent offenses.

PICPA noted that there is an important distinction between practicing without a license and practicing with a lapsed license and suggested providing Act 48 citations for a reduced civil penalty for inadvertent practice on a lapsed license. The HPLC asked why a penalty was not listed for firms operating when "not currently licensed." The HPLC further requested the Board to distinguish between lapsed license and unlicensed practice and impose a more severe sanction for unlicensed practice. The Board further considered how best to handle the process of disciplining a licensee for practice on a lapsed license. The Board agreed with PICPA and the HPLC that a violation is substantively different from practicing without having ever been licensed and should not always result in a \$1,000 fine. However, as described in the preamble of the proposed rulemaking, the Board prefers that CPAs, PAs and public accounting firms that use professional designations after licenses have lapsed be charged with the unlicensed practice of public accounting under section 12(q) of the CPA Law. Rather than setting predetermined civil penalties or even a formula for civil penalties, the Board has always enforced this provision

through formal action, fashioning each disciplinary sanction on a case-by-case basis by taking into account the length of time that a license has lapsed and the type of accounting activities performed. IRRC inquired why formal action is necessary in matters that would otherwise appear to be straightforward more minor violations. In light of the comments received and to increase efficiency in imposing an appropriate disciplinary sanction with the relatively modest civil penalty, the Board determined that the Commissioner should amend the schedule to provide a civil penalty of \$500 for lapsed license practice of less than 6 months. Subsequent violations and lapsed license practice of 6 months or more will continue to be enforced through formal action in which the Board retains the full discretion to impose an appropriate sanction based upon the relevant facts when it issues an adjudication or determines to accept a consent agreement. If these violations were included on the Act 48 schedule, the hearing examiner would be required to impose the full civil penalty from the schedule, as required under § 43b.3(c)(2) (relating to procedures). The Board would not have the opportunity to exercise its discretion unless the respondent denies the violation and, after the hearing examiner issues an order, either the respondent or the Commonwealth files an application for review. While the Board will continue to exercise its discretion in these individual cases, the Board agreed that a lapsed license practice violation generally does not merit the same sanction imposed upon a person who has never been licensed for the same level of practice and length of violation.

PICPA objected to providing a citation for second offense violations of the various CPE provisions as licensees who receive a first offense citation should then be able to comply or face formal action. The HPLC recommended subjecting second offense violations to formal action rather than simply an increased civil penalty. Upon further consideration, the Board agreed that the Commissioner should not amend this regulation to provide a citation for a second offense violation of the CPE provisions at section 8.2 of the CPA Law (63 P. S. § 9.8b(b)) and § 11.63(a)(1), (6) and (7) (relating to CPE subject areas; relevance to professional competence).

The HPLC first noted use of an asterisk and a number/pound sign as references in the schedule and suggested at least replacing them with superscript numbers. The Commissioner has replaced the * with superscript ¹ and replaced the # with superscript ².

IRRC requested that the Bureau clarify the difference between a CPA license and CPA certificate, as referenced for a violation of section 12(a) of the CPA Law. The general term of art for authorization to practice a profession is a "license." Section 4.2(a) of the CPA Law (63 P. S. § 9.4b(a)) refers to the Board issuing a "certificate" to a qualified individual who has passed the examination. Sections 5 and 5.1 of the CPA Law (63 P. S. §§ 9.5 and 9.5a) refer to the Board issuing "certificates" by domestic and foreign reciprocity, respectively. Section 12(a) of the CPA Law prohibits one from holding out as a CPA or with a similar title unless the person has received a "certificate" of CPA. Conversely, section 8.2 of the CPA Law refers to biennial "licenses" to engage in the practice of public accounting which are issued to holders of CPA certificates and to public accountants registered with the Board. Section 2 of the CPA Law (63 P. S. § 9.2) defines

“licensee” to include “an individual certified by or registered with the board and holding a current license to practice under section 8.2 of this act.” Thus, the statutory scheme would seem to indicate that an individual cannot obtain a renewable license authorizing the individual to practice public accounting without first possessing a CPA certificate or without first registering as a PA with the Board. Essentially, an individual can be credentialed as a CPA but not be licensed to engage in the practice of public accounting unless the individual has a current, active license issued by the Board. See § 11.9 (relating to use of the designation “certified public accountant” and the abbreviation “CPA” solely as mark of achievement by individual without current license).

To be consistent with the statutory language, the Commissioner proposed replacing “never licensed” with “not possessing CPA certificate in good standing.” Upon review of the comments about the difference between wholly unlicensed practice and practice with a lapsed license, the Board further realized that the proposed language might also suggest lapsed license practice. Accordingly, to more closely match the statutory language and make clear that it is directed towards unlicensed practice by individuals not holding credential issued by the Board, the Commissioner further revised the description for violation of section 12(a) of the CPA Law to refer to a person “who has not received a CPA certificate or whose certificate is revoked or suspended.” Similarly, because section 12(j) of the CPA Law prohibits one from holding out as a PA or similar title unless registered as a PA or received a CPA certificate, the Commissioner revised the description for violation of section 12(j) of the CPA Law to refer to a person “who has not received a PA registration or CPA certificate.” Because section 12(c) of the CPA Law prohibits similar holding out by a firm unless it “holds a current license,” the Commissioner did not revised the language referring to this violation as “by a firm never licensed.”

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The final-form rulemaking will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

This final-form rulemaking is authorized by section 5(a) of Act 48.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 8, 2011, the Board submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 4535, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing

the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 17, 2012, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 18, 2012, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1404, st-accountancy@pa.gov.

Findings

The Commissioner finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and the comments were considered.
- (3) This final-form rulemaking does not include amendments that would enlarge the scope of proposed rulemaking published at 41 Pa.B. 4535.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the authorizing acts set forth in this preamble.

Order

The Commissioner, acting under the authority of Act 48, orders that:

- (a) The regulations of the Commissioner, 49 Pa. Code Chapter 43b, are amended by amending § 43b.10a to read as set forth in Annex A.
- (b) The Bureau shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Bureau shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

KATIE TRUE,
Commissioner

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 6969 (November 3, 2012).)

(Editor’s Note: See 42 Pa.B. 7267 (December 1, 2012) for a final-form rulemaking by the State Board of Accountancy relating to this final-form rulemaking.)

Fiscal Note: Fiscal Note 16A-48 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.10a. Schedule of civil penalties—accountants.

STATE BOARD OF ACCOUNTANCY

| <i>Violation under 63 P. S.</i> | <i>Title/Description</i> | <i>Civil Penalty</i> |
|---|--|---|
| Section 9.8b(b) | Failure to complete 80 hours of acceptable continuing professional education during reporting period | 1st offense—1 to 20 hour deficiency—\$300; 21 to 40 hour deficiency—\$600; 41 to 60 hour deficiency—\$800; 61 to 80 hour deficiency—\$1,000 ² 2nd or subsequent offense—formal action |
| Section 9.12(a) | Unlawful use of “certified public accountant,” “CPA” or similar representation by person who has not received a CPA certificate or whose certificate is revoked or suspended | 1st offense—\$1,000 ¹ 2nd or subsequent offense—formal action |
| Section 9.12(c) | Unlawful use of “certified public accountant,” “public accountant,” “CPA,” “PA” or similar representation by a firm never licensed | 1st offense—\$1,000 ¹ 2nd or subsequent offense—formal action |
| Section 9.12(j) | Unlawful use of “public accountant,” “PA” or similar representation by person who has not received a PA registration or CPA certificate | 1st offense—\$1,000 ¹ 2nd or subsequent offense—formal action |
| Section 9.12(o) | Unlawful representation of membership in professional society, association or organization of CPAs or PAs by person not credentialed as CPA or PA or firm not licensed | 1st offense—\$250 ¹ 2nd or subsequent offense—formal action |
| Section 9.12(q) | Engaging in the practice of public accounting in this Commonwealth when the individual’s license is expired | 1st offense—less than 6 months—\$500; 6 months or more—formal action 2nd or subsequent offense—formal action |
| <i>Violation under 49 Pa. Code Chapter 11</i> | | |
| Section 11.62(b) | Failure to complete 20 hours of acceptable continuing professional education during each year of reporting period | 1st offense—\$300 2nd or subsequent offense—formal action |
| Section 11.63(a)(1) | Failure to complete 16 hours of acceptable continuing professional education in accounting and attest subjects during reporting period | 1st offense—1-4 hour deficiency—\$300; 4-8 hour deficiency—\$400; 9-12 hour deficiency—\$500; 13-16 hour deficiency—\$600 ² 2nd or subsequent offense—formal action |
| Section 11.63(a)(6) | Failure to complete 8 hours of acceptable continuing professional education in tax subjects during reporting period | 1st offense—\$300 ² 2nd or subsequent offense—formal action |
| Section 11.63(a)(7) | Failure to complete 4 hours of acceptable continuing professional education in professional ethics during reporting period | 1st offense—\$300 ² 2nd or subsequent offense—formal action |

Violation under
49 Pa. Code Chapter 11

Section 11.67(b)

Failure to timely submit documentation of continuing professional education during Board audit (assumes no other continuing education violation)

1st offense—\$500
2nd or subsequent offense—formal action

¹ The first offense provision does not apply to a situation involving multiple occurrences or a pattern or practice of misconduct.

² When there are violations of both 63 P. S. § 9.8b(b) and 49 Pa. Code § 11.63(a)(1), (6) or (7) (relating to CPE subject areas; relevance to professional competence), a combined civil penalty will not be assessed for both sets of violations. The highest civil penalty will be assessed whether for the violation of 63 P. S. § 9.8b(b) or 49 Pa. Code § 11.63(a)(1), (6) or (7).

[Pa.B. Doc. No. 12-2313. Filed for public inspection November 30, 2012, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE TREASURY DEPARTMENT

[61 PA. CODE CH. 5]

Payments by Electronic Funds Transfer

The Department of Revenue (Department) and the Treasury Department (Treasury), under the authority of section 9 of The Fiscal Code (72 P. S. § 9), amend Chapter 5 (relating to payments by electronic funds transfer) to read as set forth in Annex A.

The act of July 2, 2012 (P. L. 823, No. 87) (Act 87) mandates the Secretary of Revenue and the State Treasurer to jointly promulgate a regulation revising electronic funds transfer (EFT) payments for payments equal to or greater than \$10,000. Accordingly, the Department and the Treasury, under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), and the regulation thereunder, 1 Pa. Code § 7.4, find that notice of proposed rulemaking is under the circumstances impracticable and, therefore, may be omitted.

Act 87 mandated these changes as part of the Fiscal Year (FY) 2012-2013 budget package. A balanced operating budget for the Commonwealth is required under Pa. Const. Art. VIII, § 12. The only way to timely implement this change, a necessary component of the FY 2012-2013 budget, is through a final-omitted rulemaking. These savings form part of the FY 2012-2013 budget passed by the General Assembly. Failure to timely adopt the regulations will create a deficit in the current year's budget as enacted.

Utilizing the shorter regulatory process enables the Department and the Treasury to quickly amend the regulations and provide the public with the revised EFT requirement enacted under Act 87. Even though time constraints make the formal comment period impossible, the Department reached out to the tax community to give them the opportunity to provide informal comments through the public outreach process. A copy of the draft regulation was sent to the Pennsylvania Bar Association, the Philadelphia Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants and the Pennsylvania Chamber of Business and Industry with a 30-day comment period. The draft regulation was also delivered to the Chairpersons of the Appropriations and Finance legislative committees. Comments or objections were not received on the EFT threshold revision. The regulation is listed on the Department's Quarterly Regulatory Report

posted on the Department's web site. The Department continues to inform taxpayers of the lower EFT requirement through many avenues, such as the Revenue Tax Update publication, notification in the electronic E-TIDES system and on the Department's web site.

As a result, the Department for good cause finds that the procedures specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are in these circumstances impractical, unnecessary or impose an impossible burden on the Department.

Purpose of the Final-Omitted Rulemaking

The purpose of this final-omitted rulemaking is to implement regulations to reflect a statutory change made by the General Assembly that revised payments required under § 5.3 (relating to payments required to be paid by EFT) from "\$20,000 or more" to "\$10,000 or more." Electronic payments offer several advantages over check payments. Payments are received faster and errors in handling and posting of tax payments are reduced.

Explanation of Regulatory Requirements

The Department amended § 5.3 to add language in subsection (d) that explains the lower EFT threshold requirement of \$10,000 beginning January 1, 2013. The remaining subsections are renumbered.

Section 5.5 is rescinded. Technology advances and streamlining processes available on the Department's web site have rendered obsolete the taxpayer registration process.

Section 5.7 (relating to miscellaneous provisions) is amended to reflect a new amount of "\$10,000 or more" as well update the reference to the renumbered section.

Fiscal Impact

The Department estimated that the regulations will have a fiscal impact of \$100,000 savings to the Commonwealth. It can be expected that the costs to the regulated community and small businesses, after an initial setup expense of staff time or other resources if the business is not already set up to make EFT payments, are minimal. Added expense to convert to electronic payments should be offset by savings on checks, stamps and envelopes.

Paperwork

This final-omitted rulemaking will not generate substantial paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

This final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of publication. A sunset date has not been assigned.

Contact Person

The contact person for an explanation of the final-omitted rulemaking is Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on October 12, 2012, the Department and Treasury submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on November 14, 2012, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 15, 2012, and approved the final-omitted rulemaking.

Findings

The Department and the Treasury find that:

(1) The proposed rulemaking procedures in sections 201 and 202 of the CDL are unnecessary because it is in the public interest to expedite final-omitted rulemaking.

(2) The adoption of this final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department and the Treasury, acting under the authorizing statute, order that:

(a) The regulations of the Department, 61 Pa. Code Chapter 5, are amended by amending §§ 5.3 and 5.7 and deleting § 5.5 to read as set forth in Annex A.

(b) The Secretary of the Department and the State Treasurer shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department and the State Treasurer shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DANIEL MEUSER,
Secretary of Revenue
ROBERT M. McCORD,
State Treasurer

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 7364 (December 1, 2012).)

Fiscal Note: 15-457. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 61. REVENUE****PART I. DEPARTMENT OF REVENUE****Subpart A. GENERAL PROVISIONS****CHAPTER 5. PAYMENTS BY ELECTRONIC FUNDS TRANSFER****§ 5.3. Payments required to be paid by EFT.**

(a) Beginning July 1, 1992, a payment in the amount of \$40,000 or more shall be remitted using a method of EFT selected by the taxpayer. A taxpayer may choose the ACH debit method or the ACH credit method.

(b) Beginning January 1, 1993, a payment in the amount of \$30,000 or more shall be remitted using a method of EFT selected by the taxpayer. A taxpayer may choose the ACH debit method or the ACH credit method.

(c) Beginning January 1, 1994, a payment in the amount of \$20,000 or more shall be remitted using a method of EFT selected by the taxpayer. The taxpayer may choose the ACH debit method or the ACH credit method.

(d) Beginning January 1, 2013, a payment in the amount of \$10,000 or more shall be remitted using a method of EFT selected by the taxpayer. The taxpayer may choose the ACH debit method or the ACH credit method.

(e) This requirement applies to payment of only the following taxes:

Sales and Use
Employer Withholding
Liquid Fuels
Fuel Use
Mutual Thrift Institutions
Oil Company Franchise
Malt Beverage
Motor Carrier Road Tax
Corporate Net Income
Capital Stock-Franchise
Bank Shares
Title Insurance and Trust Company Shares
Insurance Premiums
Public Utility Realty
Gross Receipts

(f) A taxpayer may satisfy the obligation to remit a payment by EFT by delivering a certified or cashier's check, in person or by courier with the appropriate return or deposit statement, to the Pennsylvania Department of Revenue, Bureau of Business Trust Fund Taxes, EFT Unit, Ninth Floor, Strawberry Square, Fourth and Walnut Streets, Harrisburg, Pennsylvania 17128 on or before the due date of the obligation. Payments will not be accepted at other Department locations.

(g) Separate transfers shall be made for each payment.

§ 5.5. (Reserved).**§ 5.7. Miscellaneous provisions.**

(a) A taxpayer who is required to remit payments by EFT shall initiate the transfer so that the tax due is deposited to the Commonwealth's depository account on or before the day that the tax is due. If a tax due date falls on a day other than a business day, the deposit by EFT is due on the first business day thereafter.

(b) The EFT method of payment does not change current filing requirements for tax returns. If the EFT payment is not timely made or the tax return required is

not filed by the due date, the provisions for late filing penalties, interest and loss of collection allowance apply as provided by law.

(c) A taxpayer who is required to remit payments by EFT and who is unable to make a timely payment because of system failures within the banking system/ACH interface which are beyond the taxpayer's control will not be subject to penalty or interest for late payment or loss of collection allowance.

(d) Errors made by the Treasury, the Department or their agents will not subject the taxpayer to loss of collection allowance or assessment of penalty or interest for late payment.

(e) A taxpayer who is required to remit payment by EFT and who elects to remit the payment by courier as described in § 5.6(d) (relating to EFT payments) will not be subject to penalty or interest for late payment or loss of collection allowance if the courier fails to make timely delivery due to a force majeure.

(f) For the first 6 months that a taxpayer is required to remit tax by EFT, the Department will extend a reasonable grace period to the taxpayer to resolve problems which arise with new administrative procedures, data

systems changes and taxpayer operating procedures. To qualify for a grace period, the taxpayer shall demonstrate that a good faith effort to comply was made, or that circumstances beyond the taxpayer's reasonable control prevented compliance by the required date.

(g) A taxpayer who remits taxes by EFT shall indicate that fact on the return when it is filed. For the purpose of this chapter, "return" means the form designated for filing the report of taxes due for a period, including forms for making installments of estimated tax and tentative tax returns.

(h) The Department and the Treasurer will provide one or more methods for taxpayers who remit taxes by EFT to verify and acknowledge that the payments have been received by the Department.

(i) The Treasurer, the Department and the Secretary of the Budget will provide one or more methods for tax refunds of \$10,000 or more. The refunds will be available for the taxes listed in § 5.3(e) (relating to payments required to be paid by EFT). The taxpayer shall file a written request for the electronic transfer of a refund.

[Pa.B. Doc. No. 12-2314. Filed for public inspection November 30, 2012, 9:00 a.m.]
