

Regulatory Analysis Form

This space for use by IRRC

(1) Agency
Department of State, Bureau of Professional and Occupational Affairs, State Board of Accountancy

(2) I.D. Number (Governor's Office Use)
16A-559

IRRC Number: **2465**

RECEIVED
2007 MAR 30 10:26
INDEPENDENT REGULATORY REVIEW COMMISSION

(3) Short Title
General Revisions

(4) PA Code Cite
49 Pa. Code §§11.1, 11.5-11.9, 11.21, 11.25, 11.27, 11.28, 11.30, 11.31, 11.35, 11.36, 11.41, 11.53-11.56, 11.73

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Steven Wennberg, Board Counsel**
783-7200

Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, 783-7200**

(6) Type of Rulemaking (check one)
 Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The amendments revise regulations to promote greater consistency with the current provisions of the CPA Law (63 P.S. §§9.1 – 9.16b), clarify practice issues, and improve organization and readability.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Sections 3(a)(11) and 3(a)(12) of the CPA Law (63 P.S. §§9.3(a)(11) and 9.3(a)(12)) authorize the Board to promulgate regulations relating to, respectively, professional conduct and other matters necessary for enforcement of the CPA Law.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The amendments are not mandated by any federal or state law or court order, or by any federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendments provide guidance to the regulated community on certain practice issues under the CPA Law and harmonize the Board's regulations with the current requirements of the CPA Law.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

The principal risk associated with nonregulation is that members of the regulated community (1) will be unaware of how the Board intends to apply the CPA Law with regard to certain practice issues and (2) may misapprehend that certain regulatory requirements are either obsolete or inconsistent with current provisions of the CPA Law.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The amendments will benefit the entire regulated community equally.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Board cannot identify any group that will be adversely affected by the amendments.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The amendments will affect all certificateholders, registrants, permitholders, and current, inactive and lapsed licensees under the CPA Law as well as all candidates for the CPA examination and for CPA certification. There are currently approximately 20,500 licensed certified public accountants, 260 licensed public accountants, and 1,200 licensed public accounting firms.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In drafting the amendments, the Board solicited comments from the Pennsylvania Institute of Certified Public Accountants and the Pennsylvania Society of Public Accountants, the two major organizations representing the public accounting profession in Pennsylvania.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The amendments will not result in costs or savings to the regulated community, and will not impose new legal, accounting or consulting procedures.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The amendments will not result in costs or savings to local government.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The amendments will not result in costs or savings to state government.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY +1	FY +2	FY +3	FY +4	FY +5
SAVINGS:	None	None	None	None	None	None
Regulated						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated	None	None	None	None	None	None
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	None	None	None	None	None	None
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Accountancy	\$934,000	\$959,000	\$1,045,000 (est.)	\$1,093,000 (est.)

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The amendments streamline and clarify regulatory requirements, to the benefit of all in the regulated community and to the cost of none.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Board did not consider a nonregulatory alternative.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Because this final rulemaking only amends an existing regulatory scheme, the Board did not consider an alternative regulatory scheme.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal standards applicable to the amendments.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The CPA Law, like the public accountancy laws of other states, is very similar to the Uniform Accountancy Act adopted by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy. Because the amendments are aimed at harmonizing the Board's regulations with the CPA Law, the amendments will align Pennsylvania's requirements even more closely with those of other states. None of the amendments will induce a Pennsylvania licensee to move his practice out-of-state or induce a Pennsylvania consumer to engage the services of an out-of-state licensee over the services of a Pennsylvania licensee.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The amendments will not affect other existing or proposed regulations of the Board or the existing or proposed regulations of another state agency.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board has not scheduled public hearings or informational meetings regarding this final rulemaking.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendments will require the Board to modify its application forms and instructions. The amendments will not affect other reporting, record keeping and paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The amendments will apply uniformly to all affected groups.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The amendments will take effect upon final publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The Board regularly evaluates the effectiveness of its regulations during its monthly meetings.

RECEIVED

2007 MAR 30 AM 10:26

INDEPENDENT REGULATORY
REVIEW COMMISSION

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

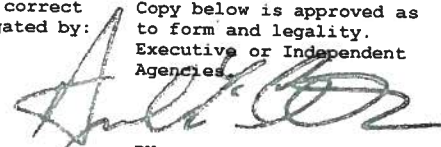
2465

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated by:

Copy below is approved as
to form and legality.
Executive or Independent
Agencies.



State Board of Accountancy

(AGENCY)

BY: _____

BY: _____
(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 16A-559

Andrew C. Clark

MAR 28 2007

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: William J. Park, CPA

(Deputy General Counsel
~~Chief Counsel,~~
Independent Agency
~~(Strike inapplicable
title)~~)

Chairman

TITLE: _____
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if
applicable. No Attorney
General approval or
objection within 30 days
after submission.

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF ACCOUNTANCY
(49 PA. CODE, CHAPTER 11)

GENERAL REVISIONS

PREAMBLE

The State Board of Accountancy (Board) amends Chapter 11, to read as set forth in Annex A, by revising §§ 11.1, 11.5, 11.7-11.9, 11.21, 11.25, 11.27, 11.28, 11.30, 11.31, 11.35, 11.55, 11.56, and 11.73; by adding § 11.36 (relating to form of business name; disclosure); and by deleting §§ 11.6, 11.41, 11.53 and 11.54.

The final-form rulemaking is a general updating of the Board's regulations that aims to provide consistency with the current provisions of the CPA Law (act) (63 P.S. §§ 9.1-9.16b), clarify certain practice issues, and improve organization and comprehension. The final-form rulemaking amends regulations that predate the act of December 4, 1996 (P.L. 851, No. 140) (Act 140), which constituted the last major revision of the act. The Board implemented statutorily mandated regulations under Act 140 in previous rulemaking.

Statutory Authority

The final-form rulemaking is authorized by section 3(a)(11) and (12) of the act (63 P.S. § 9.3(a)(11) and (12)), which empowers the Board to promulgate, respectively, regulations regarding professional conduct and other matters necessary to carry out the provisions of the act.

Summary of Comments and Responses to Proposed Rulemaking

The Board published a notice of proposed rulemaking at 35 Pa. B. 1573 (March 5, 2005), with a 30-day public comment period. The Board received comments from the Pennsylvania Institute of Certified Public Accountants (PICPA).

The Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (House Committee) as part of their review of the proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.14). The Board did not receive comments from the Senate Committee on Consumer Protection and Professional Licensure (Senate Committee) as part of its review of the proposed rulemaking under the Regulatory Review Act.

Deletion of Redundant Regulations

The proposed rulemaking deleted several regulations and parts of regulations that the Board considered unnecessary because they were obsolete, redundant of language in the act or relocated elsewhere in Chapter 11. The House Committee recommended that the Board retain, and update as necessary, those regulations that contain language from the act. The House Committee commented

that attorneys, licensees and those who engage the services of licensees are likely to consult Chapter 11 for information about requirements relating to the practice of public accounting, and that they would benefit from regulations that reflect current statutory requirements. IRRC endorsed the views of the House Committee.

As more specifically discussed below, the final-form rulemaking retains, with updated content and references to statutory language as appropriate, those regulations that were proposed for deletion as being redundant of the act.

§ 11.1 (Definitions)

The proposed rulemaking deleted the definitions of “Board,” “firm,” “licensee” and “practice of public accounting” because updated definitions of those terms appear in section 2 of the act (63 P.S. § 9.2). The proposed rulemaking also deleted the definition of “contingent fee” because it was being relocated to § 11.25 (relating to contingent fees), the single regulation in Chapter 11 where the term appears; deleted the definition of “attest function” because the term had been replaced elsewhere in Chapter 11 with the term “attest activity,” which is already defined in section 2 of the act; and deleted the definition of “inactive status” because the term is not used anywhere in Chapter 11.

The House Committee and IRRC recommended that current versions of the definitions of “attest activity,” “Board,” “firm,” “licensee” and “public accounting,” as set forth in the act, be retained in § 11.1. The House Committee also recommended that the definition of “contingent fee” be retained in § 11.1 in the event the Board should reference the term in another regulation. The House Committee also recommended that the definition of “inactive status” be retained, because the term is a better choice of language than “inactive license roll” in § 11.9 (relating to use of the designation “certified public accountant” and the abbreviation “CPA” as solely as mark of achievement by individual without current license). The final-form rulemaking incorporates these recommendations. All definitions are based on section 2 of the act, except the definition of “inactive status,” which is based on sections 8.2(a.1) and 9.2(d) of the act (63 P.S. §§ 9.8b(a.1) and 9.9b(d)).

The House Committee also recommended that the definition of “qualified association” from section 2 of the act be added to § 11.1, noting that the term is part of the current definition of “firm” and could be referenced in § 11.5 (relating to temporary practice in this Commonwealth). The final-form rulemaking incorporates this recommendation.

The House Committee, IRRC and the PICPA recommended that the abbreviation of the Public Company Accounting Oversight Board (PCAOB) be added to § 11.1, because the PCAOB is an important recognized standard-setting body that should be referenced in those regulations that

identify other recognized standard-setting bodies. The PICPA also recommended that the abbreviation of the Statement on Standards for Attestation Engagements (SSAE) be added to § 11.1, because the SSAE should be referenced in § 11.55(b) (relating to experience requirements for CPA certification), which sets forth categories of qualifying attest experience for CPA certification. The final-form rulemaking incorporates these recommendations.

The final-form rulemaking also adds the abbreviation of the Securities and Exchange Commission (SEC) to § 11.1, because the SEC is referenced in certain regulations that identify recognized standard-setting bodies.

§ 11.3 (Applicability of general rules)

The proposed rulemaking deleted § 11.3, which provides that the Board's formal proceedings are governed by the General Rules of Administrative Practice and Procedure (1 Pa. Code §§ 31.1 – 35.251), on the ground that it is redundant of language in section 9(a) of the act (63 P.S. § 9.9(a)).

Upon the recommendation of the House Committee and IRRC, the final-form rulemaking retains § 11.3.

§ 11.5 (Temporary practice in this Commonwealth)

Current § 11.5(a) lists the requirements for the temporary practice of public accounting in Pennsylvania. The proposed rulemaking modified § 11.5(a) to provide that a CPA currently licensed to practice in another state or an association of CPAs currently licensed to practice in another state could seek permission to obtain a temporary permit to practice public accounting in Pennsylvania.

Noting that current § 11.5(a) references not only licensees “of another state” but also licensees of any “other jurisdiction of the United States,” the House Committee and IRRC commented that the proposed rulemaking could be interpreted as denying temporary practice privileges to licensees of the District of Columbia and asked the Board to provide its rationale for such exclusion. The Board agrees that § 11.5(a) excludes licensees of the District of Columbia from temporary practice permits. However, the temporary practice language in section 13(b) of the act (63 P.S. § 9.13(b)), which was enacted as part of Act 140, refers only to licensees “of another state.” The prior version of section 13(b) referred to licensees of “another state or Federal district, territory or insular possession of the United States.” The Board must assume that the General Assembly, by its 1996 amendments to the act, intended that temporary practice privileges may only be accorded to licensees of other states.

The House Committee recommended that the reference in § 11.5(a) to “an association of

certified public accountants” be changed to “a qualified association of certified public accountants.” Although section 13(b) of the act refers only to an association of CPAs, the Board believes a qualified association of CPAs is more appropriate terminology because a “qualified association,” as defined in section 2 of the act, includes an association that is formed under the laws of another state that affords the association’s owners no greater immunity than is available to shareholders of a professional corporation incorporated in Pennsylvania. The Board considers it appropriate that an out-of-state firm practicing public accounting in Pennsylvania should not enjoy greater immunity from civil liability than that accorded a Pennsylvania public accounting firm. Accordingly, the final-form rulemaking incorporates the recommendation of the House Committee.

Current § 11.5(a) provides that an applicant for a temporary practice permit may not maintain an office in Pennsylvania. The proposed rulemaking modified § 11.5(a) to provide that an applicant may not “personally” maintain an office in Pennsylvania. The House Committee questioned the legal significance of adding the word “personally” to the requirement. The Board’s intent was to make it clear that an out-of-state employee of a Pennsylvania-licensed national or regional public accounting firm is not precluded from obtaining a temporary practice permit merely because his employer maintains an office in Pennsylvania.

The Board has reconsidered the need to retain any prohibition on the right of a temporary practice permitholder to maintain an office in Pennsylvania. The rationale for the prohibition is to prevent a temporary practitioner in Pennsylvania from establishing a permanent practice without the requirement of licensure. However, § 11.5(b) authorizes the issuance of a renewable 1-year permit for up to 500 hours of work, or a nonrenewable 1-year permit for an unlimited number of hours on a single, nonrecurring engagement. These provisions contemplate that a temporary practice permitholder may practice regularly in Pennsylvania for periods of relatively short duration or practice episodically in Pennsylvania for periods of relatively long duration. In either case, allowing such temporary practice permitholder to maintain an office in Pennsylvania affords greater convenience to Pennsylvania clients. Accordingly, the final-form rulemaking deletes the prohibition in § 11.5(a) against a temporary practice permitholder’s maintaining an office in Pennsylvania.

Current § 11.5(c) provides that an out-of-state licensee that does not meet the requirements for a temporary practice permit must satisfy the license requirements in the act in order to practice public accounting in Pennsylvania. Current § 11.5(d) identifies the types of activities that do not require possession of a temporary practice permit. The proposed rulemaking deleted § 11.5(c) and (d) as unnecessary because the act adequately addresses the subject matter of these subsections.

Upon the recommendation of the House Committee and IRRC, the final-form rulemaking retains § 11.5(c) and (d) in revised form. Revised § 11.5(c) contains references to the current provisions of the act that set forth requirements relating to the certification and licensure of

individuals by reciprocity and to the licensure of public accounting firms. Revised § 11.5(d) reflects the current content of section 13(c) of the act (63 P.S. § 9.13(c)), which addresses the scope of permissible activities not requiring a license or temporary practice permit.

§ 11.7 (Use of the designation “public accountant” and the abbreviation “PA”) and § 11.8 (Use of the designation “certified public accountant” and the abbreviation “CPA” in the practice of public accounting)

Current § 11.7 relates to the use of the designation “public accountant” and the abbreviation “PA,” while current § 11.8 relates to the use of the designation “certified public accountant” and the abbreviation “CPA” in the practice of public accounting. Current §§ 11.7(a) and 11.8(a) identify the categories of individuals and entities that may use the designations and abbreviations. Current §§ 11.7(b) and 11.8(b) proscribe unlawful use of the designations and abbreviations by individuals and entities that are not currently licensed to practice public accounting. Current §§ 11.7(c) and 11.8(c) give examples of unlawful use. Current §§ 11.7(d) and 11.8(d) set forth the disciplinary provisions of the act that are implicated by unlawful use. The proposed rulemaking deleted §§ 11.7 and 11.8 as unnecessary, because various provisions of the act already cover the subject matter of these regulations.

Upon the recommendation of the House Committee and IRRC, the final-form rulemaking retains §§ 11.7 and 11.8 with editorial changes for clarity and comprehension, including revised examples of unlawful use, and deletion of references to repealed sections of the act. Revised §§ 11.7 and 11.8 are consistent with the current versions of section 12(a), (c), (j) and (q) of the act (63 P.S. § 9.12(a), (c), (j) and (q)).

§ 11.9 (Use of the designation “certified public accountant” and the abbreviation “CPA” solely as mark of achievement by individual without current license).

Current § 11.9(a) sets forth conditions under which the holder of a CPA certificate who does not possess a current license to practice public accounting may use the designation “certified public accountant” and the abbreviation “CPA” solely as a mark of achievement on business cards and stationery. The conditions stipulate that the certificateholder must not be under suspension or revocation; notify the Board in writing that he desires to be placed on the inactive roll; be employed in private industry, government or academia; refrain from practicing public accounting or offering to practice public accounting; refrain from holding out as a CPA when offering accounting-related services; refrain from advertising as a CPA and from publicly displaying a CPA certificate in a manner to suggest he is engaged in the practice of public accounting; and identify his employer and job title on the stationery and business cards that bear the designation “certified public accountant” or the abbreviation “CPA.” Current § 11.9(b) gives examples of unlawful use, while current §

11.9(c) identifies the disciplinary provisions of the act that are implicated by unlawful use.

The proposed rulemaking revised § 11.9(a), consistent with section 12(a) of the act, to provide that an individual who has received written notification from the Board that he is qualified to receive a CPA certificate may also use the designation “certified public accountant” and the abbreviation “CPA” subject to the same conditions as an actual certificateholder. The proposed rulemaking also revised § 11.9(a) to broaden the scope of permissible use to include an individual’s résumé or *curriculum vitae*, when accompanied by language reflecting that the individual’s license is inactive, and a self-employed individual’s business cards, letterhead and other stationery, when accompanied by wording describing the nature of the individual’s business. The proposed rulemaking further revised § 11.9(a) by restating the conditions relating to permissible use in fewer paragraphs and without redundancy of content. The proposed rulemaking deleted § 11.9(b) and (c) as duplicative of information contained in § 11.9(a) or in the act.

The House Committee and IRRC expressed concern that allowing an individual without a current license to use the designation “certified public accountant” and the abbreviation “CPA” as a mark of achievement may mislead the public into believing the individual is authorized to practice public accounting. The House Committee asked the Board to reevaluate the legal basis for § 11.9 under the current the act.

Section 12(a) of the act makes it unlawful, in part, for an individual to use the designation “certified public accountant” or the abbreviation “CPA” unless he has either received a CPA certificate from the Board or has been notified in writing of his eligibility to receive a CPA certificate from the Board. Section 12(q) of the act makes it unlawful for an individual to practice public accounting without a license from the Board. Section 2 of the act defines “public accounting,” in part, as performing, or offering to perform, professional services involving the use of accounting skills (such as management advisory or consulting services, financial planning or preparation of tax returns) while holding out as a CPA. “Holding out,” in turn, is defined in section 2 of the act as any written or oral communication by an individual that he is a CPA while performing or offering to perform services to the public. Taken together, section 12(a) and (q) of the act permit the holder of a CPA certificate, or an individual eligible to receive such a certificate, to use the designation “certified public accountant” and the abbreviation “CPA” without a current license from the Board so long as such use does not implicate the practice of public accounting. The conditions set forth in § 11.9(a) are aimed at ensuring that an unlicensed individual who is permitted to use the designation “certified public accountant” or the abbreviation “CPA” under section 12(a) of the act does so without violating section 12(q) of the act. Accordingly, the Board sees no inconsistency between § 11.9 and the current provisions of the act.

The House Committee recommended retaining the conditions in § 11.9(a), proposed for

deletion, that proscribe an unlicensed individual's use of the designation "certified public accountant" and the abbreviation "CPA" in advertising and his holding himself out as being engaged in the practice of public accounting when offering accounting-related services. The final-form rulemaking restores these conditions with editorial changes.

The House Committee and IRRC recommended that § 11.9(a) be modified to require an unlicensed individual to disclose his "inactive" status on a résumé or *curriculum vitae* in addition to business cards, letterhead and other stationery. The final-form rulemaking includes this modification. The final-form rulemaking also revises § 11.9(a) to eliminate a usage issue raised by the House Committee.

Upon the recommendation of the House Committee and IRRC, the final-form rulemaking retains § 11.9(b) and (c) with editorial revisions and updated references to the act.

The House Committee asked whether an individual on inactive status who uses the designation "certified public accountant" or the abbreviation "CPA" as a mark of achievement is required to complete 80 hours of continuing professional education (CPE) every 2 years. The CPE requirement in the act applies only to an individual who desires to maintain a current license. Section 9.2(d)(1) of the act (63 P.S. § 9.9b(d)(1)) provides that an individual applying to reinstate an inactive license must have completed 80 hours of CPE within the 2-year period preceding the date of application.

§ 11.21 (*Independence*)

Current § 11.21 provides that a licensee may not issue an opinion on the financial statements of an enterprise as an independent public accountant if the licensee's independence with respect to the enterprise is impaired. Current § 11.21 also sets forth the circumstances under which a licensee's independence is considered impaired, which are based on the interpretations of Professional Standards Rule 101 of the American Institute of Certified Public Accountants (AICPA). The proposed rulemaking modified § 11.21 to provide that a licensee's independence is considered impaired if the licensee failed to comply with the independence rules and requirements of a recognized public or private standard-setting body that are applicable to the attest engagement. The proposed rulemaking identified such standard-setting bodies as including, among others, the AICPA, SEC, General Accounting Office and Department of Labor. The proposed rulemaking reflected the fact that the AICPA's independence rule may not include all the requirements of other regulatory bodies with jurisdiction over the attest activities of the Board's licensees.

The House Committee, IRRC and the PICPA recommended that the PCAOB be added to the list of recognized standard-setting bodies in § 11.21. The PCAOB is a private-sector, non-profit

organization that was formed under the Public Company Accounting Reform and Investor Protection Act of 2002 (Pub. L. 107-204, 116 Stat.75), also known as the Sarbanes-Oxley Act, after the Board had initiated the proposed rulemaking process. The PCAOB's mission is "to oversee the auditors of publicly-traded companies in order to protect the interests of investors and further the public interest in the preparation of informative, fair and independent audit reports." The final-form rulemaking adds the PCAOB to the list of examples of recognized standard-setting bodies in § 11.21. At the recommendation of the House Committee, the final-form rulemaking also revises § 11.21 to use the term "attest activity" for consistency with the CPA Law and makes editorial changes as to how the examples of standard-setting bodies are referenced.

§ 11.25 (*Contingent fees*)

As defined in current § 11.1, a contingent fee is "[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 on the finding or result of the service." Current § 11.25(a) prohibits a licensee from collecting, or seeking to collect, a contingent fee for performing a professional service during any period in which the licensee has also been engaged to perform an attest function for the client, or for preparing an original or amended tax return or a claim for a tax refund. Current § 11.25(b) provides that documents generated during an engagement in which the licensee is collecting a contingent fee must contain a statement that no attest function is being performed.

The proposed rulemaking replaced the term "attest function" with "attest activity" in § 11.25(a) and (b) and added a new subsection (c) for the purpose of relocating the definition of contingent fee from § 11.1. The current definition of contingent fee is derived from AICPA Professional Standards Rule 302. The proposed rulemaking amended the definition of contingent fee, consistent with the language in AICPA Professional Standards Rule 302, to provide that "[a] fee is not contingent if it is fixed by courts or other public authorities or, in tax matters, if it is determined based on the results of judicial proceedings or the findings of government agencies." Under the AICPA's interpretation of the above-quoted language, a fee is considered determined in tax matters based on the findings of a government agency if the licensee "can demonstrate a reasonable expectation, at the time of a fee arrangement, of substantive consideration" by the government agency with regard to the licensee's client. The AICPA's interpretation does not consider such an expectation reasonable in the case of the preparation of an original tax return.

The House Committee and IRRC commented that the PCAOB and SEC had raised concerns about the AICPA's interpretation of the additional contingent fee language referenced in the Board's proposed rulemaking and asked the Board to reconsider amending the definition of contingent fee. The House Committee further asked the Board to evaluate whether the amended definition of

contingent fee is in conflict with section 3(a)(11) of the act, which requires the Board to promulgate regulations that “establish and maintain a high standard of integrity, objectivity and dignity by certified public accountants, public accountants and firms.”

The PCAOB and SEC share regulatory authority for establishing independence and other ethical standards for licensees that perform audit services for publicly traded companies. The PCAOB’s and SEC’s rules consider a licensee’s independence to be impaired if the licensee provides any service to an audit client for a contingent fee during the audit and professional engagement period. While the definition of contingent fee in the SEC’s rules is identical to the AICPA’s definition, the SEC does not agree with the AICPA’s interpretation that the language creating an exception, in tax matters, for a fee that is determined based on the results of a judicial proceeding or the findings of a government agency means that a fee is determined when a licensee can demonstrate a reasonable expectation, at the time of the fee arrangement with a client, that a government agency will give substantive consideration to the client’s position. The SEC’s Chief Accountant, in a May 2004 letter to the AICPA, stated that the SEC regards the exception in tax matters as applying only when the determination of the fee is taken out of the hands of the licensee and his client and is made by a court or government agency acting in the public interest. The PCAOB’s own definition of contingent fee, adopted in July 2005, does not include the SEC’s exception for fees in tax matters. In its discussion of the definition, the PCAOB, referencing the letter of the SEC’s Chief Accountant to the AICPA, noted that the tax matter exception “may have been misinterpreted in the past” and further noted that it is “largely redundant of the exception for fees fixed by courts or other public authorities.”

Considering the differing views of the AICPA, SEC and PCAOB on the meaning of contingent fees, the Board believes that the current definition of contingent fee should not be amended and that § 11.25 should be recast in broader language to take into account the differing requirements of recognized standard-setting bodies. Accordingly, the final-form rulemaking retains the current definition of contingent fee in § 11.1 and revises § 11.25 to provide that a licensee who seeks to collect a contingent fee shall comply with the rules of the AICPA, PCAOB, SEC or other recognized public or private standard-setting bodies as applicable to the professional services being performed. The revisions to § 11.25 obviate the need for the Board to consider its legal authority under section 3(a)(11) of the act to promulgate the definition of contingent fee originally proposed, although it appears unlikely that a court would regard the Board’s adoption of a definition used by recognized public and private standard-setting bodies as being outside the scope of the Board’s rulemaking power.

§ 11.27 (Auditing standards and other technical standards)

The proposed rulemaking made editorial changes to § 11.27, which requires a licensee who

performs an audit of financial statements as an independent public accountant to comply with generally accepted auditing standards (GAAS), as well as with other technical standards adopted by the AICPA and other recognized standard-setting bodies, and to provide justification for any departures from the standards.

The House Committee and IRRC recommended that § 11.27 be revised to add a reference to the PCAOB as a recognized standard-setting body for technical standards relating to audits. The final-form rulemaking incorporates this recommendation.

§ 11.30 (*Confidential client information*)

The proposed rulemaking deleted § 11.30, which provides that a licensee may not disclose a client's confidential information without the client's consent except as authorized by section 11.1 of the CPA Law (63 P.S. § 9.11a), on the ground that it is redundant of information in the act.

Upon the recommendation of the House Committee and IRRC, the final-form rulemaking retains § 11.30 with editorial revisions.

§ 11.31 (*Records*)

The proposed rulemaking revised § 11.31 to eliminate language relating to production of records that appears in section 11 of the act (63 P.S. § 9.11) while retaining the statutory citation for the reader's reference. The proposed rulemaking also revised § 11.31 to add a provision requiring a licensee "who is requested by a client or former client to furnish a document to which the client is entitled" under section 11 of the act to comply with the request within "a reasonable period of time."

At the suggestion of the House Committee, the final-form rulemaking further revises § 11.31, for sake of clarity, to include the term "or former client" immediately after the second reference to the word "client."

IRRC observed that the notice of proposed rulemaking, as published by the Legislative Reference Bureau (LRB) in the *Pennsylvania Bulletin*, did not reflect the full text of § 11.31 as submitted by the Board to IRRC and to the House and Senate Committees. The Board will advise the LRB to ensure that the final-form rulemaking is published with the complete text of § 11.31.

§ 11.35 (*Form of practice*)

Current § 11.35 provides that a licensee may practice public accounting only in a sole proprietorship, a partnership or a professional corporation or association. The proposed rulemaking

deleted § 11.35 as inconsistent with the current act, which permits any “qualified association” to become licensed as a “firm.” As broadly defined in section 2 of the act, a qualified association may include not only partnerships, professional corporations, and professional associations, but also limited liability companies and limited liability partnerships.

Upon the recommendation of the House Committee and IRRC, the final-form rulemaking retains § 11.35 with updated language. Revised § 11.35 provides that a licensee may practice public accounting as a sole practitioner or firm, or as an employee of a sole practitioner or as a member or employee of a firm, subject to the requirements of the CPA Law. As noted above, definitions of “firm” and “qualified association” have been added to § 11.1 as part of the final-form rulemaking.

§ 11.36 (Form of business name; disclosure)

The proposed rulemaking added § 11.36 as a complementary regulation to section 12(1.3) of the act (63 P.S. § 9.12(1.3)), which prohibits a licensee from using a business name that is misleading as to any matter, including the identity of members and employees. Section 11.36(a) provides that a firm or sole practitioner may use a fictitious name as a business name, while § 11.36(b) prohibits a sole practitioner from using a business name with the phrases “and Company” or “and Associates” unless he employs at least one other individual who is currently licensed as a CPA or public accountant, who has sat for the CPA examination, or who has the educational qualifications to sit for the CPA examination.

Section 11.36(a) was added to clarify the permissibility of a fictitious name, the use of which was restricted under the act prior to Act 140’s amendments. Section 11.36(b) was added based on the Board’s belief that because the phrases “and Company” and “and Associates” imply at least the existence of a multi-individual practice (if not a formal entity such as a partnership or professional corporation), a sole practitioner’s use of either term could be construed as misleading under section 12(1.3) of the act if he is the only professional-level individual in the practice. Prior to Act 140’s amendments, the act contained an explicit prohibition against a sole practitioner’s using the phrase “and Company” or similar designation in his business name unless the name had been in use prior to November 1, 1961.

The House Committee recommended that the Board delete the prohibition in § 11.36(b) in favor of a requirement that a sole practitioner orally disclose his status as a sole practitioner to clients and prospective clients.

The Board believes that an adequate disclosure is acceptable as a less restrictive means of regulating potentially misleading business names than outright prohibition. The Board further believes that for a disclosure to be adequate, it must be made timely and in writing.

The final-form rulemaking revises § 11.36(b) to provide that a sole practitioner who uses a business name that includes a variation of the phrase “and Company” or “and Associates” must disclose in writing to a potential client that he is a sole practitioner before entering into an engagement agreement with the potential client and must disclose in writing to a current client that he is a sole practitioner before renewing an engagement agreement with the current client.

§ 11.55 (Experience requirements for CPA certification)

The proposed rulemaking revised § 11.55, incorporating the contents of §§ 11.53 and 11.54 (relating to classification of candidates; and time limits), so that it would serve as a complementary regulation to section 4.1 of the act (63 P.S. § 9.4a), which sets forth the experience requirements for CPA certification.

Revised § 11.55(a) provides that a candidate who qualified to sit for the CPA examination with a bachelor’s degree and 24 semester credits in accounting-related subjects must acquire 3,200 hours of qualifying experience, including 800 hours of attest activity, “over at least a 24-month period.” Revised § 11.55(a) further provides that a candidate who qualified to sit for the CPA examination with a master’s degree and 24 semester credits in accounting-related subjects, or a bachelor’s degree and 150 semester credits overall including 36 semester credits in accounting-related subjects, must acquire 1,600 hours of qualifying experience, including 400 hours of attest activity, “over at least a 12-month period.” A candidate may not receive credit for more than 1,600 hours of qualifying experience in a 12-month period.

The House Committee commented that the phrases “over at least a 24-month period” and “over at least a 12-month period” are confusing and may lead some candidates to conclude that they must acquire more than the 1 or 2 years of experience as set forth in section 4.1 of the act. The final-form rulemaking clarifies § 11.55(a) by providing that a candidate for CPA certification must acquire the required 1,600 hours or 3,200 hours of qualifying experience, as the case may be, during a period of not less than 12 months or during a period of not less than 24 months, respectively.

The House Committee and IRRC recommended that § 11.55(a) be further revised to include language from section 4.1(c) of the section providing that a candidate for CPA certification who first sat for the CPA examination after January 1, 2000, must acquire qualifying experience within 120 months preceding the date of application for CPA certification, while a candidate for CPA certification who first sat for the CPA examination prior to January 1, 2000, is not required to acquire qualifying experience within any particular period of time. The final-form rulemaking adds this language to § 11.55(a).

The proposed rulemaking revised § 11.55(b) and (c) to set forth the types of attest and nonattest activities, respectively, that will serve as qualifying experience depending on whether the candidate is employed in public accounting, private industry or government. The proposed rulemaking eliminated “training sessions on the attest function” as an acceptable category of attest experience, because qualifying attest experience should be based on a candidate’s actual participation in an attest activity.

The House Committee and IRRC commented that elimination of training sessions on the attest function could adversely affect candidates for CPA certification who have already completed such training sessions with the expectation that they will be accepted by the Board as qualifying attest experience. The House Committee recommended that the Board modify § 11.55(b) to establish a date in the future after which training sessions on the attest function will not be counted. IRRC recommended that a similar clarification be made in order to preserve the training experience already obtained by prospective candidates. The final-form rulemaking revises § 11.55(b) to provide that training sessions on the attest function that are completed prior to January 1, 2008, will be accepted as qualifying attest experience. The Board will notify CPA candidates of the deadline by revising the CPA application form and instructions and by posting a notice on the Board’s website.

The PICPA recommended revisions to the categories of qualifying attest experience in § 11.55(b) that may be acquired by a candidate who is employed in public accounting. Upon the recommendation of the PICPA, the final-form rulemaking expands the category of audits of financial statements performed in accordance with General Accepted Auditing Standards (GAAS) or Generally Accepted Government Auditing Standards (GAGAS) to include audits of financial statements performed in accordance with requirements of the PCAOB, and adds a new category that comprises attestation engagements performed in accordance with SSAE, which are promulgated by the AICPA’s Auditing Standards Board. The PICPA also recommended that § 11.55(b) should include language referencing “[o]ther auditing in accordance with accepted standards that leads to the expression of a written opinion.” The proposed rulemaking retained such language and cited as examples reviews regarding internal controls, operational audits, compliance audits, and opinions regarding financial forecasts and projections. The final-form rulemaking deletes the reference to financial forecasts and projections because such work is classified in § 11.55(c) as nonattest activity.

The proposed rulemaking added § 11.55(d), which lists types of unacceptable experience. The final-form rulemaking makes editorial changes to § 11.55(d) to address a usage issue raised by the House Committee.

§ 11.56 (Supervision of experience; verification)

The proposed rulemaking revised § 11.56, which relates to the supervision of experience

acquired by a candidate for CPA certification. One of a supervisor's duties is to verify a candidate's experience on a Board-provided form, giving details as to the dates of supervision and the types and hours of experience acquired by the candidate. The proposed rulemaking deleted language referencing a supervisor's responsibility for the accuracy of the verified statement of experience and providing that a supervisor's failure to properly verify a candidate's experience may result in disciplinary action. In place of the deleted language, the proposed rulemaking added a provision stating that a supervisor may not knowingly submit a false or inaccurate verified statement or wilfully refuse to submit a verified statement when qualified experience has been acquired.

The House Committee recommended that the Board retain the language in § 11.56 that refers to a supervisor's responsibility for the accuracy of the information he provides to the Board about a candidate's experience and to the supervisor's disciplinary liability for failing to discharge that responsibility. IRRC's comments echoed the House Committee's concerns.

The final-form rulemaking revises § 11.56 to provide that a supervisor is responsible for the accuracy of the verified statement of a candidate's experience, and that a supervisor who knowingly submits a false or inaccurate verified statement, or who refuses to submit a verified statement when qualifying experience has been acquired, will be subject to disciplinary action under the act.

§ 11.73 (Interpretation of chapter)

The proposed rulemaking deleted § 11.73, which provides that the Board's regulations are not to be construed to be in violation of or inconsistent with the act, on the ground that such requirement is unnecessary, because the Board's obligation to construe its regulations in harmony with the act is inherent in the primacy of a statute over the regulations promulgated under authority of the statute.

Upon the recommendation of the House Committee and IRRC, the final-form rulemaking retains § 11.73, with editorial revisions.

Compliance with PACOB

The House Committee asked the Board to review the entirety of its rulemaking to determine whether any additional changes are needed to comply with the requirements of the PCAOB. The Board does not believe any additional changes are required.

Additional rulemaking

The notice of proposed rulemaking referenced the Board's intention to submit additional

rulemaking. The House Committee asked what was the anticipated delivery date of additional rulemaking.

The Board anticipates that delivery of proposed rulemaking relating to CPE requirements will occur in the spring of 2007. The Board also anticipates that proposed rulemaking relating to an increase in biennial renewal fees, based on a recent analysis conducted by the Department of State's Bureau of Finance and Operations, will likewise occur in the spring of 2007.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have a fiscal impact on, or create additional paperwork for, the regulated community, the general public, or the Commonwealth and its political subdivisions. The final-form rulemaking will require the Board to modify its application forms and instructions.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 23, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 1573, to IRRC and the chairpersons of the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), IRRC and the House and Senate Committees were provided with copies of 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 received from IRRC, the House and Senate Committees, and the public.

Under sections 5.1(e) and 5.1(j.2) of the Regulatory Review Act (71 P.S. §§ 745.5a(e) and 745.5a(j.2)), the final-form rulemaking was approved by the House Committee on _____, 2007, and deemed approved by the Senate Committee on _____, 2007. Under Section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2007, and approved the final-form rulemaking.

Additional Information

Persons who desire additional information about the final-form rulemaking may submit inquiries to Kristopher J. Adams, Administrator, State Board of Accountancy, P.O. Box 2649, Harrisburg, PA 17105-2649. The Board's telephone number is (717) 783-1404 and its e-mail address is ST-ACCOUNTANCY@state.pa.us.

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) (45 P.S. §§ 1201 and 1202) and the 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 the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 35 Pa. B. 1573.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under authority of the act, orders that:

- (a) The regulations of the Board, 49 Pa. Code, Chapter 11, are amended by adding § 11.36, deleting §§ 11.6, 11.41, 11.53 and 11.54, and amending §§ 11.1, 11.5, 11.7-11.9, 11.21, 11.25, 11.27, 11.28, 11.30, 11.31, 11.35, 11.55, 11.56, and 11.73 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 LRB as required by law.
- (d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

**LIST OF NAMES AND ADDRESSES OF PUBLIC
COMMENTATORS FOR REGULATION 16A-559**
(1 Pa. Code §307.2(c)(6))

- (1) Albert E. Trexler
Executive Director
Pennsylvania Institute of Certified Public Accountants
Government Relations Office
100 Pine Street, Suite 275
Harrisburg, PA 17101-1206

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 meaning, unless the context clearly indicates otherwise:

* * * * *

Act - The [C.P.A.] CPA Law (63 P.S. §§ 9.1 - [9.16(b)] 9.16b) [, which promulgates the rules of professional conduct for certified accountants of this Commonwealth].

ATTEST ACTIVITY – AN EXAMINATION, AUDIT, REVIEW, COMPILATION OR OTHER AGREED-UPON PROCEDURE WITH RESPECT TO FINANCIAL INFORMATION, TOGETHER WITH THE ISSUANCE OF A REPORT EXPRESSING OR DISCLAIMING AN OPINION OR OTHER ASSURANCE ON THE INFORMATION.

[*Attest function* - A written communication that expresses a conclusion about the reliability of a written assertion which may take the form of an audit, review or compilation of a financial statement or an examination of prospective financial information.]

{*Board* – The State Board of Accountancy of the Commonwealth.}

[*C.P.A.*] CPA – Certified [Public Accountant of this Commonwealth] public accountant.

* * * * *

{*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.}

* * * * *

[*Firm* – A proprietorship, partnership or professional corporation or association engaged in the practice of public accounting and registered with the Board.] *FIRM* – A QUALIFIED ASSOCIATION THAT IS A LICENSEE.

* * * * *

[*Inactive status* – Status of a C.P.A. or Registered Public or Foreign Accountant who is not permitted to engage in the practice of public accounting because he does not qualify for or possess a current biennial permit.] *INACTIVE STATUS* – STATUS OF A CERTIFIED PUBLIC ACCOUNTANT 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. THE TERM DOES NOT APPLY TO THE STATUS OF A CERTIFIED PUBLIC ACCOUNTANT OR PUBLIC ACCOUNTANT WHOSE LICENSE TO PRACTICE PUBLIC ACCOUNTING HAS EXPIRED

FOR FAILURE TO COMPLY WITH REQUIREMENTS FOR BIENNIAL RENEWAL OF
LICENSURE.

* * * * *

[Licensee – A person holding a certificate issued by the Board, registered with the Board, or holding a permit to practice and a firm registered with the Board or holding a permit to practice.]

LICENSEE – 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). THE TERM DOES NOT INCLUDE AN INDIVIDUAL WHO IS ON INACTIVE STATUS UNDER SECTION 8.2(A.1) OF THE ACT (63 P.S. § 9.8B(A.1)) OR WHO DOES NOT OTHERWISE HOLD A CURRENT LICENSE.

* * * * *

PCAOB – PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.

[*Practice of public accounting* – The offering to perform, or the performing, for a client or potential client services involving the use of accounting or auditing skills, management advisory or consulting services, preparation of tax returns or furnishing of advice on tax matters while holding oneself out in a manner that states or implies one is a licensee.

Professional Corporation Law - The Professional Corporation Law (15 P.S. §§ 2901-2914)

which allows for the formation of professional associations or corporations by accountants.]

* * * * *

PUBLIC ACCOUNTING – OFFERING TO PERFORM OR PERFORMING FOR A CLIENT OR POTENTIAL CLIENT:

(1) ATTEST ACTIVITY.

(2) 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 CERTIFIED PUBLIC ACCOUNTANT, PUBLIC ACCOUNTANT OR FIRM.

* * * * *

QUALIFIED ASSOCIATION – AN ASSOCIATION AS DEFINED IN 15 PA. C.S. § 102 (RELATING TO DEFINITIONS) THAT IS INCORPORATED OR ORGANIZED UNDER THE LAWS OF THIS 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.

* * * * *

§ 11.3. {Applicability of general rules} (Reserved).

{Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) is applicable to the activities of and proceedings before the Board.}

* * * * *

§ 11.5. Temporary practice in this Commonwealth.

(a) *Requirements for temporary practice.* A [certified public accountant] CPA, or [partnership or corporation] QUALIFIED association composed of [certified public accountants] CPAs, of another state [or other jurisdiction of the United States] may temporarily practice public [accountancy] accounting in this Commonwealth, if the [certified public accountant or partnership or corporation] CPA or QUALIFIED association:

(1) Holds a [valid] current license or registration to practice public [accountancy] accounting in the other state [or jurisdiction].

(2) Concurrently practices public [accountancy] accounting in the other state [or jurisdiction].

(3) ~~Does not personally maintain an office in this Commonwealth.~~

(4) * * *

(b) *Temporary practice permit.* The temporary practice permit:

(1) Allows [a certified public accountant, or partnership or corporation, who meets the requirements of subsection (a)] the permitholder to work for not more than 500 hours in this Commonwealth during a 12-month period, except that this 500 hour limitation does not apply if the [holder of a temporary practice permit] permitholder is working only on a single, nonrecurring engagement.

* * * * *

[(c) *Failure to meet requirements for temporary practice.* A person, partnership or corporation, of another state or other jurisdiction who wishes to practice public accountancy in this Commonwealth but does not meet the requirements of subsection (a) is subject to the full licensing requirements of section 8.2 of the act (63 P.S. §9.8b).

(d) *Exemption from requirement of temporary practice permit.* The requirement of a temporary practice permit does not apply to a person, partnership or corporation, who renders

bookkeeping and similar technical services, prepares income tax returns, or prepares financial statements, but does not issue a report that expresses an opinion or assurance on the statements.]

(C) *FAILURE TO MEET REQUIREMENTS FOR TEMPORARY PRACTICE.* A CPA OR QUALIFIED ASSOCIATION OF CPAS OF ANOTHER STATE THAT DESIRES TO PRACTICE PUBLIC ACCOUNTING IN THIS COMMONWEALTH BUT DOES NOT QUALIFY FOR A TEMPORARY PRACTICE PERMIT SHALL COMPLY, AS APPROPRIATE, WITH SECTIONS 5, 8.2 AND 8.8 OF THE ACT (63 P.S. §§ 9.5, 9.8B AND 9.8H).

(D) *EXEMPTION FROM REQUIREMENT OF TEMPORARY PRACTICE PERMIT.* SUBSECTION (A) DOES NOT APPLY TO A CPA OR QUALIFIED ASSOCIATION OF CPAS OF ANOTHER STATE THAT, WHILE NOT HOLDING OUT AS A CPA, PUBLIC ACCOUNTANT OR LICENSEE, OFFERS AND RENDERS IN THIS COMONWEALTH BOOKKEEPING AND SIMILAR TECHNICAL SERVICES OR OTHER SERVICES INVOLVING THE USE OF ACCOUNTING SKILLS, INCLUDING THE PREPARATION OF TAX RETURNS AND THE PREPARATION OF FINANCIAL INFORMATION WITHOUT ISSUING A REPORT OR OTHER COMMUNICATION THAT EXPRESSES AN OPINION OR ASSURANCE ON THE STATEMENTS.

[SUPERVISION]

§ 11.6. [Supervised experience] (Reserved).

[(a) Supervised experience that qualifies a person to take the certified public accountant

examination or to be granted a certificate of certified public accountant shall meet the following conditions:

(1) The supervisor shall be a licensed certified public accountant or public accountant during the period of supervision.

(2) The supervisor shall employ the person or be employed by the same person, partnership, corporation or branch of government as the person he is supervising.

(3) The supervisor personally evaluates and is responsible for the work performed by the person.

(b) The following are examples of experience which do not qualify a person to take the certified public accountant examination or to be granted a certificate of certified public accountant.

(1) Self-employment.

(2) Work as a partner in a partnership.

(3) Work supervised by a certified public accountant who was not licensed at the time of supervision.

(4) Work supervised by an accounting firm which is independent of the entity for which the person works.]

§ 11.7. {Use of the designation “public accountant” and the abbreviation “PA”}—Reserved).

[(a) Only the following individuals and entities may use the designation public accountant,

the abbreviation PA, and other designations which suggest that the user is a public accountant.

(1) An individual who is registered as a public accountant under section 8.7 of the act (63 P.S. § 9.8g) and holds a current license.

(2) An individual who has written notification from the Board that he was qualified to receive a certificate of certified public accountant and holds a current license.

(3) A partnership, professional association or professional corporation composed of public accountants or of certified public accountants and public accountants which registered under section 8.5 or 8.6 of the act (63 P.S. § 9.8e or § 9.8f) and holds a current license.

(b) It is unlawful for an individual , partnership, professional association or professional corporation, not currently licensed to engage in the practice of public accounting or to use the designation public accountant, the abbreviation PA or a similar designation.

(c) The following are examples of unlawful use of the designation public accountant, PA or similar designations:

(1) An individual had registered under section 8.7 of the act (63 P.S. § 9.8g) and had once been licensed. The individual does not hold a current license but still uses business cards which indicate that he is a public accountant. To make use of the designation public accountant, the individual shall hold a current license.

(2) An unlicensed individual offers to prepare income tax returns and either asserts that he is a public accountant or signs the return "John Doe, PA."

Explanation: The offer to perform a service related to accounting while holding oneself out as a public accountant is engaging in the practice of public accounting and requires a current license.

(d) Unlawful use of the designation "Public Accountant" and the abbreviation "PA" may result in the penalties in sections 9.1, 9.3, 14 and 16 of the act (63 P.S. §§ 9.9a, 9.9c, 9.14 and 9.16).]

(A) ONLY THE FOLLOWING INDIVIDUALS AND ENTITIES MAY USE THE DESIGNATION "PUBLIC ACCOUNTANT," THE ABBREVIATION "PA," OR ANY OTHER TITLE, DESIGNATION, WORDS, LETTERS OR ABBREVIATION TENDING TO INDICATE THAT THE USER IS A PUBLIC ACCOUNTANT OR IS COMPOSED OF PUBLIC ACCOUNTANTS:

(1) AN INDIVIDUAL WHO HOLDS A PUBLIC ACCOUNTANT REGISTRATION AND A CURRENT LICENSE FROM THE BOARD.

(2) AN INDIVIDUAL WHO HOLDS A CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT FROM THE BOARD OR WHO HAS RECEIVED WRITTEN NOTIFICATION FROM THE BOARD THAT HE IS QUALIFIED TO RECEIVE A CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT.

(3) A QUALIFIED ASSOCIATION THAT HOLDS A CURRENT

LICENSE FROM THE BOARD.

(B) AN INDIVIDUAL OR QUALIFIED ASSOCIATION ENGAGED IN THE PRACTICE OF PUBLIC ACCOUNTING MAY NOT USE THE DESIGNATION "PUBLIC ACCOUNTANT," THE ABBREVIATION "PA," OR ANY OTHER TITLE, DESIGNATION, WORDS, LETTERS OR ABBREVIATION TENDING TO INDICATE THAT THE USER IS A PUBLIC ACCOUNTANT OR COMPOSED OF PUBLIC ACCOUNTANTS UNLESS THE USER HOLDS A CURRENT LICENSE FROM THE BOARD.

(C) THE FOLLOWING ARE EXAMPLES OF UNLAWFUL USE UNDER THIS SECTION:

(1) AN INDIVIDUAL WHO IS REGISTERED BY THE BOARD AS A PUBLIC ACCOUNTANT BUT WHO DOES NOT HOLD A CURRENT LICENSE USES A BUSINESS CARD BEARING THE DESIGNATION "PUBLIC ACCOUNTANT." *EXPLANATION:* THE INDIVIDUAL MUST OBTAIN A CURRENT LICENSE IN ORDER TO USE THE DESIGNATION "PUBLIC ACCOUNTANT."

(2) AN INDIVIDUAL WHO IS CERTIFIED BY THE BOARD AS A CPA BUT WHO DOES NOT HOLD A CURRENT LICENSE SIGNS TAX RETURNS THAT HE PREPARES FOR CLIENTS AS "JOHN DOE, PA." *EXPLANATION.* THE INDIVIDUAL MUST OBTAIN A CURRENT LICENSE IN ORDER TO USE

THE ABBREVIATION "PA" BECAUSE THE PREPARATION OF TAX RETURNS WHILE USING SUCH AN ABBREVIATION CONSTITUTES THE PRACTICE OF PUBLIC ACCOUNTING.

(D) AN INDIVIDUAL OR ENTITY THAT VIOLATES THIS SECTION SHALL BE SUBJECT TO DISCIPLINARY ACTION, AS APPROPRIATE, UNDER SECTIONS 9.1, 12, 14 AND 16 OF THE ACT (63 P.S. §§ 9.9A, 9.12, 9.14 AND 9.16).

§ 11.8. {Use of the designation "certified public accountant" and the abbreviation "CPA" in the practice of public accounting} (Reserved).

[(a) Only the following individuals and entities may use the designation certified public accountant, the abbreviation CPA, and other designations which suggest that the user is a certified public accountant, in the practice of public accounting.

(1) An individual who holds a certificate of certified public accountant and a current license.

(2) An individual who has written notification from the Board that he has qualified to receive a certificate of certified public accountant and a current license.

(3) A partnership, professional association or professional corporation composed of certified public accountants which is registered with the Board under section 8.3 or 8.4 of the act (63 P.S. § 9.8c or § 9.8d) and holds a current license.

(b) It is unlawful for an individual, partnership, professional association or professional

corporation, not currently licensed to engage in the practice of public accounting to hold oneself out as a certified public accountant.

(c) The following are examples of unlawful use of the designation certified public accountant, CPA or similar designations, in the practice of public accounting.

(1) An individual who holds a certificate of certified public accountant but not a current license offers to establish a bookkeeping system for a potential client and tells the potential client that he is a certified public accountant. *Explanation:* The offer to perform a service related to accounting, including matters such as bookkeeping and tax returns, while holding oneself out as a certified public accountant is engaging in the practice of public accounting and requires a current license.

(2) An individual who holds a certificate of certified public accountant but not a current license prepares income tax returns. The individual has a sign outside of his office which reads "John Does, CPA, Tax Preparation." *Explanation:* The sign is a solicitation to perform accounting-related services. By offering to perform services related to accounting without maintaining a current license, John Does violates the act. Similarly, John Doe may not sign a tax return which he prepared as "John Doe, CPA." John Doe may lawfully put up a sign reading "John Doe, Tax Preparation" and may prepare and sign tax returns as "John Doe."

(d) Unlawful use of the designation “certified public accountant” and the abbreviation “CPA” in the practice of public accounting may result in the penalties set forth in sections 9.1, 9.3, 14 and 16 of the act (63 P.S. §§ 9.9a, 9.9c, 9.14 and 9.16).]

(A) ONLY THE FOLLOWING INDIVIDUALS AND ENTITIES MAY USE THE DESIGNATION “CERTIFIED PUBLIC ACCOUNTANT”, THE ABBREVIATION “CPA,” OR ANY OTHER DESIGNATION, TITLE, WORDS, LETTERS OR ABBREVIATION TENDING TO INDICATE THAT THE USER IS A CPA OR COMPOSED OF CPAS, WHILE ENGAGED IN THE PRACTICE OF PUBLIC ACCOUNTING:

(1) AN INDIVIDUAL WHO HOLDS A CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT AND CURRENT LICENSE FROM THE BOARD.

(2) AN INDIVIDUAL WHO HOLDS A PUBLIC ACCOUNTANT REGISTRATION AND CURRENT LICENSE FROM THE BOARD AND WHO HAS RECEIVED WRITTEN NOTIFICATION FROM THE BOARD THAT HE IS QUALIFIED TO RECEIVE A CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT.

(3) A QUALIFIED ASSOCIATION THAT HOLDS A CURRENT LICENSE FROM THE BOARD.

(B) AN INDIVIDUAL OR QUALIFIED ASSOCIATION ENGAGED IN THE PRACTICE OF PUBLIC ACCOUNTING MAY NOT USE THE DESIGNATION “CERTIFIED PUBLIC

ACCOUNTANT,” THE ABBREVIATION “CPA,” OR ANY OTHER TITLE, DESIGNATION, WORDS, LETTERS OR ABBREVIATION TENDING TO INDICATE THAT THE USER IS A CPA OR COMPOSED OF CPAS UNLESS THE USER HOLDS A CURRENT LICENSE FROM THE BOARD.

(C) THE FOLLOWING ARE EXAMPLES OF UNLAWFUL USE UNDER THIS SECTION:

(1) AN INDIVIDUAL WHO IS CERTIFIED BY THE BOARD AS A CPA BUT WHO DOES NOT HOLD A CURENT LICENSE OFFERS TO ESTABLISH A BOOKKEEPING SYSTEM FOR A POTENTIAL CLIENT AND TELLS THE POTENTIAL CLIENT THAT HE IS A “CERTIFIED PUBLIC ACCOUNTANT.” *EXPLANATION.* THE INDIVIDUAL MUST OBTAIN A CURRENT LICENSE IN ORDER TO USE THE DESIGNATION “CERTIFIED PUBLIC ACCOUNTANT” BECAUSE OFFERING TO PERFORM A SERVICE RELATED TO ACCOUNTING WHILE USING SUCH DESIGNATION CONSTITUTES THE PRACTICE OF PUBLIC ACCOUNTING.

(2) AN UNLICENSED PARTNERSHIP COMPRISED OF TWO INDIVIDUALS – “SMITH” AND “BROWN” – WHO POSSESS CERTIFICATES OF CERTIFIED PUBLIC ACCOUNTANT AND CURRENT LICENSES FROM THE BOARD OFFERS TO PERFORM TAX PREPARATION SERVICES FOR

CLIENTS UNDER THE BUSINESS NAME "SMITH & BROWN, CPAS."

EXPLANATION: THE PARTNERSHIP, BEING A QUALIFIED ASSOCIATION, MUST OBTAIN A CURRENT LICENSE IN ORDER TO USE THE DESIGNATION "CPAS" BECAUSE OFFERING TO PREPARE TAX RETURNS WHILE USING SUCH DESIGNATION CONSTITUTES THE PRACTICE OF PUBLIC ACCOUNTING.

(D) AN INDIVIDUAL OR ENTITY THAT VIOLATES THIS SECTION SHALL BE SUBJECT TO DISCIPLINARY ACTION, AS APPROPRIATE, UNDER SECTIONS 9.1, 12, 14 AND 16 OF THE ACT (63 P.S. §§ 9.9A, 9.12, 9.14 AND 9.16).

§ 11.9. Use of ~~{the designation "certified public accountant" and the abbreviation "CPA" by holders of a certificate of certified public accountant who do not maintain current licensure and are not engaged in the practice of public accounting}~~ professional title solely as mark of achievement by individual without current license.

{(a)} An individual who holds a certificate of certified public accountant but does not maintain a current [licensure] license to practice public accounting, or an individual who has received notification from the Board that he is qualified to receive a certificate of certified public accountant, may use the designation "certified public accountant" [or] and the abbreviation "CPA" solely as a mark of achievement [on business cards and stationery if] subject to the following conditions:

* * * * *

(2) The individual has notified the Board in writing that he wishes to be placed on ~~the Board's inactive~~ license roll STATUS.

(3) The individual does not [engage in the] practice [of] or offer to practice public accounting [or offer to perform public accounting] and is not a member or employee of a public accounting firm.

(4) {The individual does not hold himself out to be in the practice of public accounting when performing or offering to perform accounting, bookkeeping, tax or accounting-related matters.

(5) The individual does not ~~engage~~ USE THE DESIGNATION "CERTIFIED PUBLIC ACCOUNTANT" OR THE ABBREVIATION "CPA" in advertising, including listings and advertisements in phone directories, newspapers, magazines, electronic media and indoor and outdoor signs, ~~in which the individual uses the designation certified public accountant, the abbreviation CPA or a similar designation.~~

(6) } The individual does not [publicly] display [a] the certificate of certified public accountant [to imply that he is licensed in the] in a manner that suggests he is authorized to practice [of] public accounting [or offering to perform public accounting].

[(7) The individual is employed by an academic institution, corporation or company not engaged in the practice of public accounting, or government, and uses the designation certified public accountant or the abbreviation CPA on business cards and stationery if the following are met:

(i) The business cards and stationery indicate the name of the employer and the title of the person.

(ii) The business cards or stationery are not used to solicit public accounting or accounting-related business.]

~~(5)~~ (7) The INDIVIDUAL'S use of the designation "certified public accountant" and the abbreviation "CPA" under this section is limited TO BUSINESS CARDS, LETTERHEAD OR OTHER STATIONERY, AND RESUMES OR CURRICULUM VITAE, SUBJECT to the following CONDITIONS:

~~(i) A résumé or curriculum vitae, when accompanied by language reflecting that the individual's license is inactive.~~ THE WORD "INACTIVE" MUST APPEAR IMMEDIATELY ADJACENT TO THE DESIGNATION OR ABBREVIATION.

~~(ii) A business card, when accompanied by the name of the individual's employer and the individual's job title or, if the individual is self-employed, when accompanied by wording describing the nature of the~~

~~individual's business.~~ BUSINESS CARDS, LETTERHEAD AND OTHER STATIONERY MUST INCLUDE THE NAME OF THE INDIVIDUAL'S EMPLOYER AND THE INDIVIDUAL'S JOB TITLE OR, IF THE INDIVIDUAL IS SELF-EMPLOYED, THE NATURE OF THE INDIVIDUAL'S BUSINESS.

~~(iii) Letterhead and other stationery, when accompanied by the name of the individual's employer and the individual's job title or, if the individual is self employed, when accompanied by wording describing the nature of the individual's business.~~

[(b) The following are examples of unlawful use of the designation certified public accountant or the abbreviation CPA by holders of the certificate of certified public accountant who do not maintain current licensure:

(1) The holder of a certificate of certified public accountant who does not maintain current licensure has a sign in the window of his home, "John Doe, CPA". The sign is an offer to practice accounting which requires current licensure.

(2) The holder of a certificate who does not maintain current licensure shows his business card which says "John Doe, CPA, any Company or Institution, Title" to an acquaintance and offers to set up an accounting procedure. *Explanation:* The offer is an offer to practice public accounting which requires current licensure.

(c) Unlawful use of the designation “certified public accountant” and the abbreviation “CPA” by holders of a certificate of certified public accountant who do not maintain current licensure and are not engaged in the practice of public accounting may result in the penalties set forth in sections 9.1, 9.3, 14 and 16 of the act (63 P.S. §§ 9.9a, 9.9c, 9.14 and 9.16).]

(B) THE FOLLOWING ARE EXAMPLES OF UNLAWFUL USE UNDER THIS SECTION:

(1) THE HOLDER OF A CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT WHOSE LICENSE IS ON INACTIVE STATUS HAS A SIGN IN THE WINDOW OF HIS HOME THAT BEARS HIS NAME AND THE ABBREVIATION “CPA.” *EXPLANATION:* THE SIGN IS AN OFFER TO PRACTICE PUBLIC ACCOUNTING, WHICH REQUIRES POSSESSION OF A CURRENT LICENSE.

(2) THE HOLDER OF A CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT WHOSE LICENSE IS ON INACTIVE STATUS AND WHO IS EMPLOYED IN PRIVATE INDUSTRY USES A BUSINESS CARD THAT BEARS HIS NAME, THE ABBREVIATION “CPA,” HIS EMPLOYER’S NAME, AND HIS JOB TITLE. THE INDIVIDUAL SHOWS THE BUSINESS CARD TO AN ACQUAINTANCE AND OFFERS TO SET UP AN ACCOUNTING PROCEDURE. *EXPLANATION.* THE OFFER IS AN OFFER TO PRACTICE

PUBLIC ACCOUNTING, WHICH REQUIRES POSSESSION OF A CURRENT
LICENSE.

(C) AN INDIVIDUAL OR ENTITY THAT VIOLATES THIS SECTION SHALL BE
SUBJECT TO DISCIPLINARY ACTION, AS APPROPRIATE, UNDER SECTIONS 9.1, 12, 14
AND 16 OF THE ACT (63 P.S. §§ 9.9A, 9.12, 9.14 AND 9.16).

* * * * *

RELATIONS WITH CLIENTS AND THE PUBLIC

§ 11.21. Independence.

A licensee may not [express an opinion on financial statements of] ~~issue an attestation report~~
PERFORM AN ATTEST ACTIVITY for an enterprise in [such] a manner [as] to imply that he is
acting as an independent public accountant with respect thereto unless he is independent with respect
to [such] the enterprise. Independence will be considered impaired [in either of the following
situations:] when the licensee has not complied with the independence rules and requirements of a
recognized public or private standard-setting body—for example, AICPA, Securities and Exchange
Commission, General Accounting Office, Department of Labor— as applicable under the
circumstances. EXAMPLES OF STANDARD-SETTING BODIES INCLUDE THE AICPA,
PCAOB, SECURITIES AND EXCHANGE COMMISSION, GENERAL ACCOUNTING OFFICE,
AND DEPARTMENT OF LABOR.

[(1) During the period of his professional engagement or at the time of

expressing his opinion:

(i) The licensee:

(A) Had or was committed to acquire a direct or material indirect financial interest in the enterprise.

(B) Was a trustee of a trust or an executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise.

(ii) The licensee had a joint closely-held business investment with the enterprise or an officer, director or principal stockholder thereof which was material in relation to the net worth of either the licensee or the firm of the licensee.

(iii) The licensee had a loan to or from the enterprise or an officer, director or principal stockholder thereof other than the following kinds made by a financial institution under normal lending procedures, terms and requirements:

(A) Loans obtained by the licensee which are not material in relation to the net worth of the borrower.

(B) Home mortgages.

(C) Other secured loans except those secured solely by a

guarantee of the licensee.

(2) During the period of his professional engagement, at the time of expressing his opinion or during the period covered by the financial statements, the licensee:

(i) Was connected with the enterprise as a promoter, underwriter, voting trustee, director or officer or in a capacity equivalent to that of a member of management or of an employee.

(ii) Was a trustee for a pension or profit-sharing trust of the enterprise.

(iii) Was in a way connected with the enterprise that would impair independence.]

* * * * *

§ 11.25. Contingent fees.

(a) ~~A licensee may not collect or offer to collect a contingent fee for [one or more] any of the following:~~ A LICENSEE WHO SEEKS TO COLLECT A CONTINGENT FEE SHALL COMPLY WITH THE RULES OF THE AICPA, PCAOB, SEC AND OTHER RECOGNIZED PUBLIC OR PRIVATE STANDARD-SETTING BODIES AS APPLICABLE TO THE PROFESSIONAL SERVICES BEING PERFORMED.

~~(1) The performance of a professional service during any period covered by financial statements with respect to which the client entered into an attest [function] activity engagement with the licensee.~~

~~(2) The preparation of an original or amended tax return or a claim for a tax refund.~~

~~(b) Letters, statements or other documents generated during an engagement when the licensee is collecting a contingent fee shall contain a statement that the licensee has not provided attest [function] activity services for this engagement.~~

~~(c) For purposes of this section, a contingent fee is 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. A fee is not contingent if it is fixed by courts or other public authorities or, in tax matters, if it is determined based on the results of judicial proceedings or the findings of government agencies.~~

* * * * *

§ 11.27. Auditing standards and other technical standards.

(a) *Auditing standards.* A licensee may not permit his name to be associated with financial statements to imply that he is acting as an independent public accountant with respect to the financial statements unless he has complied with applicable [generally accepted auditing standards] GAAS. Statements on auditing standards issued by the [American Institute of Certified Public Accountants] AICPA or other pronouncements having similar generally recognized authority are considered to be interpretations of [generally accepted auditing standards and departures therefrom shall be justified by those who do not follow them] GAAS. A licensee shall justify any departures from the standards.

(b) *Other technical standards.* A licensee shall comply with other technical standards promulgated by bodies of the [American Institute of Certified Public Accountants] AICPA, PCAOB or other recognized authorities designated to establish the standards[, and departures therefrom shall be justified by the licensee who does not follow them]. A licensee shall justify any departures from the standards.

§ 11.28. Accounting principles.

A licensee may not express an opinion that financial statements are presented in conformity with [generally accepted accounting principles] GAAP if [such] the financial statements contain any departure from [such accounting principles which] GAAP that has a material effect on the financial statements taken as a whole, unless the licensee can demonstrate that by reason of unusual circumstances the financial statements would otherwise be misleading. In such a case, the report of the licensee shall describe the departure, the approximate effects thereof if practicable, and the reasons why compliance with the principle would result in a misleading statement. For purposes of this section, [generally accepted accounting principles] GAAP are considered to be defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

* * * * *

§ 11.30. {Confidential client information} (Reserved).

[A licensee may not without the consent of his client disclose a confidential information

pertaining to his client obtained in the course of performing professional services except to the extent provided by section 11.1 of the act (63 P.S. § 9.11a).] EXCEPT TO THE EXTENT PROVIDED BY SECTION 11.1 OF THE ACT (63 P.S. § 9.11A), A LICENSEE MAY NOT DISCLOSE CONFIDENTIAL INFORMATION PERTAINING TO A CLIENT OBTAINED IN THE COURSE OF PERFORMING PROFESSIONAL SERVICES UNLESS THE CLIENT CONSENTS TO THE DISCLOSURE.

§ 11.31. Records.

[A licensee shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

- (1) A copy of a tax return of the client.
- (2) A copy of a report or other document issued by the licensee to or for such client.
- (3) Accounting or other records belonging to the client which the licensee removed from the premises of the client or received for the account of the client, but the licensee may make and retain copies of such documents when they form the basis for work done by him.]

A licensee who is requested by a client or former client to furnish a document to which the client OR FORMER CLIENT is entitled under section 11 of the act (63 P.S. § 9.11) shall comply with the request within a reasonable period of time.

* * *

§ 11.35. {Form of practice} (Reserved).

[A licensee may practice public accounting only in a proprietorship, a partnership or a professional corporation or association.] A LICENSEE MAY PRACTICE PUBLIC ACCOUNTING AS A SOLE PRACTITIONER OR FIRM, OR AS AN EMPLOYEE OF A SOLE PRACTITIONER OR A MEMBER OR EMPLOYEE OF A FIRM, SUBJECT TO THE REQUIREMENTS OF THE ACT.

§ 11.36. FORM OF Business name; DISCLOSURE.

- (a) A licensee that is a firm or sole practitioner may use a fictitious name as a business name.
- (b) A licensee who is a sole practitioner may not use a professional name bearing the words “and Company,” “and Associates” or a variation of those words, unless the licensee employs at least one individual who possesses the credential of certified public accountant or public accountant, has sat for the CPA examination or has the educational qualifications to sit for the CPA examination. A SOLE PRACTITIONER WHO USES A BUSINESS NAME BEARING THE WORDS “AND COMPANY,” “AND ASSOCIATES,” OR A VARIATION OF THOSE WORDS SHALL DISCLOSE IN WRITING TO A CLIENT THAT HE IS A SOLE PRACTITIONER BEFORE RENEWING AN ENGAGEMENT AGREEMENT WITH THE CLIENT AND SHALL DISCLOSE IN WRITING TO A POTENTIAL CLIENT THAT HE IS A SOLE PRACTITIONER BEFORE ENTERING INTO AN ENGAGEMENT AGREEMENT WITH THE POTENTIAL CLIENT.

[LIABILITY]

§ 11.41. [Professional corporations and associations liability requirements] **(Reserved).**

[(a) In addition to the liability provisions of the Professional Corporation Law (15 P.S. §§ 2901-2914), the professional corporation shall carry professional liability insurance in the amount of \$25,000 per claim multiplied by the number of its shareholders, officers and professional employees employed in this Commonwealth; however, the maximum insurance coverage is not required to exceed \$500,000 per claim. In addition to the liability provisions of the Professional Association Act (15 P.S. §§ 12601-12619), the professional association shall carry professional liability insurance in the amount of \$25,000 per claim multiplied by the number of its associates, officers and professional employees employed in this Commonwealth; however, the maximum insurance coverage is not required to exceed \$500,000 per claim. Liability insurance is not required if the professional corporation or the professional association maintains unimpaired capital equal to the amount of insurance required. Liability may not be limited by the formation of subsidiary or affiliated corporations or associations, each with its own limited and unrelated liability. When the professional corporation or association applies for licensure or licensure renewal, it shall submit verification that it is carrying the professional liability insurance required by this subsection or it shall submit financial statements disclosing that it has unimpaired capital equal to the amount of insurance required by this subsection. The professional corporation or association shall notify the board if its liability insurance policy is cancelled or if unimpaired capital falls below the amount required by this subsection.

(b) For the professional corporation, unimpaired capital as used in subsection (a) means

capital assigned to stock plus additional paid-in capital plus retained earnings minus treasury stock held at cost. For the professional association, unimpaired capital as used in subsection (a) means unencumbered owners' equity. The financial statements of the professional corporation or professional association used in determining the unimpaired capital shall be prepared in accordance with generally accepted accounting principles.]

* * * * *

EXPERIENCE

§ 11.53. [Classification of candidates] (Reserved).

[(a) A candidate who holds a baccalaureate degree, passed the examination and completed at least 12 semester credits in accounting subjects of a content satisfactory to the Board shall have at least 2 years of qualified experience in public accounting or as an auditor with a unit of government.

(b) A candidate who holds a master's degree, passed the examination and completed at least 12 semester credits in accounting subjects of a content satisfactory to the Board shall have at least 1 year of qualified experience in public accounting or as an auditor with a unit of government.]

§ 11.54. [Time limits] (Reserved).

[(a) Each year of qualified experience shall be met by attaining 1,600 hours in not less than 12 months.

(b) A candidate may not receive credit for more than 1,600 hours in a 12-month period.

(c) A candidate shall complete the required experience within a 60-month period preceding

the date of application for a certificate of certified public accountant.]

§ 11.55. [Qualified experience] **Experience requirements for CPA certification.**

(a) General requirements.

(1) A candidate for CPA certification who qualified for the CPA examination based on possession of a bachelor's degree and completion of 24 semester credits in relevant subjects shall have acquired 3,200 hours of qualifying experience, including a minimum of 800 hours of attest activity, over at least a 24-month period OF NOT LESS THAN 24 MONTHS.

(2) A candidate for CPA certification who qualified for the CPA examination based on possession of a master's degree or other postgraduate degree and completion of 24 semester credits in relevant subjects shall have acquired 1,600 hours of qualifying experience, including a minimum 400 hours of attest activity, over at least a 12-month period OF NOT LESS THAN 12 MONTHS.

(3) A candidate for CPA certification who qualified for the CPA examination based on possession of a bachelor's degree or higher degree and completion of 150 semester credits of postsecondary education including 36 semester credits in relevant subjects shall have acquired 1,600 hours of qualifying experience, including a minimum 400 hours of attest activity, over at least a 12-month period OF NOT LESS THAN 12 MONTHS.

(4) A CANDIDATE WHO INITIALLY SAT FOR THE CPA EXAMINATION AFTER JANUARY 1, 2000, SHALL HAVE ACQUIRED THE QUALIFYING EXPERIENCE REQUIRED UNDER PARAGRAPHS (1)-(3) WITHIN 120 MONTHS PRECEDING THE DATE OF APPLICATION FOR CPA CERTIFICATION. A CANDIDATE WHO INITIALLY SAT FOR THE CPA EXAMINATION BEFORE JANUARY 1, 2000, IS NOT SUBJECT TO ANY TIME LIMITATION REGARDING THE ACQUISITION OF QUALIFYING EXPERIENCE.

(5) A candidate may not receive credit for more than 1,600 hours of qualifying experience in a 12-month period. A candidate may acquire all hours of qualifying experience in attest activity.

(b) Attest activity. A [minimum of 800 hours of total qualified experience] candidate's attest activity shall be [obtained] in one or more of the following areas:

(1) Candidates employed in public accounting:

(i) Audits of financial statements in accordance with GAAS, ~~or~~
GAGAS OR PCAOB.

[(2)] (ii) * * *

[(3)] (iii)* * *

[(4) Internal audits in an established internal auditing department

which meet accepted standards.

(5) Training sessions on the attest function.

(6)]- (iv) ATTESTATION ENGAGEMENTS IN ACCORDANCE
WITH SSAE.

(V) Other auditing in accordance with accepted standards [which]
that leads to an expression of a written opinion including:

[(i)] (A) * * *

[(ii)] Government audit agencies rendering an opinion or
report.

[(iii)] Operations audit review]

(B) Operational audits.

[(iv)] (C) * * *

[(v)] (D) * * *

(VI) TRAINING SESSIONS ON THE ATTEST FUNCTION
COMPLETED BEFORE JANUARY 1, 2008.

(2) Candidates employed in private industry:

(i) Performance of an independent internal audit function.

(ii) Compliance audits of government contracts performed on behalf
of a government agency that result in the issuance of an opinion or report.

(III) TRAINING SESSIONS ON THE ATTEST FUNCTION
COMPLETED BEFORE JANUARY 1, 2008.

(3) Candidates employed in federal, state or local government:

(i) Performance of an independent internal audit function.

(ii) Audits performed on behalf a government audit agency that results
in the issuance of an opinion or report.

(III) TRAINING SESSIONS ON THE ATTEST FUNCTION
COMPLETED BEFORE JANUARY 1, 2008.

[(b) The remaining hours of qualified experience may be obtained] (c) Nonattest activity. A
candidate's nonattest activity shall be in one or more of the following areas:

* * * * *

(2) Tax research [which] that is properly documented.

* * * * *

(4) Financial forecasts, [analysis] analyses and projections.

(5) Management advisory services [which] that meet AICPA standards.

* * * * *

(7) Professional accounting-related work in [an] a public accounting firm.

[(c) Hours of experience will not be given for time spent on nonprofessional work, including
recruiting, industrial engineering, administration, bookkeeping, appraisal, market research or

paraprofessional work unless the work complies with subsection(b)(5).] (d) Nonqualifying experience. A candidate will not receive credit for the following types of experience:

(1) Experience that was supervised by an individual who did not meet the requirements of §11.56 (relating to supervision of experience; verification) at the time the experience was obtained.

(2) Experience acquired while self-employed.

(3) Experience acquired as a partner in a partnership.

(4) Experience comprising nonprofessional work — for example, INCLUDING-recruiting, industrial engineering, administration, bookkeeping, AND appraisals— or paraprofessional work that does not comply with subsection (c)(7).

(5) PARAPROFESSIONAL WORK THAT DOES NOT COMPLY WITH SUBSECTION (C)(7).

§ 11.56. [Verification] Supervision of experience; verification.

(a) To receive credit for experience under § 11.55 (relating to experience requirements for CPA certification), a candidate for CPA certification shall acquire the experience under the supervision of an individual who meets all of the following conditions at the time the experience is acquired:

(1) Holds a current license to practice as a certified public accountant or public accountant in this Commonwealth or another jurisdiction.

(2) Either employs the candidate or is employed by the same employer as the candidate. The supervisor may not be a member of a public accounting firm that is independent of the entity that employs the candidate.

(3) Is responsible for and personally evaluates the candidate's work.

(b) [The] A supervisor shall submit a verified statement [to the Board] regarding the candidate's experience on a form provided by the Board [which specifies], specifying the dates of supervision[,] and the types and hours of experience acquired [obtained, and the number of hours].

[(b) The supervisor who submits the statement shall be responsible for its accuracy. Failure to properly verify may result in disciplinary action.] (c) A SUPERVISOR WHO SUBMITS A VERIFIED STATEMENT SHALL BE RESPONSIBLE FOR ITS ACCURACY. A supervisor may not WHO knowingly submit SUBMITS a false or inaccurate verified statement or wilfully refuse WHO REFUSES to submit a verified statement when qualified experience has been acquired SHALL BE SUBJECT TO DISCIPLINARY ACTION UNDER SECTION 9.1 OF THE ACT (63 P.S. § 9.9A).

* * * * *

{INTERPRETATION}

§ 11.73. {~~Interpretation of chapter~~} (~~Reserved~~).

[This chapter may not be construed to be in violation of or inconsistent with the act.] THE PROVISIONS OF THIS CHAPTER MAY NOT BE CONSTRUED IN A MANNER THAT

#16A-559
General Revisions
Final Rulemaking
Submitted March 30, 2007

WOULD BE IN VIOLATION OF OR INCONSISTENT WITH THE PROVISIONS OF THE ACT.

* * *

PROPOSED RULEMAKING

STATE BOARD OF ACCOUNTANCY

[49 PA. CODE CH. 11]

Revision of and Deletion of Existing Regulations

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

Purpose

The proposed rulemaking is intended to provide a general updating and streamlining of the Board's regulations consistent with the current provisions of the CPA Law (act) (63 P. S. §§ 9.1—9.16b), which was extensively amended by the act of December 4, 1996 (P. L. 851, No. 140) (Act 140). A separate rulemaking will be submitted regarding continuing education requirements and the expiration date of licenses. Previous rulemakings implemented statutorily mandated regulations regarding peer review at 30 Pa.B. 6194 (December 2, 2000), commissions and referral fees at 31 Pa.B. 147 (January 13, 2001), addressed fees for Board services at 30 Pa.B. 6344 (December 9, 2000), continuing education program sponsors at 31 Pa.B. 151 (January 13, 2001) and the certified public accountant (CPA) examination at 34 Pa.B. 1768 (April 3, 2004).

The proposed rulemaking would revise regulations for consistency with the act and for clarification of certain practice issues; delete regulations that are obsolete or redundant of provisions of the act; and make editorial and organizational changes to the regulations.

Description of the Proposed Rulemaking

§ 11.1 (relating to definitions). Section 11.1 defines words and phrases used in Chapter 11. The proposed rulemaking would delete the definitions of "attest function," "Board," "contingent fee," "firm," "inactive status," "licensee," "practice of public accounting" and "Professional Corporation Law." Editorial changes are made to the definitions of "Act" and "C.P.A."

Proposed amendments to other regulations would eliminate the need for definitions of "Professional Corporation Law" and "attest function" and would incorporate the definition of "contingent fee" into the single regulation where the term appears. Section 2 of the act (63 P. S. § 9.2) already sets forth updated definitions of "Board," "firm," "licensee" and "public accounting." "Inactive status" does not currently appear in any regulation.

§ 11.3 (relating to applicability of general rules). Section 11.3 provides that the Board's formal proceedings are governed by 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The proposed rulemaking would delete this section as unnecessary because it repeats language in section 9 of the act (63 P. S. § 9.9).

§ 11.5 (relating to temporary practice in this Commonwealth). Section 11.5 relates to the temporary practice of public accounting in this Commonwealth by a licensee of another state. Subsection (a) lists the requirements for issuance of a temporary practice permit. Subsection (b) describes the scope of a temporary practice permit. Subsection (c) provides that a licensee who does not meet the requirements for a temporary practice permit must sat-

isfy the requirements for full licensure to practice public accounting in this Commonwealth. Subsection (d) identifies those activities that do not require possession of a temporary practice permit.

The proposed rulemaking would revise subsection (a) to be consistent with the authorizing language for a temporary permit in section 13(b) of the act (63 P. S. § 9.13(b)) and to clarify that an applicant for a temporary practice permit must not personally maintain an office in this Commonwealth. Many applicants for temporary practice permits are members of National or regional public accounting firms that have offices in this Commonwealth. The proposed rulemaking also would make editorial changes to subsections (a) and (b). The proposed rulemaking would delete subsections (c) and (d) as unnecessary. The alternatives to a temporary practice permit—that is, normal certification and licensure by examination or certification and licensure without examination through domestic reciprocity—are set forth in sections 3.1, 5 and 8.2 of the act (63 P. S. §§ 9.3a, 9.5 and 9.8b). Likewise, section 13(c) of the act adequately addresses the scope of permissible activities not requiring possession of a license or temporary practice permit.

§ 11.6 (relating to supervised experience). Section 11.6(a) prescribes the manner in which qualified experience for CPA certification must be supervised. Subsection (b) gives examples of unacceptable experience. The proposed rulemaking would relocate the contents of subsections (a) and (b) to § 11.56 (relating to verification of experience) and § 11.55 (relating to qualified experience), respectively.

§§ 11.7 and 11.8 (relating to use of the designation "public accountant" and the abbreviation "PA"; and use of the designation "certified public accountant" and the abbreviation "CPA" in the practice of public accounting). Subsection (a) of each regulation identifies the categories of individuals and entities that may use the designation and abbreviation. Subsection (b) of each regulation prescribes unlawful use by individuals and entities that are not currently licensed to practice public accounting. Subsection (c) of each regulation gives examples of unlawful use. Subsection (d) of each regulation identifies the disciplinary provisions of the act that are implicated by unlawful use.

The proposed rulemaking would delete §§ 11.7 and 11.8 as essentially redundant of the act. Section 12(a), (c) and (j) of the act (63 P. S. §§ 9.12(a), (c) and (j)) adequately address which individuals and entities are permitted to use the designations "certified public accountant" and "public accountant" and the abbreviations "CPA" and "PA." The act defines public accounting, in part, as performing or offering to perform an accounting-related activity while holding out as a CPA or public accountant (PA). Because section 12(q) of the act makes it unlawful to practice public accounting without a current license, it is unnecessary in the regulations that a current license is required to use a designation or title in the practice of public accounting. It is likewise unnecessary for the regulations to give examples of unlawful use of designations and abbreviations under the act or to reference provisions in the act that set forth disciplinary remedies for unlawful use.

§ 11.9 (relating to use of the designation "certified public accountant" and the abbreviation "CPA" by holders of a certificate of certified public accountant who do not

maintain current licensure and are not engaged in the practice of public accounting). Section 11.9(a) sets forth the conditions under which the holder of a certificate of CPA who does not possess a current license to practice public accounting may use the designation "certified public accountant" and the abbreviation "CPA" solely as a mark of achievement on business cards and stationery. The conditions stipulate that the certificateholder must not be under suspension or revocation; notify the Board in writing that the certificateholder wishes to be placed on the inactive roll; be employed in private industry, government or academia; refrain from practicing public accounting or offering to practice public accounting; refrain from advertising as a CPA and from publicly displaying a CPA certificate in a manner to suggest the certificateholder is engaged in the practice of public accounting; and identify the certificateholder's employer and job title on the stationery and business cards that bear the designation "certified public accountant" or the abbreviation "CPA." Subsection (b) gives examples of unlawful use and subsection (c) identifies the disciplinary provisions of the act that are implicated by unlawful use.

The proposed rulemaking would revise subsection (a), consistent with section 12(a) of the act, to provide that an individual who has received written notification from the Board that he is qualified to receive a certificate of CPA may also use the designation "certified public accountant" and the abbreviation "CPA" subject to the same conditions as an actual certificateholder. The proposed rulemaking would broaden the scope of permissible usage in subsection (a) to include an individual's résumé or curricula vitae, when accompanied by language reflecting that the individual's license is inactive, and a self-employed individual's business cards and stationery when accompanied by wording describing the nature of the individual's business. The amendments to subsection (a) also would restate the conditions of use with greater clarity and less verbiage. Finally, the proposed rulemaking would delete subsections (b) and (c), neither of which provides information that cannot be gleaned from subsection (a) or from the act.

§ 11.21 (relating to independence). Section 11.21 provides that a licensee may not issue an opinion on the financial statements of an enterprise as an independent PA if the licensee's independence with respect to the enterprise is impaired. Section 11.21 sets forth the circumstances under which a licensee's independence is considered impaired. The independence requirements of § 11.21 are based on the interpretations of Professional Standards Rule 101 of the American Institute of Certified Public Accountants (AICPA).

The proposed rulemaking would modify § 11.21 to provide that a licensee's independence is considered impaired if the licensee failed to comply with the independence rules and requirements of the recognized public or private standard-setting body that are applicable to the attest engagement. Standard-setting bodies include the AICPA, the Securities and Exchange Commission, the General Accounting Office and the Department of Labor. The Board is making this amendment because the AICPA independence rule may not include all the requirements of other regulatory agencies with jurisdiction over attest activities.

§ 11.25 (relating to contingent fees). Section 11.25(a) prohibits a licensee from collecting, or seeking to collect, a contingent fee for performing a professional service during any period in which the licensee has also been engaged to perform an attest activity for the client, or for

preparing an original or amended tax return or a claim for a tax refund. Subsection (b) provides that documents generated during an engagement in which the licensee is collecting a contingent fee must contain a statement that no attest activity is being performed.

The proposed rulemaking would relocate the definition of "contingent fee" that appears in § 11.1 to new § 11.25(c). The definition, which is derived from AICPA Professional Standards Rule 302, states that a contingent fee is 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 fee is otherwise dependent on the outcome or result of the service. The proposed rulemaking also would include a provision in subsection (c) that clarifies, consistent with AICPA Professional Standards Rule 302, that a fee is not considered contingent if it is fixed by a judicial or other government authority or, in tax matters, if it is determined based on the results of judicial proceedings or the findings of government agencies. Thus, it would be possible for a licensee, in filing an amended tax return for a client that seeks a refund, to collect a fee calculated upon a percentage of the refund if the refund is based on a soon-to-be-decided test case or a developing position of the Internal Revenue Service. The proposed rulemaking also would revise terminology in subsections (a) and (b) for consistency with the act.

§ 11.27 (relating to auditing standards and other technical standards). Section 11.27 requires a licensee who performs an audit of financial statements as an independent PA to comply with generally accepted auditing standards and other technical standards and to provide justification for any departures from the standards. The proposed rulemaking would make editorial changes to § 11.27.

§ 11.28 (relating to accounting principles). Section 11.28 prohibits a licensee from expressing an opinion that financial statements are presented in conformity with generally accepted accounting principles (GAAP) if the financial statements contain any departure from GAAP that has a material effect on the financial statements as a whole, unless compliance with GAAP would otherwise result in a misleading statement. The licensee must justify any departures from GAAP. The proposed rulemaking would make editorial changes to § 11.28.

§ 11.30 (relating to confidential client information). Section 11.30 provides that a licensee may not disclose a client's confidential information without the client's consent except as authorized by section 11.1 of the act (63 P. S. § 9.11a), regarding privileged communications. The proposed rulemaking would delete § 11.30 as duplicative of section 11.1 of the act.

§ 11.31 (relating to records). Section 11.31 requires a licensee to furnish a client or a former client with certain types of documents, such as a tax return, if the request for the documents is made within a reasonable time after their original issuance. The proposed rulemaking would delete this language as duplicative of section 11 of the act (63 P. S. § 9.11), regarding ownership and production of records. The proposed rulemaking would add a provision requiring a licensee who is requested by a client or former client to furnish documents to which the client is entitled under section 11 of the act to comply with the request within a reasonable period of time. Section 11 of the act does not address the timeliness of a licensee's response to a request for production of records.

§ 11.35 (relating to form of practice). Section 11.35 provides that a licensee may practice public accounting

only in a sole proprietorship, partnership or professional corporation or association. The proposed rulemaking would delete § 11.35 as inconsistent with the current act, which contemplates that a licensee may practice as a sole practitioner or as part of any "qualified association" that is licensed as a firm. "Qualified association" is broadly defined in section 2 of the act to include not only partnerships, professional corporations and professional associations, but also limited liability companies and limited liability partnerships.

§ 11.36 (*relating to business name*). Section 11.36 is added to complement section 12(1.3) of the act, which prohibits a licensee from using a business name that is misleading as to any matter, including the identity of principals, members and employees. Subsection (a) would permit a firm or sole practitioner to use a fictitious name as a business name. The pre-1997 version of the act prohibited a firm that was a professional corporation from using a fictitious name. Subsection (b) would prohibit a sole practitioner from using a business name with the phrases "and Company" or "and Associates" unless he employs at least one other individual who is currently licensed as a CPA or PA, who has sat for the CPA examination or who has the educational qualifications to sit for the CPA examination. The pre-1997 version of the act prohibited a sole practitioner from using the phrase "and Company" or similar designation in his business name unless the name had been in use before November 1, 1961. Because the phrases "and Company" and "and Associates" imply at least the existence of a multi-member practice (if not a formal entity such as a partnership or professional corporation), the Board believes a sole practitioner's use of these terms is misleading if he is the only professional-level member of the practice. The terms are not misleading so long as the sole practitioner has at least one professional-level employee.

§ 11.41 (*relating to professional corporations and associations liability requirements*). Section 11.41 sets forth professional liability insurance and unimpaired capital requirements for licensed professional corporations and professional associations that were mandated under sections 8.4(7) and 8.6(7) of the act (63 P. S. §§ 9.8d(7) and 9.8f(7)), which were repealed by Act 140 effective February 3, 1997. Accordingly, the proposed rulemaking would delete § 11.41 as obsolete.

§§ 11.53 and 11.54 (*relating to classification of candidates; and time limits*). Section 11.53 sets forth the number of years of qualified experience that CPA candidates must acquire, depending on whether they possess a master's degree or a bachelor's degree only. Section 11.54 expresses each year of qualified experience in terms of hours in a 12-month period, limits the number of qualified hours that may be obtained during a 12-month period and requires qualified experience to have been acquired during the 60-month period preceding the date of application for CPA certification.

The proposed rulemaking would relocate the contents of §§ 11.53 and 11.54 to § 11.55, except for the 60-month limitation on the acquisition of qualified experience, which would be deleted as inconsistent with the act. Section 4.1(c) of the act (63 P. S. § 9.4a(c)), which was added by Act 140, provides that an individual taking the CPA examination for the first time after January 1, 2000, must have acquired qualified experience for CPA certification within 120 months preceding the date of application for certification. Section 4.1(c) of the act further provides that an individual who initially took the CPA examination before January 1, 2000, is not subject to any time limitation in acquiring qualified experience.

§ 11.55. Section 11.55(a) and (b) sets forth the types of qualified experience in attest activities and nonattest activities, respectively, that an individual can acquire to satisfy the experience requirement for CPA certification. Section 11.55(c) lists types of unacceptable experience.

The proposed rulemaking would relocate to subsection (a) the contents of §§ 11.53 and 11.54, as revised for consistency with the experience requirements in section 4.1 of the act. The proposed rulemaking would move the types of qualifying attest and nonattest activities to subsections (b) and (c), respectively, while providing a more specific breakdown of qualifying attest activities depending on whether the candidate is employed in public accounting, private industry or government. The proposed rulemaking would revise the descriptions of certain types of qualifying activities and would eliminate "training" on the attest function as an acceptable alternative to actual participation in an attest activity. The proposed rulemaking would combine into a new subsection (d) examples of unacceptable experience from subsection (c) and from § 11.6. The proposed rulemaking also would rename § 11.55 as "Experience requirements for CPA certification."

§ 11.56. Section 11.56(a) provides that a licensee who supervises the experience of a CPA candidate shall submit a verification of experience form specifying the dates of supervision, hours worked and types of experience. Subsection (b) provides that a supervisor who fails to properly verify a candidate's experience is subject to disciplinary action.

The proposed rulemaking would relocate to subsection (a) the requirements for a supervisor in § 11.6. The proposed rulemaking would make editorial changes to subsection (a) and relocate it to subsection (b). The proposed rulemaking would relocate subsection (b) to a new subsection (c) and would expand its scope to provide that a supervisor may not knowingly submit a false or inaccurate verified statement or wilfully refuse to submit a verified statement when qualified experience has been acquired. The amendments also would rename § 11.56 as "Supervision of experience; verification."

§ 11.73 (*relating to interpretation of chapter*). Section 11.73 provides that the Board's regulations are not to be construed to be in violation of, or inconsistent with, the act. The amendments would delete § 11.73 as unnecessary. The Board's obligation to construe its regulations in consonance with the act is inherent in the primacy of a statute over the regulations promulgated under authority of the statute.

Statutory Authority

Section 3(a)(11) and (12) of the act (63 P. S. §§ 9.3(a)(11) and (12)) authorizes the Board to promulgate, respectively, regulations regarding professional conduct and to other matters necessary to carry out the provisions of the act.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would not have a fiscal impact on, or create additional paperwork for, the regulated community, the general public or the Commonwealth and its political subdivisions.

The Board solicited comments from the major professional organizations that represent the regulated community in this Commonwealth.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 23, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Standing Committee on Consumer Protection and Professional Licensure and the House Standing Committee on Professional Licensure. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

The Board invites interested persons to submit written comments, suggestions or objections regarding the proposed rulemaking to Steven Wennberg, Counsel, State Board of Accountancy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this notice of proposed rulemaking in the *Pennsylvania Bulletin*.

ROBERT J. CIARUFFOLI, Jr., CPA,
Chairperson

Fiscal Note: 16A-559. No fiscal impact; (8) recommends adoption.

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 meaning, unless the context clearly indicates otherwise:

* * * * *

Act—The [C.P.A.] CPA Law (63 P. S. §§ 9.1—[9.16(b)] 9.16b)[, which promulgates the rules of professional conduct for certified accountants of this Commonwealth].

[*Attest function*—A written communication that expresses a conclusion about the reliability of a written assertion which may take the form of an audit, review or compilation of a financial statement or an examination of prospective financial information.

Board—The State Board of Accountancy of the Commonwealth.

C.P.A.] CPA—Certified [Public Accountant of this Commonwealth] public accountant.

* * * * *

[*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.]

* * * * *

[*Firm*—A proprietorship, partnership or professional corporation or association engaged in the practice of public accounting and registered with the Board.]

* * * * *

[*Inactive status*—Status of a C.P.A. or Registered Public or Foreign Accountant who is not permitted to engage in the practice of public accounting because he does not qualify for or possess a current biennial permit.]

* * * * *

[*Licensee*—A person holding a certificate issued by the Board, registered with the Board, or holding a permit to practice and a firm registered with the Board or holding a permit to practice.]

* * * * *

[*Practice of public accounting*—The offering to perform, or the performing, for a client or potential client services involving the use of accounting or auditing skills, management advisory or consulting services, preparation of tax returns or furnishing of advice on tax matters while holding oneself out in a manner that states or implies one is a licensee.

Professional Corporation Law—The Professional Corporation Law (15 P. S. §§ 2901-2914) which allows for the formation of professional associations or corporations by accountants.]

* * * * *

§ 11.3. [Applicability of general rules] (Reserved).

[Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) is applicable to the activities of and proceedings before the Board.]

§ 11.5. Temporary practice in this Commonwealth.

(a) *Requirements for temporary practice.* A [certified public accountant] CPA, or [partnership or corporation] association composed of [certified public accountants] CPAs, of another state [or other jurisdiction of the United States] may temporarily practice public [accountancy] accounting in this Commonwealth, if the [certified public accountant, or partnership or corporation] CPA or association:

(1) Holds a [valid] current license or registration to practice public [accountancy] accounting in the other state [or jurisdiction].

(2) Concurrently practices public [accountancy] accounting in the other state [or jurisdiction].

(3) Does not personally maintain an office in this Commonwealth.

* * * * *

(b) *Temporary practice permit.* The temporary practice permit:

(1) Allows [a certified public accountant, or partnership or corporation, who meets the requirements of subsection (a)] the permitholder to work for not more than 500 hours in this Commonwealth during a 12-month period, except that this 500 hour limitation does not apply if the [holder of a temporary practice permit] permitholder is working only on a single, nonrecurring engagement.

* * * * *

[(c) *Failure to meet requirements for temporary practice.* A person, partnership or corporation, of another state or other jurisdiction who wishes to practice public accountancy in this Commonwealth but does not meet the requirements of subsection (a) is subject to the full licensing requirements of section 8.2 of the act (63 P. S. § 9.8b).

(d) *Exemption from requirement of temporary practice permit.* The requirement of a temporary practice permit does not apply to a person, partnership or corporation, who renders bookkeeping and similar technical services, prepares income tax returns, or prepares financial statements, but does not issue a report that expresses an opinion or assurance on the statements.]

[SUPERVISION]

§ 11.6. [Supervised experience] (Reserved).

[(a) Supervised experience that qualifies a person to take the certified public accountant examination or to be granted a certificate of certified public accountant shall meet the following conditions:

(1) The supervisor shall be a licensed certified public accountant or public accountant during the period of supervision.

(2) The supervisor shall employ the person or be employed by the same person, partnership, corporation or branch of government as the person he is supervising.

(3) The supervisor personally evaluates and is responsible for the work performed by the person.

(b) The following are examples of experience which do not qualify a person to take the certified public accountant examination or to be granted a certificate of certified public accountant.

(1) Self-employment.

(2) Work as a partner in a partnership.

(3) Work supervised by a certified public accountant who was not licensed at the time of supervision.

(4) Work supervised by an accounting firm which is independent of the entity for which the person works.]

§ 11.7. [Use of the designation "public accountant" and the abbreviation "PA"] (Reserved).

[(a) Only the following individuals and entities may use the designation public accountant, the

abbreviation PA, and other designations which suggest that the user is a public accountant.

(1) An individual who is registered as a public accountant under section 8.7 of the act (63 P. S. § 9.8g) and holds a current license.

(2) An individual who has written notification from the Board that he was qualified to receive a certificate of certified public accountant and holds a current license.

(3) A partnership, professional association or professional corporation composed of public accountants or of certified public accountants and public accountants which registered under section 8.5 or 8.6 of the act (63 P. S. § 9.8e or § 9.8f) and holds a current license.

(b) It is unlawful for an individual, partnership, professional association or professional corporation, not currently licensed to engage in the practice of public accounting or to use the designation public accountant, the abbreviation PA or a similar designation.

(c) The following are examples of unlawful use of the designation public accountant, PA or similar designations:

(1) An individual had registered under section 8.7 of the act (63 P. S. § 9.8g) and had once been licensed. The individual does not hold a current license but still uses business cards which indicate that he is a public accountant. To make use of the designation public accountant, the individual shall hold a current license.

(2) An unlicensed individual offers to prepare income tax returns and either asserts that he is a public accountant or signs the return "John Doe, PA." *Explanation:* The offer to perform a service related to accounting while holding oneself out as a public accountant is engaging in the practice of public accounting and requires a current license.

(d) Unlawful use of the designation "Public Accountant" and the abbreviation "PA" may result in the penalties in sections 9.1, 9.3, 14 and 16 of the act (63 P. S. §§ 9.9a, 9.9c, 9.14 and 9.16).]

§ 11.8. [Use of the designation "certified public accountant" and the abbreviation "CPA" in the practice of public accounting] (Reserved).

[(a) Only the following individuals and entities may use the designation certified public accountant, the abbreviation CPA, and other designations which suggest that the user is a certified public accountant, in the practice of public accounting.

(1) An individual who holds a certificate of certified public accountant and a current license.

(2) An individual who has written notification from the Board that he has qualified to receive a certificate of certified public accountant and a current license.

(3) A partnership, professional association or professional corporation composed of certified public accountants which is registered with the Board under section 8.3 or 8.4 of the act (63 P. S. § 9.8c or § 9.8d) and holds a current license.

(b) It is unlawful for an individual, partnership, professional association or professional corpora-

tion, not currently licensed to engage in the practice of public accounting to hold oneself out as a certified public accountant.

(c) The following are examples of unlawful use of the designation certified public accountant, CPA or similar designations, in the practice of public accounting.

(1) An individual who holds a certificate of certified public accountant but not a current license offers to establish a bookkeeping system for a potential client and tells the potential client that he is a certified public accountant. *Explanation:* The offer to perform a service related to accounting, including matters such as bookkeeping and tax returns, while holding oneself out as a certified public accountant is engaging in the practice of public accounting and requires a current license.

(2) An individual who holds a certificate of certified public accountant but not a current license prepares income tax returns. The individual has a sign outside of his office which reads "John Does, CPA, Tax Preparation." *Explanation:* The sign is a solicitation to perform accounting-related services. By offering to perform services related to accounting without maintaining a current license, John Does violates the act. Similarly, John Doe may not sign a tax return which he prepared as "John Doe, CPA." John Doe may lawfully put up a sign reading "John Doe, Tax Preparation" and may prepare and sign tax returns as "John Doe."

(d) Unlawful use of the designation "certified public accountant" and the abbreviation "CPA" in the practice of public accounting may result in the penalties set forth in sections 9.1, 9.3, 14 and 16 of the act (63 P. S. §§ 9.9a, 9.9c, 9.14 and 9.16).]

§ 11.9. Use of [the designation "certified public accountant" and the abbreviation "CPA" by holders of a certificate of certified public accountant who do not maintain current licensure and are not engaged in the practice of public accounting] professional title solely as mark of achievement by individual without current license.

[(a)] An individual who holds a certificate of certified public accountant but does not maintain a current [licensure] license to practice public accounting, or an individual who has received notification from the Board that he is qualified to receive a certificate of certified public accountant, may use the designation "certified public accountant" [or] and the abbreviation "CPA" solely as a mark of achievement [on business cards and stationery if] subject to the following conditions:

* * * *

(2) The individual has notified the Board in writing that he wishes to be placed on the Board's inactive license roll.

(3) The individual does not [engage in the] practice [of] or offer to practice public accounting [or offer to perform public accounting] and is not a member or employee of a public accounting firm.

(4) [The individual does not hold himself out to be in the practice of public accounting when per-

forming or offering to perform accounting, bookkeeping, tax or accounting-related matters.

(5) The individual does not engage in advertising, including listings and advertisements in phone directories, newspapers, magazines, electronic media and indoor and outdoor signs, in which the individual uses the designation certified public accountant, the abbreviation CPA or a similar designation.

(6)] The individual does not [publicly] display [a] the certificate of certified public accountant [to imply that he is licensed in the] in a manner that suggests he is authorized to practice [of] public accounting [or offering to perform public accounting].

[(7) The individual is employed by an academic institution, corporation or company not engaged in the practice of public accounting, or government, and uses the designation certified public accountant or the abbreviation CPA on business cards and stationery if the following are met:

(i) The business cards and stationery indicate the name of the employer and the title of the person.

(ii) The business cards or stationery are not used to solicit public accounting or accounting-related business.

(b) The following are examples of unlawful use of the designation certified public accountant or the abbreviation CPA by holders of the certificate of certified public accountant who do not maintain current licensure:

(1) The holder of a certificate of certified public accountant who does not maintain current licensure has a sign in the window of his home, "John Doe, CPA". The sign is an offer to practice accounting which requires current licensure.

(2) The holder of a certificate who does not maintain current licensure shows his business card which says "John Doe, CPA, any Company or Institution, Title" to an acquaintance and offers to set up an accounting procedure. *Explanation:* The offer is an offer to practice public accounting which requires current licensure.

(c) Unlawful use of the designation "certified public accountant" and the abbreviation "CPA" by holders of a certificate of certified public accountant who do not maintain current licensure and are not engaged in the practice of public accounting may result in the penalties set forth in sections 9.1, 9.3, 14 and 16 of the act (63 P. S. §§ 9.9a, 9.9c, 9.14 and 9.16).]

(5) The use of the designation "certified public accountant" and the abbreviation "CPA" under this section is limited to the following:

(i) A résumé or curriculum vitae, when accompanied by language reflecting that the individual's license is inactive.

(ii) A business card, when accompanied by the name of the individual's employer and the individual's job title or, if the individual is self-employed, when accompanied by wording describing the nature of the individual's business.

(iii) Letterhead and other stationery, when accompanied by the name of the individual's em-

ployer and the individual's job title or, if the individual is self-employed, when accompanied by wording describing the nature of the individual's business.

RELATIONS WITH CLIENTS AND THE PUBLIC

§ 11.21. Independence.

A licensee may not [express an opinion on financial statements of] issue an attestation report for an enterprise in [such] a manner [as] to imply that he is acting as an independent public accountant with respect thereto unless he is independent with respect to [such] the enterprise. Independence will be considered impaired [in either of the following situations:] when the licensee has not complied with the independence rules and requirements of a recognized public or private standard-setting body—for example, AICPA, Securities and Exchange Commission, General Accounting Office, Department of Labor—as applicable under the circumstances.

[(1) During the period of his professional engagement or at the time of expressing his opinion:

(i) The licensee:

(A) Had or was committed to acquire a direct or material indirect financial interest in the enterprise.

(B) Was a trustee of a trust or an executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise.

(ii) The licensee had a joint closely-held business investment with the enterprise or an officer, director or principal stockholder thereof which was material in relation to the net worth of either the licensee or the firm of the licensee.

(iii) The licensee had a loan to or from the enterprise or an officer, director or principal stockholder thereof other than the following kinds made by a financial institution under normal lending procedures, terms and requirements:

(A) Loans obtained by the licensee which are not material in relation to the net worth of the borrower.

(B) Home mortgages.

(C) Other secured loans except those secured solely by a guarantee of the licensee.

(2) During the period of his professional engagement, at the time of expressing his opinion or during the period covered by the financial statements, the licensee:

(i) Was connected with the enterprise as a promoter, underwriter, voting trustee, director or officer or in a capacity equivalent to that of a member of management or of an employee.

(ii) Was a trustee for a pension or profit-sharing trust of the enterprise.

(iii) Was in a way connected with the enterprise that would impair independence.]

§ 11.25. Contingent fees.

(a) A licensee may not collect or offer to collect a contingent fee for [one or more] any of the following:

(1) The performance of a professional service during any period covered by financial statements with respect to which the client entered into an attest [function] activity engagement with the licensee.

* * * * *

(b) Letters, statements or other documents generated during an engagement when the licensee is collecting a contingent fee shall contain a statement that the licensee has not provided attest [function] activity services for this engagement.

(c) For purposes of this section, a contingent fee is 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. A fee is not contingent if it is fixed by courts or other public authorities or, in tax matters, if it is determined based on the results of judicial proceedings or the findings of government agencies.

§ 11.27. Auditing standards and other technical standards.

(a) *Auditing standards.* A licensee may not permit his name to be associated with financial statements to imply that he is acting as an independent public accountant with respect to the financial statements unless he has complied with applicable [generally accepted auditing standards] GAAS. Statements on auditing standards issued by the [American Institute of Certified Public Accountants] AICPA or other pronouncements having similar generally recognized authority are considered to be interpretations of [generally accepted auditing standards, and departures therefrom shall be justified by those who do not follow them] GAAS. A licensee shall justify any departures from the standards.

(b) *Other technical standards.* A licensee shall comply with other technical standards promulgated by bodies of the [American Institute of Certified Public Accountants] AICPA or other recognized authorities designated to establish the standards[, and departures therefrom shall be justified by the licensee who does not follow them]. A licensee shall justify any departures from the standards.

§ 11.28. Accounting principles.

A licensee may not express an opinion that financial statements are presented in conformity with [generally accepted accounting principles] GAAP if [such] the financial statements contain any departure from [such accounting principles which] GAAP that has a material effect on the financial statements taken as a whole, unless the licensee can demonstrate that by reason of unusual circumstances the financial statements would otherwise be misleading. In such a case, the report of the licensee shall describe the departure, the approximate effects thereof if practicable, and the reasons why compliance with the principle would result in a misleading statement. For purposes of this section, [generally accepted accounting principles] GAAP are considered to be defined by pronouncements issued by the Financial Accounting Standards Board and its precedes-

sor entities and similar pronouncements issued by other entities having similar generally recognized authority.

§ 11.30. [Confidential client information] (Reserved).

[A licensee may not without the consent of his client disclose a confidential information pertaining to his client obtained in the course of performing professional services except to the extent provided by section 11.1 of the act (63 P. S. § 9.11a).]

§ 11.31. Records.

[A licensee shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

- (1) A copy of a tax return of the client.
- (2) A copy of a report or other document issued by the licensee to or for such client.
- (3) Accounting or other records belonging to the client which the licensee removed from the premises of the client or received for the account of the client, but the licensee may make and retain copies of such documents when they form the basis for work done by him.]

§ 11.35. [Form of practice] (Reserved).

[A licensee may practice public accounting only in a proprietorship, a partnership or a professional corporation or association.]

§ 11.36. Business name.

(a) A licensee that is a firm or sole practitioner may use a fictitious name as a business name.

(b) A licensee who is a sole practitioner may not use a professional name bearing the words "and Company," "and Associates" or a variation of those words, unless the licensee employs at least one individual who possesses the credential of certified public accountant or public accountant, has sat for the CPA examination or has the educational qualifications to sit for the CPA examination.

[LIABILITY]

§ 11.41. [Professional corporations and associations liability requirements] (Reserved).

[(a) In addition to the liability provisions of the Professional Corporation Law (15 P. S. §§ 2901—2914), the professional corporation shall carry professional liability insurance in the amount of \$25,000 per claim multiplied by the number of its shareholders, officers and professional employees employed in this Commonwealth; however, the maximum insurance coverage is not required to exceed \$500,000 per claim. In addition to the liability provisions of the Professional Association Act (15 P. S. §§ 12601—12619), the professional association shall carry professional liability insurance in the amount of \$25,000 per claim multiplied by the number of its associates, officers and professional employees employed in this Commonwealth; however, the maximum insurance coverage is not required to exceed \$500,000 per claim. Liability insurance is not required if the professional corporation or the professional association maintains unimpaired capital equal to the amount of insurance required. Liability may not be limited by the forma-

tion of subsidiary or affiliated corporations or associations, each with its own limited and unrelated liability. When the professional corporation or association applies for licensure or licensure renewal, it shall submit verification that it is carrying the professional liability insurance required by this subsection or it shall submit financial statements disclosing that it has unimpaired capital equal to the amount of insurance required by this subsection. The professional corporation or association shall notify the board if its liability insurance policy is cancelled or if unimpaired capital falls below the amount required by this subsection.

(b) For the professional corporation, unimpaired capital as used in subsection (a) means capital assigned to stock plus additional paid-in capital plus retained earnings minus treasury stock held at cost. For the professional association, unimpaired capital as used in subsection (a) means unencumbered owners' equity. The financial statements of the professional corporation or professional association used in determining the unimpaired capital shall be prepared in accordance with generally accepted accounting principles.]

EXPERIENCE

§ 11.53. [Classification of candidates] (Reserved).

[(a) A candidate who holds a baccalaureate degree, passed the examination and completed at least 12 semester credits in accounting subjects of a content satisfactory to the Board shall have at least 2 years of qualified experience in public accounting or as an auditor with a unit of government.

(b) A candidate who holds a master's degree, passed the examination and completed at least 12 semester credits in accounting subjects of a content satisfactory to the Board shall have at least 1 year of qualified experience in public accounting or as an auditor with a unit of government.]

§ 11.54. [Time limits] (Reserved).

[(a) Each year of qualified experience shall be met by attaining 1,600 hours in not less than 12 months.

(b) A candidate may not receive credit for more than 1,600 hours in a 12-month period.

(c) A candidate shall complete the required experience within a 60-month period preceding the date of application for a certificate of certified public accountant.]

§ 11.55. [Qualified experience] Experience requirements for CPA certification.

(a) *General requirements.*

(1) A candidate for CPA certification who qualified for the CPA examination based on possession of a bachelor's degree and completion of 24 semester credits in relevant subjects shall have acquired 3,200 hours of qualifying experience, including a minimum of 800 hours of attest activity, over at least a 24-month period.

(2) A candidate for CPA certification who qualified for the CPA examination based on possession of a master's degree or other postgraduate degree and completion of 24 semester credits in relevant subjects shall have acquired 1,600 hours of qualify-

ing experience, including a minimum 400 hours of attest activity, over at least a 12-month period.

(3) A candidate for CPA certification who qualified for the CPA examination based on possession of a bachelor's degree or higher degree and completion of 150 semester credits of post-secondary education including 36 semester credits in relevant subjects shall have acquired 1,600 hours of qualifying experience, including a minimum 400 hours of attest activity, over at least a 12-month period.

(4) A candidate may not receive credit for more than 1,600 hours of qualifying experience in a 12-month period. A candidate may acquire all hours of qualifying experience in attest activity.

(b) *Attest activity.* A [minimum of 800 hours of total qualified experience] candidate's attest activity shall be [obtained] in one or more of the following areas:

(1) Candidates employed in public accounting:

(i) Audits of financial statements in accordance with GAAS or GAGAS.

[(2)] (ii) ***

[(3)] (iii) ***

[(4) Internal audits in an established internal auditing department which meet accepted standards.

(5) Training sessions on the attest function.

(6) [(iv) Other auditing in accordance with accepted standards [which] that leads to an expression of a written opinion including:

[(i)] (A) ***

[(ii) Government audit agencies rendering an opinion or report.

(iii) Operations audit review]

(B) Operational audits.

[(iv)] (C) ***

[(v)] (D) ***

(2) Candidates employed in private industry:

(i) Performance of an independent internal audit function.

(ii) Compliance audits of government contracts performed on behalf of a government agency that result in the issuance of an opinion or report.

(3) Candidates employed in Federal, State or local government:

(i) Performance of an independent internal audit function.

(ii) Audits performed on behalf a government audit agency that results in the issuance of an opinion or report.

[(b) The remaining hours of qualified experience may be obtained] (c) *Nonattest activity.* A candidate's nonattest activity shall be in one or more of the following areas:

* * * * *

(2) Tax research [which] that is properly documented.

* * * * *

(4) Financial forecasts, [analysis] analyses and projections.

(5) Management advisory services [which] that meet AICPA standards.

* * * * *

(7) Professional accounting-related work in [an] a public accounting firm.

[(c) Hours of experience will not be given for time spent on nonprofessional work, including recruiting, industrial engineering, administration, bookkeeping, appraisal, market research or paraprofessional work unless the work complies with subsection(b)(5).] (d) *Nonqualifying experience.* A candidate will not receive credit for the following types of experience:

(1) Experience that was supervised by an individual who did not meet the requirements of § 11.56 (relating to supervision of experience; verification) at the time the experience was obtained.

(2) Experience acquired while self-employed.

(3) Experience acquired as a partner in a partnership.

(4) Experience comprising nonprofessional work—for example, recruiting, industrial engineering, administration, bookkeeping, appraisals—or paraprofessional work that does not comply with subsection (c)(7).

§ 11.56. [Verification] Supervision of experience; verification.

(a) To receive credit for experience under § 11.55 (relating to experience requirements for CPA certification), a candidate for CPA certification shall acquire the experience under the supervision of an individual who meets the following conditions at the time the experience is acquired:

(1) Holds a current license to practice as a certified public accountant or public accountant in this Commonwealth or another jurisdiction.

(2) Either employs the candidate or is employed by the same employer as the candidate. The supervisor may not be a member of a public accounting firm that is independent of the entity that employs the candidate.

(3) Is responsible for and personally evaluates the candidate's work.

(b) [The] A supervisor shall submit a verified statement [to the Board] regarding the candidate's experience on a form provided by the Board [which specifies], specifying the dates of supervision [,] and the types and hours of experience [obtained and the number of hours] acquired.

[(b) The supervisor who submits the statement shall be responsible for its accuracy. Failure to properly verify may result in disciplinary action.] (c) A supervisor may not knowingly submit a false or inaccurate verified statement or wilfully refuse

to submit a verified statement when qualified experience has been acquired.

[INTERPRETATION]

§ 11.73. [Interpretation of chapter] (Reserved).

[This chapter may not be construed to be in violation of or inconsistent with the act.]

[Pa.B. Doc. No. 05-419. Filed for public inspection March 4, 2005, 9:00 a.m.]

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Biennial Renewal Fee Increase

The State Board of Psychology (Board) proposes to amend § 41.12 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for psychologists from \$120 to \$300.

Effective Date

The proposed amendment will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new fees will take effect for the biennial period commencing December 1, 2005.

Statutory Authority

The proposed rulemaking is authorized under section 3.3(a) of the Professional Psychologists Practice Act (act) (63 P. S. § 1203.3(a)). It requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

Background and Need for Proposed Rulemaking

The Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In accordance with section 3.3(a) of the act, if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period, the Board must increase fees by regulation so that its projected revenues will match or exceed expenditures.

The Board raises virtually all of its operating revenue (exclusive of application and services fees) through biennial renewal fees. The biennial license renewal fee is the most substantial revenue generating fee of all the fees charged by the Board. The Board's current biennial license renewal fee for psychologists was established by regulation at 20 Pa. B. 2034 (April 14, 1990).

At its September 21, 2004, Board meeting, the Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2001-2002 and 2003-2004 and projected revenue and expenses for FY 2003-2004 through FY 2010-2011. The summary, presented in table format as follows, demonstrated that the Board must raise fees to meet or exceed projected expenditures to comply with section 3.3(a) of the act. The BFO projected a deficit of \$420,554.58 in FY 2004-2005, a deficit of \$370,554.58 in FY 2005-2006 and a deficit of \$998,554.58 in FY 2006-2007. The BFO recommended that the Board raise fees to meet projected expenditures, in compliance with section 3.3(a) of the act.

2001-2002 beginning balance	\$281,563.02
FY 2001-2002 revenue	701,605.69
Prior year returned funds	15,208.46
FY 2001-2002 expenses	384,000.00
Remaining balance	614,377.17
2002-2003 beginning balance	\$614,377.17
FY 2002-2003 revenue	40,496.72
Prior year returned funds	0.00
FY 2002-2003 expenses	418,000.00
Remaining balance	236,873.89
2003-2004 beginning balance	\$236,873.89
FY 2003-2004 projected revenue	716,282.39
FY 2003-2004 projected expenses	544,000.00
Remaining balance	409,156.28
2004-2005 beginning balance	\$409,156.28
FY 2004-2005 projected revenue	42,000.00
Adjusted for prior year expenses	240,710.86
FY 2004-2005 projected expenses	631,000.00
Remaining balance	(\$420,554.58)
2005-2006 beginning balance	(\$420,554.58)
FY 2005-2006 projected revenue	700,000.00
FY 2005-2006 projected expenses	650,000.00
Remaining balance	(370,554.58)
2006-2007 beginning balance	(\$370,554.58)
FY 2006-2007 projected revenue	42,000.00
FY 2006-2007 projected expenses	670,000.00
Remaining balance	(998,554.58)
2007-2008 beginning balance	(\$998,554.58)
FY 2007-2008 projected revenue	700,000.00
FY 2007-2008 projected expenses	690,000.00
Remaining balance	(998,554.58)
2008-2009 beginning balance	(\$998,554.58)
FY 2008-2009 projected revenue	42,000.00
FY 2008-2009 projected expenses	711,000.00
Remaining balance	(1,657,554.58)
2009-2010 beginning balance	(\$1,657,554.58)
FY 2009-2010 projected revenue	740,000.00
FY 2009-2010 projected expenses	732,000.00
Remaining balance	(1,649,554.58)
2010-2011 beginning balance	(\$1,649,554.58)
FY 2010-2011 projected revenue	42,000.00
FY 2010-2011 projected expenses	754,000.00
Remaining balance	(\$2,361,554.58)

The BFO estimates that at the close of FY 2004-2005, the Board's expenses will exceed its revenues by \$420,554.58. The BFO anticipates that the deficit will increase proportionally, except for FY 2005-2006, in each succeeding fiscal year. Without an increase, the projected deficit in FY 2010-2011 would be \$2,361,554.58.

The increases in the Board's biennial expenses occurred primarily in hearing examiner and legal office costs. Hearing examiner expenditures increased from approximately \$10,914.55 in FY 2002-2003 to approximately \$28,472.31 in FY 2003-2004. The BFO estimates that this expenditure will increase to \$32,000.00 in FY 2004-2005. The legal office expenditures increased from approximately \$208,344.29 in FY 2002-2003 to approximately \$228,056.31 in FY 2003-2004. BFO anticipates that this expenditure will increase to \$240,000.00 in FY 2004-2005.

Hearing examiner costs almost tripled in 2003-2004 as a result of the increasing number of cases delegated to the hearing examiners in 2002-2003. During 2002-2003, the Board delegated 20 cases to hearing examiners. In 2003-2004, the Board delegated 10 cases to hearing examiners. Many of the cases delegated in 2002-2003

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS



STATE BOARD OF ACCOUNTANCY
P.O. BOX 2649
HARRISBURG, PENNSYLVANIA 17105-2649

Telephone: (717) 783-1404
Fax: (717) 705-5540
ST-ACCOUNTANCY@state.pa.us

March 30, 2007

The Honorable Arthur Coccodrilli
Chairman, Independent Regulatory Review Commission
Harristown II, 14th Floor
333 Market Street
Harrisburg, PA 17101

RE: Final Rulemaking of the State Board of Accountancy
Relating to General Revisions (16A-559)

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Accountancy relating to general revisions.

The Board stands ready to provide whatever information or assistance your Commission may require during its review of this final rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Park".

William J. Park, CPA, Chairman
State Board of Accountancy

WJP:SW
Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs

Albert H. Masland, Chief Counsel
Department of State

Joyce McKeever, Deputy Chief Counsel
Department of State

6 1 0 7



Cynthia Montgomery, Regulatory Counsel
Department of State

Gerald S. Smith, Senior Counsel in Charge
Department of State

Steven Wennberg, Counsel
State Board of Accountancy

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-559
 SUBJECT: GENERAL REVISIONS
 AGENCY: DEPARTMENT OF STATE
 STATE BOARD OF ACCOUNTANCY

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2007 MAR 30 AM 10:26
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/30/07		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/30/07	Mary Walmer	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3/30/07	Kathy Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)