

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

2012 SEP 12 AM 10:26

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IRRC

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs

(2) Agency Number: 16A

Identification Number: ~~54~~ 48 ^{SFH}

IRRC Number: 2904

(3) PA Code Cite:

49 Pa. Code § 43b.10a

(4) Short Title:

Schedule of civil penalties – accountants

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Thomas A. Blackburn, Regulatory Unit counsel, Department of State;
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; tblackburn@pa.gov

Secondary Contact: Cynthia K. Montgomery, Regulatory Counsel, Department of State
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; cymontgome@pa.gov

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This rulemaking revises the schedule of civil penalties applicable to violations of the CPA Law and regulations of the State Board of Accountancy (Board). Specifically, the regulation increases the civil penalty for one continuing professional education (CPE) violation; adds civil penalties for additional CPE violations; eliminates a civil penalty for a defunct CPE violation; and clarifies the scope of certain unauthorized practice violations for which civil penalties are assessed. The rulemaking also makes editorial changes.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 5(a) of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) (63 P.S. § 2205(a)) authorizes the Commissioner, after consultation with the appropriate licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these boards. Section 5(b)(4) of Act 48 (63 P.S. § 2205(b)(4)) authorizes the Board, as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on any licensee or unlicensed person who violates any provision of the act or Board regulations. However, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than \$1,000 per violation.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The rulemaking is not mandated by any federal or state law or court order.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The rulemaking is needed because the current Act 48 schedule of civil penalties is underutilized with regard to disciplinary actions involving CPE violations and because it does not accurately set forth the categories of violations for which civil penalties may be imposed. An updated Act 48 schedule of civil penalties is desirable because it improves the effectiveness of the Bureau's enforcement efforts by streamlining procedures and reducing paperwork while preserving the due process rights of respondents. Accordingly, the Bureau, the Board and the regulated community all would directly benefit from the regulation.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

This rulemaking is not based upon any scientific data, studies, or references.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

The Board has not identified any group of individuals or entities that will be adversely affected by the rulemaking.

(13) 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 rulemaking will affect certified public accountants, public accountants and public accounting firms as well as uncredentialed individuals and entities that use restricted designations or that make unauthorized representations. At present there are approximately 22,000 certified public accountants, 220 public accountants and 1,380 public accounting firms with current licenses. The number of uncredentialed individuals and entities that might be subject to the regulation cannot be estimated.

(14) 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. Explain how the dollar estimates were derived.

The rulemaking will not impose additional costs on the regulated community, because civil penalties may be imposed in any disciplinary proceeding, whether initiated by an Act 48 citation or by the more formal order to show cause. The regulated community should realize some savings, in the form of less time spent on paperwork and reduced legal fees, from the streamlined Act 48 procedures. These estimated savings cannot be quantified.

The rulemaking will not impose new legal, accounting or consulting procedures.

(15) 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. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(16) 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. Explain how the dollar estimates were derived.

The Bureau and the Board will enjoy a savings as a result of compliance with this proposed rulemaking, as a result of using the summary Act 48 citation process rather than full formal disciplinary action. There are no other costs or savings to state government associated with implementation of the rulemaking.

(17) 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 Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 (2008-09)	FY -2 (2009-10)	FY -1 (2010-11)	Current FY (2011-12)
State Board of Accountancy	(actual) \$1,008,033	(actual) \$1,141,313	(actual) \$1,059,918	(budget) \$1,286,000

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation would provide a much-needed updating of the Act 48 schedule of civil penalties at no cost to the public at large and with likely savings for the Bureau, the Board and the regulated community.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Because Act 48 specifically requires the Commissioner to consult with the licensing boards in promulgating schedules of civil penalties, the Commissioner relied on the Board to draft the rulemaking, which relates to civil penalties for violations of the CPA Law and the Board's regulations. As a consequence, the Commissioner did not solicit pre-drafting input from the public or any other advisory council or group. However, the Commissioner has invited the major professional organizations that represent the regulated community to submit comments following publication of the notice of proposed rulemaking. After publication as proposed, the Board discussed all comments and discussed revisions to the rulemaking in public session at its meeting January, 2012. All public sessions are open to the public, and representatives of the three professions generally attend the public sessions of all Board meetings.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory schemes were considered.

(21) 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 regulations.

The rulemaking does not overlap or conflict with any federal requirements.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The rulemaking sets no standards for licensure or practice. All states are empowered to impose disciplinary sanctions, including fines or civil penalties, against those who violate accountancy licensing statutes and regulations.

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states.

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

This rulemaking will have no effect on other regulations of the Board or other state agencies. The regulation is referenced in the Board's rulemaking that will update CPE requirements (#16A-5511). The rulemaking will not affect existing or proposed regulations of any other state agency.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The rulemaking will likely reduce the overall amount of paperwork associated with disciplinary proceedings relating to violations of the CPA Law and the Board's regulations. The rulemaking will not alter reporting requirements or legal, accounting and consulting procedures.

(25) 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 Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(26) Include a schedule for review of the regulation including:

- | | |
|---|---------------------------|
| A. The date by which the agency must receive public comments: | <u>September 19, 2011</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>By Sept. 19, 2013</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Upon publication</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

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

The Commissioner and the Board continually review the efficacy of their regulations, as part of the annual review process pursuant to Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, meeting at least nine times each year. More information can be found on the Board's website (www.dos.state.pa.us/account).

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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

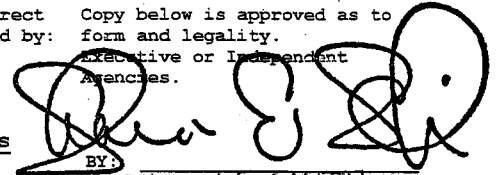
Copy below is hereby approved as to form and legality. Attorney General

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.

BY: _____
(DEPUTY ATTORNEY GENERAL)

Department of State, Bureau of Professional and Occupational Affairs
(AGENCY)


BY: SHAWN E. SMITH

DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 16A-48

AUG 31 2012
DATE OF APPROVAL

DATE OF ADOPTION:

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

BY: 
Katie True

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

TITLE: Commissioner
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

FINAL RULEMAKING

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

49 Pa. Code § 43b.10a

SCHEDULE OF CIVIL PENALTIES - ACCOUNTANTS

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

Description and Need for the Rulemaking

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P.S. § 2205(a)) authorizes agents of the Bureau of Professional and Occupational Affairs (Bureau) to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. It further provides that any such penalty shall not exceed the sum of \$1,000 per violation. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation have the right to a hearing and retain their due process right of appeal prior to the imposition of discipline. The State Board of Accountancy (Board) has had an Act 48 schedule of civil penalties since 1998. *See*, 28 Pa.B. 5883 (November 28, 1998), 31 Pa.B. 1227 (March 3, 2001). On August 20, 2011, the Commissioner published proposed revisions to the schedule of civil penalties for various violations of the CPA Law (63 P.S. §§ 9.1-9.16b) and regulations of the Board. The proposed rulemaking would increase the Act 48 civil penalty for one continuing professional education (CPE) violation; add Act 48 civil penalties for additional CPE violations; eliminate the Act 48 civil penalty for a CPE violation that is no longer recognized under the CPA Law; restrict the applicability of Act 48 civil penalties for certain violations involving the unauthorized use of professional designations and other unauthorized representations; and make editorial changes to the descriptions of violations for which Act 48 civil penalties are assessed.

Consistent with its prior proposed rulemaking published at 41 Pa.B. 4541, the Board is contemporaneously promulgating final rulemaking, published at 42 Pa.B. _____, that, among other things, requires a licensee to make up any CPE deficiency no later than 6 months after imposition of a disciplinary sanction for noncompliance and provide that a licensee's failure to make up that CPE deficiency will result in the automatic suspension of the licensee's professional credentials until the deficiency is satisfied.

Summary of Comments and Responses to Proposed Rulemaking

The Commissioner published notice of proposed rulemaking at 41 Pa.B. 4535 (August 20, 2011), with a 30-day public comment period. The Board received comments from the Pennsylvania Institute of Certified Public Accountants (PICPA), but not from any other members of the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

PICPA first noted its strong belief that the civil penalty amounts provided for violations of section 12(a), (c) and (j) of the CPA Law (63 P.S. § 9.12(a), (c) and (j)) for holding out as a CPA or PA without having been licensed are not an effective enough deterrent. HPLC

recommended more stringent penalties for unlicensed persons and firms violating these protected titles. Although the Commissioner had not previously proposed changing the amount of this penalty, the Board agrees that a fine of \$500 is not a sufficient deterrent. Accordingly, the Commissioner has revised the sanction to be \$1,000 for the first offense and formal action for all subsequent offenses.

PICPA noted that there is an important distinction between practicing without a license and practicing with a lapsed license and suggested providing Act 48 citations for a reduced civil penalty for inadvertent practice on a lapsed license. HPLC asked why no penalty is listed for firms operating when “not currently licensed.” HPLC further requested the Board to distinguish between lapsed license and unlicensed practice and impose a more severe sanction for unlicensed practice. The Board has further considered how best to handle the process of disciplining a licensee for practice on a lapsed license. The Board agrees with PICPA and HPLC that such a violation is substantively different from practicing without having ever been licensed and should not always result in a \$1,000 fine. However, as described in the preamble during publication as proposed, the Board prefers that certified public accountants, public accountants and public accounting firms that use professional designations after their licenses have lapsed be charged with the unlicensed practice of public accounting under section 12(q) of the CPA Law (63 P.S. § 9.12(q)). Rather than setting predetermined civil penalties or even a formula for such civil penalties, the Board has always enforced this provision through formal action, fashioning each disciplinary sanction on a case-by-case basis by taking into account the length of time that a license has lapsed and the type of accounting activities performed. IRRRC inquired why formal action is necessary in matters that would otherwise appear to be straightforward more minor violations. In light of the comments received and in order to increase efficiency in imposing an appropriate disciplinary sanction with the relatively modest civil penalty, the Board has determined that the Commissioner should amend the schedule to provide a civil penalty of \$500 for lapsed license practice of less than 6 months. Subsequent violations and lapsed license practice of 6 months or more will continue to be enforced through formal action, in which the Board retains the full discretion to impose an appropriate sanction based upon all relevant facts when it issues an adjudication or determines to accept a consent agreement. If these violations were included on the Act 48 schedule, the hearing examiner would be required to impose the full civil penalty from the schedule, as required by § 43b.3(c)(2) (relating to procedures). The Board would not have the opportunity to exercise its discretion unless the respondent denies the violation and, after the hearing examiner issues an order, either the respondent or the Commonwealth files an application for review. While the Board will continue to exercise its discretion in these individual cases, the Board agrees that a lapsed license practice violation generally does not merit the same sanction imposed upon a person who has never been licensed for the same level of practice and length of violation.

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

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

Finally, IRRC requested that the Bureau clarify the difference between a CPA license and CPA certificate, as referenced for a violation of section 12(a) of the CPA Law. The general term of art for authorization to practice a profession is a “license.” Section 4.2(a) of the CPA Law (63 P.S. § 9.4b(a)) refers to the Board issuing a “certificate” to a qualified individual who has passed the examination. Sections 5 and 5.1 of the CPA Law (63 P.S. §§ 9.5 and 9.5a) refer to the Board issuing “certificates” by domestic and foreign reciprocity, respectively. Section 12(a) of the CPA Law prohibits one from holding out as a CPA or with a similar title unless the person has received a “certificate” of certified public accountant. Conversely, section 8.2 of the CPA Law (63 P.S. § 9.8b) refers to biennial “licenses” to engage in the practice of public accounting which are issued to holders of CPA certificates and to public accountants registered with the Board; and the CPA Law defines the term “licensee” to include “an individual certified by or registered with the board and holding a current license to practice under section 8.2 of this act.” Thus, the statutory scheme would seem to indicate that an individual cannot obtain a renewable license authorizing the individual to practice public accounting without first possessing a CPA certificate or without first registering as a PA with the Board. Essentially, one can be credentialed as a CPA, but not be licensed to engage in the practice of public accounting unless the individual has a current, active license issued by the Board. See § 11.9 (relating to use of the designation “certified public accountant” and the abbreviation “CPA” solely as mark of achievement by individual without current license).

In order to be consistent with the statutory language, the Commissioner had proposed replacing the term “never licensed” with the phrase “not possessing CPA certificate in good standing.” Upon review of the above comments about the difference between wholly unlicensed practice and practice with a lapsed license, the Board further realized that the proposed language might also suggest lapsed license practice. Accordingly, in order to more closely match the statutory language and make clear that it is directed towards unlicensed practice by individuals holding no credential issued by the Board, the Commissioner has further revised the description for violation of section 12(a) of the CPA Law to refer to a person “who has not received a CPA certificate or whose certificate is revoked or suspended.” Similarly, because section 12(j) of the CPA Law prohibits one from holding out as a public accountant or similar title unless registered as a public accountant or received a CPA certificate, the Commissioner has revised the description for violation of section 12(j) of the CPA Law to refer to a person “who has not received a PA registration or CPA certificate.” Because section 12(c) of the CPA Law prohibits similar holding out by a firm unless it “holds a current license,” the Commissioner has not revised the language referring to this violation as “by a firm never licensed.”

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The rulemaking will impose no additional paperwork requirements upon the Commonwealth, its political subdivisions, or the private sector.

Effective Date

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

Statutory Authority

This rulemaking is authorized by section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 8, 2011, the Commissioner submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 4535 (August 20, 2011), to IRRC and the chairpersons of the HPLC and the SCP/PLC for review and comment.

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

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

Additional Information

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

Findings

The Commissioner finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.

- (3) This final-form rulemaking does not include any amendments that would enlarge the scope of proposed rulemaking published at 41 Pa.B. 4535.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the authorizing acts set forth in this preamble.

Order

The Commissioner, acting under the authority provided by act of July 2, 1993 (P. L. 345, No. 48), orders that:

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

Katie True
Commissioner of Professional and Occupational
Affairs

ANNEX A

PENNSYLVANIA ADMINISTRATIVE CODE

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL
AFFAIRS

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

* * * * *

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

STATE BOARD OF ACCOUNTANCY

Violation under

63 P.S.	Title/Description	Civil Penalty
Section 9.8b(b)	[Completion of continuing education hours after end of reporting period but before start of next license biennium (assumes no other continuing education violation)]	[1 st offense – \$150 2 nd offense – formal action]
	<u>Failure to complete 80 hours of acceptable continuing professional education during reporting period</u>	<u>1st or 2nd offense – 1 to 20 hour deficiency - \$300; 21 to 40 hour deficiency - \$600; 41 to 60 hour deficiency - \$800; 61 to 80 hour deficiency - \$1,000 #²</u>
		<u>3rd 2ND or subsequent offense – formal action</u>

Section 9.12(a)	Unlawful use of “certified public accountant,” “CPA” or similar representation by person [never licensed] <u>not possessing</u> WHO HAS NOT RECEIVED A <u>CPA certificate in good standing</u> OR WHOSE CERTIFICATE IS REVOKED OR SUSPENDED	1 st offense – \$500* \$1,000 ¹ 2 nd OR SUBSEQUENT offense – formal action
	[Unlawful use of “certified public accountant” “CPA” or similar representation by person not currently licensed	1 st offense – up to 90 days past renewal deadline - warning; 90 days to 180 days past renewal deadline - \$500 2 nd offense – formal action]
Section 9.12(c)	Unlawful use of “certified public accountant,” “public accountant,” “CPA,” “PA” or similar representation by a firm never licensed	1 st offense – \$500* \$1,000 ¹ 2 nd OR SUBSEQUENT offense – formal action
	[Unlawful use of “certified public accountant,” “public accountant,” “CPA,” “PA” or similar representation by a firm not currently licensed	1 st offense – up to 90 days past renewal deadline - warning; 90 days to 180 days past renewal deadline - \$500 2 nd offense – formal action]

Section 9.12(j) Unlawful use of “public accountant,” 1st offense – \$500* \$1,000¹
[or] “PA” or similar representation by 2nd OR SUBSEQUENT offense –
person ~~never licensed~~ WHO HAS formal action
NOT RECEIVED A PA
REGISTRATION OR CPA
CERTIFICATE

[Unlawful use of “public accountant,” 1st offense – up to 90 days past
or “PA” or similar representation by renewal deadline - warning; 90
person not currently licensed days to 180 days past renewal
deadline - \$500
2nd offense – formal action]

Section 9.12(o) Unlawful representation of 1st offense – \$250*¹
membership in professional society, 2nd OR SUBSEQUENT offense –
association or organization of CPA’s formal action
or PA’s by person not credentialed as
CPA or PA or firm [never] not
licensed

[Unlawful representation of 1st offense – up to 90 days past
membership in professional society, renewal deadline - warning; 90
association or organization of CPA’s days to 180 days past renewal
or PA’s by person or firm not deadline - \$250
currently licensed 2nd offense – formal action]

SECTION 9.12(Q) ENGAGING IN THE PRACTICE OF 1ST OFFENSE – LESS THAN 6
PUBLIC ACCOUNTING IN THIS MONTHS - \$500; 6 MONTHS OR
COMMONWEALTH WHILE ONE'S MORE – FORMAL ACTION
LICENSE TO DO SO IS EXPIRED 2ND OR SUBSEQUENT
OFFENSE – FORMAL ACTION

Violation under 49

Pa. Code[,] Chapter

11

Section [11.62(a)(2)] Failure to complete 20 hours of 1st ~~or 2nd~~ offense – [\$150] \$300
11.62(b) acceptable continuing professional {2nd} ~~3rd~~ or subsequent offense –
education during each year [(assumes formal action
no other violation)] of
reporting period

Section 11.63(a)(1) Failure to complete 16 hours of 1st ~~or 2nd~~ offense –
acceptable continuing professional 1-4 hour deficiency - \$300; 4-8
education in accounting and attest hour deficiency - \$400; 9-12 hour
subjects during reporting period deficiency - \$500; 13-16 hour
deficiency - \$600 #²
~~3rd~~ 2ND or subsequent offense –
formal action

Section 11.63(a)(6) Failure to complete 8 hours of 1st ~~or 2nd~~ offense – \$300 #²
acceptable continuing professional ~~3rd~~ 2ND or subsequent offense –

	<u>education in tax subjects during reporting period</u>	<u>formal action</u>
<u>Section 11.63(a)(7)</u>	<u>Failure to complete 4 hours of acceptable continuing professional education in professional ethics during reporting period</u>	<u>1st or 2nd offense – \$300 #² 3rd 2ND or subsequent offense – formal action</u>
Section [11.68(b)]	Failure to timely submit	1 st offense – \$500
<u>11.67(b)</u>	<u>documentation of continuing professional education during Board audit (assumes no other continuing education violation)</u>	<u>2nd OR SUBSEQUENT offense – formal action</u>

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

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

LIST OF PUBLIC COMMENTATORS

Michael D. Colgan, Executive Director & CEO
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www.picpa.org

PROPOSED RULEMAKINGS

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Accountants

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

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with the licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate schedules of civil penalties of up to \$1,000 for minor violations of the enabling acts and regulations of Bureau licensing boards.

Background and Purpose

Under authority of Act 48, the Bureau agents issue citations and impose civil penalties in accordance with schedules of civil penalties adopted by the Commissioner in consultation with Bureau licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, respondents who receive Act 48 citations retain their due process right of appeal prior to imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented. Act 48 citations have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the Bureau licensing boards being accomplished through the Act 48 citation process.

Under the authority of Act 48, the Commissioner published a statement of policy at 28 Pa.B. 5883 (November 28, 1998) establishing Act 48 civil penalties for certain violations of the CPA Law (act) (63 P. S. §§ 9.1—9.16b) and the regulations of the State Board of Accountancy (Board) in §§ 11.1—11.86. The Commissioner published a final-form rulemaking at 31 Pa.B. 1227 (March 3, 2001) that replaced the statement of policy with identical Act 48 civil penalties. The Commissioner has now determined, based on input from the Board, that the Act 48 civil penalties for violations of the act and the Board's regulations require updating to further improve the efficiency of the Bureau's enforcement efforts.

The Commissioner proposes to do the following: increase the Act 48 civil penalty for one continuing professional education (CPE) violation; add Act 48 civil penalties for additional CPE violations; eliminate the Act 48 civil penalty for a CPE violation that is no longer recognized under the act; restrict the applicability of Act 48 civil penalties for certain violations involving the unauthorized use of professional designations and other unauthorized representations; and make editorial changes to the descriptions of violations for which Act 48 civil penalties are assessed.

Description of Proposed Amendments

The proposed rulemaking would increase the Act 48 civil penalty for first and second offenses regarding failure to complete at least 20 CPE hours in each year of a CPE reporting period as required under § 11.62(b) (relating to credit-hour requirement). The proposed rulemaking also would add Act 48 civil penalties for first and second offenses regarding failure, during each CPE reporting period, to complete 80 CPE hours overall, including 16 hours in accounting and attest subjects, 8 hours in tax subjects and 4 hours in professional ethics, as required under section 8.2(b) of the act (63 P. S. § 9.8b(b)) and § 11.63(a)(1), (6) and (7) (relating to continuing education subject areas). Third and subsequent offenses for these violations would continue to be handled through formal action (that is, issuance of an order to show cause). The proposed rulemaking would reflect that the violation relating to failure to timely submit documentation of CPE hours, the first offense of which is punishable by an Act 48 civil penalty, is in § 11.67(b) (relating to reporting of continuing education credit hours). A second and subsequent offense for this violation would continue to be handled through formal action.

The Board has contemporaneously submitted a proposed rulemaking, published at 41 Pa.B. 4541 (August 20, 2011), that, among other things, proposes to do the following: relocate existing CPE requirements to the sections previously referenced; establish the professional ethics requirement previously referenced; require a licensee to make up a CPE deficiency within 6 months after imposition of a disciplinary sanction for noncompliance; and provide that a licensee's failure to timely satisfy a CPE deficiency will result in the automatic suspension of the licensee's professional credentials until the deficiency is satisfied.

The proposed rulemaking would eliminate the Act 48 civil penalty for violating section 8.2(b) of the act by completing CPE hours after the end of a CPE reporting period but before the start of the next license period. When the current schedule of Act 48 civil penalties was adopted in 1998, a CPE reporting period ended on December 31 of each odd-numbered year while a license period ended on April 30 of each even-numbered year. Since 2008, the reporting period and license period have been coextensive, with both ending on December 31 of each odd-numbered year.

The proposed rulemaking would restrict the applicability of Act 48 civil penalties for the first-time unauthorized use of the titles "certified public accountant" and "public accountant," the abbreviations "CPA" and "PA" and similar representations, as prohibited under section 12(a), (c) and (j) of the act (63 P. S. § 9.12(a), (c) and (j)), to those individuals and entities that have never been credentialed by the Board as certified public accountants, public accountants or public accounting firms. The Board prefers that certified public accountants, public accountants and public accounting firms that use professional designations after their licenses have lapsed be charged with the unlicensed practice of public accounting under section 12(q) of the act, which the Board has always enforced through formal action, fashioning each disciplinary sanction on a case-by-case basis by taking into account the length of time that a license has lapsed and the type of accounting activities performed.

The proposed rulemaking also would restrict the applicability of an Act 48 civil penalty for the first-time unauthorized representation of membership in a professional accounting society, association or organization, as prohibited under section 12(o) of the act, to those individuals and entities that have never been credentialed as certified public accountants, public accountants or public accounting firms. It is not unlawful under section 12(o) of the act for certified public accountants, public accountants and public accounting firms with lapsed licenses to represent their professional membership affiliations.

Fiscal Impact

The proposed rulemaking would not impose additional costs on the regulated community because civil penalties may be imposed in any disciplinary proceeding, whether initiated by an Act 48 citation or by formal action. Rather, because the majority of disciplinary sanctions imposed by the Board involve first-time violations of CPE requirements, the regulated community should realize some savings, in the form of less time spent on paperwork and reduced legal fees, from the transfer of most CPE disciplinary proceedings to the streamlined procedures authorized by Act 48. It is not possible to give a reliable estimate of these savings.

The proposed rulemaking should also result in savings for the Board and the Bureau's Prosecution and Counsel Divisions, which would spend less time on disciplinary proceedings relating to violations of CPE requirements. It is not possible to give a reliable estimate of these savings.

The proposed rulemaking will not have a fiscal impact on the general public or other agencies and political subdivisions of the Commonwealth.

Paperwork Requirements

The proposed rulemaking will reduce the overall amount of paperwork associated with disciplinary proceedings relating to violations of CPE requirements. The proposed rulemaking would not create additional paperwork for the general public or other agencies and political subdivisions of the 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 August 8, 2011, 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 the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey 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 Commissioner invites interested persons to submit written comments, suggestions or objections regarding the proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

KATIE TRUE,
Commissioner

(Editor's Note: See 41 Pa.B. 4541 (August 20, 2011) for a proposed rulemaking by the State Board of Accountancy relating to this proposed rulemaking.)

Fiscal Note: 16A-48. 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 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

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

STATE BOARD OF ACCOUNTANCY		
Violation under 63 P. S.	Title/Description	Civil Penalty
Section 9.8b(b)	[Completion of continuing education hours after end of reporting period but before start of next license biennium (assumes no other continuing education violation)] Failure to complete 80 hours of acceptable continuing professional education during reporting period	[1st offense—\$150 2nd offense—formal action] 1st or 2nd offense—1 to 20 hour deficiency—\$300; 21 to 40 hour deficiency—\$600; 41 to 60 hour deficiency—\$800; 61 to 80 hour deficiency—\$1,000 # 3rd or subsequent offense—formal action

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 9.12(a)	Unlawful use of "certified public accountant," "CPA" or similar representation by person [never licensed] not possessing CPA certificate in good standing [Unlawful use of "certified public accountant" "CPA" or similar representation by person not currently licensed	1st offense—\$500* 2nd offense—formal action 1st offense—up to 90 days past renewal deadline—warning; 90 days to 180 days past renewal deadline—\$500 2nd offense—formal action]
Section 9.12(c)	Unlawful use of "certified public accountant," "public accountant," "CPA," "PA" or similar representation by a firm never licensed [Unlawful use of "certified public accountant," "public accountant," "CPA," "PA" or similar representation by a firm not currently licensed	1st offense—\$500* 2nd offense—formal action 1st offense—up to 90 days past renewal deadline—warning; 90 days to 180 days past renewal deadline—\$500 2nd offense—formal action]
Section 9.12(j)	Unlawful use of "public accountant," [or] "PA" or similar representation by person never licensed [Unlawful use of "public accountant," or "PA" or similar representation by person not currently licensed	1st offense—\$500* 2nd offense—formal action 1st offense—up to 90 days past renewal deadline—warning; 90 days to 180 days past renewal deadline—\$500 2nd offense—formal action]
Section 9.12(o)	Unlawful representation of membership in professional society, association or organization of CPA's or PA's by person not credentialed as CPA or PA or firm [never] not licensed [Unlawful representation of membership in professional society, association or organization of CPA's or PA's by person or firm not currently licensed	1st offense—\$250* 2nd offense—formal action 1st offense—up to 90 days past renewal deadline—warning; 90 days to 180 days past renewal deadline—\$250 2nd offense—formal action]
Violation under 49 Pa. Code [,] Chapter 11		
Section [11.62(a)(2)] 11.62(b)	Failure to complete 20 hours of acceptable continuing professional education during each year [(assumes no other continuing education violation)] of reporting period	1st or 2nd offense—[\$150] \$300 [2nd] 3rd or subsequent offense—formal action
Section 11.63(a)(1)	Failure to complete 16 hours of acceptable continuing professional education in accounting and attest subjects during reporting period	1st or 2nd offense—1-4 hour deficiency—\$300; 4-8 hour deficiency—\$400; 9-12 hour deficiency—\$500; 13-16 hour deficiency—\$600 # 3rd or subsequent offense—formal action

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 11.63(a)(6)	Failure to complete 8 hours of acceptable continuing professional education in tax subjects during reporting period	1st or 2nd offense—\$300 # 3rd or subsequent offense—formal action
Section 11.63(a)(7)	Failure to complete 4 hours of acceptable continuing professional education in professional ethics during reporting period	1st or 2nd offense—\$300 # 3rd or subsequent offense—formal action
Section [11.68(b)] 11.67(b)	Failure to timely submit documentation of continuing professional education during Board audit (assumes no other continuing education violation)	1st offense—\$500 2nd offense—formal action

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

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

[Pa.B. Doc. No. 11-1428. Filed for public inspection August 19, 2011, 9:00 a.m.]

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Engineers, Land Surveyors and Geologists

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend § 43b.13a (relating to schedule of civil penalties—engineers, land surveyors and geologists) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards.

Background and Need for the Amendment

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts. The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) has had an Act 48 schedule of civil penalties since 2001. See 31 Pa.B. 1227 (March 3, 2011).

Section 3(a) of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P. S. § 150(a)) makes it "unlawful for any person to practice or to offer to practice engineering in this Commonwealth, unless he is licensed and registered under the laws of this Commonwealth as a professional engineer" and similarly prohibits unlicensed

practice of land surveying and geology. Section 3(b) of the act provides that a person is construed to practice or offer to practice engineering, land surveying or geology if the person, among other things, "by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be an engineer, land surveyor or geologist, or through the use of some other title implies that he is an engineer, land surveyor or geologist or that he is registered under this act." The prohibition against unlicensed practice applies also to practicing while one's license is lapsed; that is, the license was not renewed upon expiration. See § 37.18(3) (relating to reactivation of licensure status), which provides that a licensee whose license has lapsed due to failure to register biennially with the Board is prohibited from the practice of that profession in this Commonwealth unless the licensure status is reactivated. Section 4(e) of the act (63 P. S. § 151(e)) authorizes the Board, among other thing, to require licensees to register biennially with the Board and to collect the biennial registration fee, issue biennial registration to those licensees who renew, suspend the licenses of persons who do not renew and reinstate the licenses of those persons who thereafter renew and pay the registration fees. To enforce these provisions, section 11(b) of the act (63 P. S. § 158(b)) authorizes the Board to levy a civil penalty of up to \$1,000 on a licensee who violates a provision of the act or on a person who practices the profession without being properly licensed to do so. Section 5(b)(4) of Act 48 authorizes the Board, as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on a licensee or unlicensed person who violates a provision of the act or Board regulations. However, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than \$1,000 per violation. This authority to levy a civil penalty is in addition to the Board's authority under section 4(g) of the act to suspend or revoke the license and registration of a licensee who has, among other things, committed misconduct in the practice of the profession, which includes violating a provision of the act or Board regulations.

The Board's current Act 48 schedule of civil penalties authorizes issuance of a citation under section 4(g) of the act for representing oneself as an engineer, land surveyor or geologist on a sign, advertisement, letterhead or card



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
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September 12, 2012

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
Bureau of Professional and Occupational Affairs
16A-48

Dear Chairman Lutkewitte:

Enclosed is a copy of a final rulemaking package of the Commissioner of Bureau of Professional and Occupational Affairs pertaining to the schedule of civil penalties for accountants.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in cursive script that reads "Katie True".

Katie True
Commissioner
Bureau of Professional and Occupational Affairs

KT/JJW:aag

Enclosure

cc: Katie True, Commissioner
Bureau of Professional and Occupational Affairs
Rebecca Oyler, Director of Policy, Department of State
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Jeffery J. Wood, Counsel
State Board of Accountancy
State Board of Accountancy

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 16A-48
SUBJECT: SCHEDULE OF CIVIL PENALTIES – ACCOUNTANTS
AGENCY: DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

TYPE OF REGULATION

- Proposed Regulation
- X 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

2012 SEP 12 AM 10:27

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IRRC

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
9/12/12	Michele Warren	MAJORITY CHAIR Julie Harhart
		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
9/12	Annaly	MAJORITY CHAIR Robert M. Tomlinson
9/12/12	K Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)