



**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

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AUG 12 9 52 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

9/10/93

NOTICE OF AN EMERGENCY RULE

AGENCY: WEST VIRGINIA BOARD OF ACCOUNTANCY TITLE NUMBER: 1

CITE AUTHORITY : 30-9-1

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: BOARD RULES AND RULES OF PROFESSIONAL CONDUCT

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See attached statement

9-80

Use additional sheets if necessary

Signature



STATE OF WEST VIRGINIA
WEST VIRGINIA BOARD OF ACCOUNTANCY
CHARLESTON, WEST VIRGINIA 25301-2695
1-304/558-3557

August 5, 1993

Amendment of West Virginia Board of Accountancy Rules
Statement of Facts and Circumstances Constituting an Emergency

The West Virginia Board of Accountancy administers the CPA Exam twice a year, in May and November. This Board, as does all State Boards of Accountancy, administers the CPA Exam that is prepared and developed by the American Institute of CPAs (AICPA). The AICPA is making significant changes to the Exam beginning in May, 1994. Accordingly, the West Virginia Board of Accountancy Rules as they relate to the Exam and its' content need to be changed.

In addition, The West Virginia Board of Accountancy has adopted changes in the "conditioning credits", as outlined in the description of Rule changes submitted with the proposed rule on June 30, 1993, a copy of which is attached. The Board believes it would be appropriate to make the changes in the "conditioning requirements" at the same time the changes in content are being made to the Exam.

As stated above, the Examination is given in May and November with application deadlines of August 15 for the November Exam and February 15 for the May Exam. This cutoff is necessary so that the proper materials can be ordered and the administrative work completed in the time to administer the Exam. The Exam is given simultaneously in every State. Therefore, the Agency approved proposed rules need to be emergency rules so that when the applications are distributed for the May 1994 Exam, they will include the changes made necessary by the change in the Exam format by the AICPA and also the changes in conditioning requirements being approved by the West Virginia Board of Accountancy. If the rules are not implemented as emergency rules, the proper information will not have gone to the candidates for the May 1994 Exam and the Examination given at the May 1994 will not be in accordance with the Rules.

Please be advised that the West Virginia Board of Accountancy has been notifying all interested parties of the proposed changes in the Examination, as well as, the proposed changes to the "conditioning requirements" since they were approved by the Board at the January 14th, 1993 Board meeting. Therefore all candidates will have had over one year's notice before the changes take place.

A handwritten signature in cursive script, appearing to read "D. McIver, Jr.", written over a horizontal line.

Donald H. McIver, Jr., President

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: BOARD RULES AND RULES OF PROFESSIONAL CONDUCT
 Type of Rule: X Legislative Interpretive Procedural
 Agency WEST VIRGINIA BOARD OF ACCOUNTANCY
 Address 201 L & S BUILDING
812 QUARRIER STREET
CHARLESTON, WV 25301

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-
CURRENT EXPENSE	-0-	-0-	-0-	-0-	-0-
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

THESE RULE CHANGES HAVE NO FISCAL EFFECT.

3. Objectives of these rules:

TO CHANGE THE RULES TO COMPLY WITH THE CPA EXAM WHICH WILL BE GIVEN IN MAY, 1994 AND TO CHANGE THE CONDITIONS UNDER WHICH A CANDIDATE GETS CREDIT FOR HAVING PASSED PARTS OF THE EXAM. WE BELIEVE EACH CANDIDATE SHOULD TAKE THE EXAM SERIOUSLY AND THESE RULE CHANGES ENCOURAGE THE CANDIDATE TO DO SO.

Rule Title: WEST VIRGINIA BOARD OF ACCOUNTANCY
BOARD RULES AND RULES OF PROFESSIONAL CONDUCT

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date:

June 29, 1992

Signature of Agency Head or Authorized Representative

Kathy B. Eddy

DATE: AUGUST 5, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WEST VIRGINIA BOARD OF ACCOUNTANCY

EMERGENCY RULE TITLE: BOARD RULES AND RULES OF PROFESSIONAL CONDUCT

1. Date of Filing AUGUST 15, 1993
2. Statutory authority for promulgating emergency rule:
30-9-1
3. Date of filing of proposed legislative rule: JUNE 30, 1993
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?
THE EMERGENCY RULE AMENDS THE CURRENT LEGISLATIVE RULES.
5. Has the same or similar emergency rule previously been filed and expired?
NO
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
PLEASE SEE ATTACHED STATEMENT OF FACTS AND CIRCUMSTANCES
CONSTITUTING AN EMERGENCY DATED AUGUST 5, 1993.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

NOT APPLICABLE

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

PLEASE SEE ATTACHED STATEMENT OF FACTS AND CIRCUMSTANCES

CONSTITUTING AN EMERGENCY DATED AUGUST 5, 1993.

FILED

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1 CSR 1

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 1
LEGISLATIVE RULES
BOARD OF ACCOUNTANCY
SERIES 1
BOARD RULES AND
RULES OF PROFESSIONAL CONDUCT

§ 1-1-1 General.

1.1. Scope. -- These Legislative rules establish general rules for the regulation of the practice of public accounting, including the certification and licensure of certified public accountants and the registration and licensure of public accountants.

1.2 Authority. -- W.Va. Code §30-9-3.

1.3 Filing Date. --

1.4 Effective Date. --

~~1.5 Repeal and Replace. -- These Rules repeal and replace Board of Accountancy Rules, 1 CSR 1-1982.~~

§ 1-1-2 Definitions.

As used in these Rules, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

2.1 "Accredited school" means any four-year, degree-granting college or university accredited at the time of an applicant's degree or attendance by the:

- a. Middle States Association of Colleges and Secondary Schools;
- b. New England Association of Schools and Colleges;

- c. North Central Association of Colleges and Secondary Schools;
- d. Northwest Association of Schools and Colleges;
- e. Southern Association of Colleges and Schools; or
- f. Western Association of Schools and Colleges.

2.2 "Act" means the provisions of West Virginia Code 30-9-1, et seq.

2.3 "Assurance" means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards.

2.4 "Board" means the West Virginia Board of Accountancy provided for in the Act.

2.5 "Certificate" means a certificate as a certified public accountant issued by the Board pursuant to the West Virginia Code or corresponding provisions of prior law or a corresponding certificate as a certified public accountant issued after examination under the laws of any other state.

2.6 "Client" means a person or entity that contracts with or retains a firm for performance of public accounting services.

2.7 "Domicile" means the situs of the applicant's permanent residence, even though he may, at the time of making application, be residing elsewhere. Domicile is a question of fact in each case and is established only by concurrence of the

actual residence coupled with the intent to make such residence the applicant's permanent residence.

2.8 "Financial statement" means a writing or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position or cash flow of any person, corporation, partnership, or other entity.

2.9 "Firm" means a sole proprietorship, corporation, partnership, professional association, or any combination thereof practicing public accountancy in West Virginia.

2.10 "License" means a license to practice public accounting issued annually under the Act and these Rules and "licensee" means a person holding such a license.

2.11 "Place of business" means the location within the State of West Virginia where a person is actually engaged in a lawful business.

2.12 "Practice of public accountancy" or "public accounting" means (i) the giving of an assurance, in a report or otherwise, whether expressly or implicitly or (ii) in the case of a person holding himself out as a certificate holder or for purposes of subsection 7.4 of these Rules, the performance or offering to perform any service involving the use of accounting or auditing skills, including, but not limited to, management advisory or consulting services, the preparation of tax returns, the rendering of tax services, the keeping of books of account and

related accounting records, and the preparation of financial statements without the expression of an assurance: Provided, That an employee giving assurances to or performing such services for an employer shall not be considered to be practicing public accountancy.

2.13 "Registered" or "registrant" means a person registered, but not certified, by the Board under prior law as a public accountant before January 1, 1967, and "registration" means such registration.

2.14 "Report" or "reports," when used with reference to financial statements, means an opinion or disclaimer of opinion or other form of language or representation which states or implies any form of assurance or denial of assurance.

2.15 "Rules" means these Board Rules and Rules of Professional Conduct.

2.16 "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands or Guam, and "this State" means the State of West Virginia.

§ 1-1-3 Board Organization and Proceedings.

3.1 Board Name. -- The Board shall be known as the "West Virginia Board of Accountancy."

3.2 Officers. -- At its first meeting after July 1 of each year, the Board shall elect a president, a vice president, a secretary, and an assistant secretary from among its members. All officers shall be elected for a term of one (1) year and each

shall continue in office until his successor has been elected and qualified or until his term as a member of the Board expires.

3.3 Meetings. -- The Board shall meet in Charleston or elsewhere in West Virginia as it may elect, at least twice each year, and shall remain in session as long as necessary in order to transact its business. Meetings shall be held upon notice by the president of the Board or by joint call of any three (3) of its members and may be held at any reasonable time or place designated in the notice of the meeting.

3.4 Quorum. -- A majority of the Board shall constitute a quorum for the transaction of business.

3.5 Office and employees. -- The Board shall establish an office in West Virginia, if it is considered necessary and desirable, to transact the day-to-day business of the Board and for the maintenance of its files and records. The Board shall designate one (1) of its principal officers or any other person as the executive officer in charge of its office and shall arrange his compensation in the form of a per diem allowance or as salary. The executive officer, with the approval of the Board, may employ such assistance as may be necessary for the efficient performance of his duties.

3.6 Records. -- The Board shall designate and cause to have prepared such forms as it shall consider necessary or expedient to the discharge of its duties, the convenience of applicants for registration or examination, and the compilation of proper records.

As soon as practicable after July 1 of each year the Board shall publish a roster showing the names and addresses of all certificate holders and registrants who hold licenses during the fiscal year beginning on that date.

§ 1-1-4 Registration of Public Accountants.

Registrants shall continue to be recognized as such as provided in the Act. No registrant needs to reregister or take other action to continue the effectiveness of such registration upon the effective date of these Rules. Nothing in these Rules shall be construed to require the certification of registrants.

§ 1-1-5. Certification.

5.1 The Board shall issue a certificate to any applicant who satisfies each of the requirements of this section.

5.2 Age. -- An applicant for certification shall be over the age of eighteen (18) years.

5.3 Good character. -- An applicant for certification shall have fiscal integrity and no history of acts involving dishonesty or acts which would constitute a violation of these Rules. The Board may deny certification upon a finding supported by clear and convincing evidence of a lack of good character.

5.4 An applicant for certification shall be domiciled, or employed on a full time basis in West Virginia.

5.5 Education. -- An applicant for certification shall have completed the following educational requirements:

(a) If application is made prior to July 1, 2000, the

obtainment of a baccalaureate or equivalent degree conferred by an accredited school with a concentration in accounting or its equivalent; such application must be submitted by a qualified candidate on Board approved form(s) with the required documentation. An applicant will be considered to be in compliance with the educational requirement of this subsection as long as the applicant otherwise continues to meet the qualifications for certification examination under subsection 6.1 of these rules:

(b) If application is made on or after July 1, 2000, the satisfactory completion of one hundred fifty (150) semester hours or their equivalent at an accredited school, including the obtainment of the aforesaid degree.

5.6 An applicant for certification shall have satisfactorily completed examination provided for in section 6 of these Rules. The Board may, in its discretion, issue a certificate to any person who possesses the other qualifications stated in this section, and who (a) is the holder of a certificate issued under the laws of any state which extends similar privileges to certificate holders of this State: Provided, That the requirements for such certificates in the state which has granted the certificate are, in the opinion of the Board, equivalent to those required by these rules; or (b) is the holder of a certificate, or the equivalent thereof, granted under the authority of a foreign nation: Provided, That the requirements for such certificates in the foreign nation are, in the opinion of the

Board, equivalent to those required by these rules.

5.7 Prior Certificants. -- Persons who, on July 1, 1989, held certificates theretofore issued by the Board shall not be required to obtain additional certificates, but shall otherwise be subject to all provisions of these Rules. Such certificates shall, for all purposes, be considered certificates issued under and subject to these Rules.

5.8 Practice by nonresidents. -- A person holding a certificate or registration issued by the accountancy board or commission of another state or jurisdiction may temporarily practice in this state on professional business incident to his regular practice: Provided, That he shall in such practice be governed by these Rules and shall pay the fee for a current license to practice, as provided in section 12 of these Rules.

Evidence of a violation of any Rule shall first be submitted to the accountancy board or commission of the state from which such person holds his certificate or registration, and proceedings shall be instituted by this Board only in the event that such board or commission fails or is unable to take appropriate action.

§ 1-1-6 Examination for Certificate.

6.1 Application. -- Applicants for certificate examination must meet the requirements of subsections 5.1, 5.2, 5.3, 5.4 and 5.5 of these rules and must complete the application form prescribed by the Board and furnish all information,

documentation, and references required therein, as well as the examination fee provided for in section 12 of these Rules. Complete applications must be filed with the Board at least three (3) months prior to the examination which the applicant for certification desires to take. If the person fails to attend three consecutive examinations he must complete a new application for certification examination under the requirements existing at the time the new application is completed.

6.2 Notice and Procedure. -- The Board will conduct an examination in May and November of each year for applicants for certification approved by the Board. The applicants approved as candidates for examination will be notified in writing to the address stated in their applications of the exact place of the examination and the dates and hours at which the subjects specified in subsection 6.3 of this rule will be given.

All examination answers shall be completed on materials provided by the Board. All examination papers shall be preserved for a period of six (6) months after each examination.

Candidates for examination shall be given a card bearing a number. After the card is completed, it shall be handed to the examiners at the beginning of the examination. The number is for identification only and shall be used on all papers submitted by the candidate. If any candidate shall sign his name or write initials or other identification marks upon his examination papers, such action shall be considered as misconduct and shall be

sufficient cause for rejecting his examination papers.

6.3 Examination subjects, grading, reexaminations. --

Examinations will include questions or problems on accounting practice, theory of accounts, auditing, commercial law, or such other areas as the Board may prescribe. Beginning in May 1994, the examination will be a two-day examination comprising 15 1/2 hours. The examination will be administered every May and November on Wednesday and Thursday. The examination sections shall consist of, Financial Accounting & Reporting-Business Enterprises; Accounting & Reporting-Taxation, Managerial, and Governmental and Not-for Profit Organization; Auditing; Business Law & Professional Responsibilities.

The candidate will be required to make a grade of not less than seventy-five percent (75%) in each examination subject before he will be declared to have passed the examination.

~~A candidate who fails to pass all subjects, but who receives a passing grade on one (1) or more subjects, shall receive a conditional credit for such subject or subjects. Such conditional credit shall remain in force for the three (3) years next succeeding the examination at which the conditional credit was earned and, if the candidate receives passing grades in the remaining subjects within the said three (3) years, he shall be considered to have successfully passed the certificate examination. In the event of his failure to pass the entire examination within the above prescribed period, he will be considered to have failed the subject for which he received the conditional credit more than three years past. Such failed subjects must be taken again.~~

If a candidate is sitting for the examination for the first time at the May, 1994 examination or thereafter and passes two or more but not all sections, then the candidate shall be given credit for those sections that the candidate has passed and need not sit for reexamination in those sections, provided that --

- (a) the candidate wrote all sections of the examination at that sitting;
- (b) the candidate attained a minimum grade of 50 on each section not passed at that sitting;
- (c) the candidate passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed;
- (d) at each subsequent sitting at which the applicant seeks to pass any additional sections, the candidate writes all sections not yet passed; and
- (e) in order to receive credit for passing additional sections in any such subsequent sitting, the candidate attains a minimum grade of 50 on sections written but not passed on such sitting.

A candidate who sat for and passed part of the examination prior to May, 1994 will retain said credit(s) and shall be given credit for sections passed on May, 1994 or after provided that --

- (a) the candidate wrote all remaining sections of the examination at the May, 1994 and subsequent examinations;
- (b) the candidate attained a minimum grade of 50 on each section not passed at that sitting and
- (c) the candidate passes the remaining sections of the examination within six consecutive examinations given

after the one at which the first section(s) were passed.

A candidate shall be given credit for any and all sections of an examination passed in another state if such credit would have been given, under then applicable requirements, if the candidate had taken the examination in this State.

The Board may in particular cases waive or defer any of the requirements regarding the circumstances in which the various sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the candidate's control, the candidate was unable to meet such requirement.

§ 1-1-7 Licensure.

7.1 License required. -- All registrants and certificants shall annually obtain or renew a license from the Board in order to practice public accounting. Licenses shall be valid for a period of one (1) year (or portion thereof) ending on June 30 of each year.

7.2 Application. -- Applicants for licensure or licensure renewal must complete the forms prescribed by the Board and furnish all information and documentation required therein, as well as the license fee provided for in section 12 of these Rules.

7.3 Continuing education. -- Effective July 1, 1991, certificate holders applying for licensure renewal shall have completed 120 hours of continuing education as provided for in this subsection within the three prior calendar years, with at least 20 hours in each such calendar year: Provided, That for licenses effective July 1, 1991, the total hour requirement shall

be 40 hours within calendar year 1990; and Provided, however, That for licenses effective July 1, 1992 the total hour requirement shall be 80 hours within calendar years 1990 and 1991, with at least 20 hours in 1991.

Any certificate holder applying for licensure who has not been engaged in the practice of public accountancy or held a license to practice public accountancy during the prior calendar year shall be considered to have complied with the hourly requirements set forth in this subsection: Provided, That the certificate holder completes 40 hours of continuing education during the subsequent calendar year and thereafter satisfies all otherwise applicable provisions of this subsection.

Registrants are exempt from the requirements of this subsection.

7.3.1 Continuing education program guidelines.

Satisfaction of the requirements of this subsection shall be determined by the Board. In its evaluation of continuing education programs, the Board shall apply the following standards:

- (a) The program should contribute directly to the professional competence of the individual.
- (b) The stated objectives of a program should include the enhancement of the ability of the participant which the program is intended to accomplish.
- (c) The education and/or experience prerequisites for the program should be stated.
- (d) Materials used in programs should be developed by qualified individuals for use with specified teaching methods.

- (e) Program content should be current.
- (f) Programs should be reviewed by person(s) other than the preparer to ensure compliance with these standards.
- (g) Qualifying programs include, but are not necessarily limited to:
 - (1) Courses (and mini-courses) sponsored by national or state professional organizations. Programs sponsored by other groups may be approved if they meet the same educational objectives.
 - (2) University and college courses (other than courses in principles of accounting) which contribute to the professional competence of the individual.
 - (3) Formal home study courses.
 - (4) Firm "in-house" programs and programs sponsored by accounting firm associations, other than basic, "on-the-job" training.
 - (5) Published books and articles, to a maximum of 60 hours credit per publication.
 - (6) Technical sessions at meetings of professional organizations or other organizations of direct interest and application to the practice of public accountancy, such as the West Virginia Tax Institute.
- (h) Qualifying programs do not include, for example, time spent in:

- (1) Providing services to clients.
- (2) Presentations to nonprofessional groups such as schools, civic, religious, or community organizations.
- (3) Informal review of professional journals.

7.3.2 Continuing education program pre-approval, credits and administration; additional credit for instruction.

(a) The Board encourages licensees, program sponsors, and other interested persons to seek prior approval of continuing education programs in order to facilitate the administration of and compliance with this subsection.

(b) One hour of credit will be awarded for the completion of each 50 minutes of actual participation in the program, or its lesson equivalent in a home study course, as indicated on the certificate of completion. Credit will not be given for programs less than 50 minutes in length or partial hours of program participation.

(c) Credit will be granted for university or college courses at accredited schools as follows:

- (1) Applicants will receive 15 hours credit for each semester credit hour earned and ten hours credit for each quarter credit hour earned.
- (2) Applicants attending noncredit courses will receive credit at the rate of one hour of credit for each 50 minutes of in-class participation.
- (d) Credit may be claimed only for programs completed

during the relevant calendar year(s), except for good cause shown.

(e) Instructors in an approved program will receive three hours credit for each hour taught for the first time they teach a course, to a maximum of 60 hours credit per course per year. No credit will be given for subsequent teaching of the same course, unless the course has been substantially updated. If the same course is taught again in less than three years, the instructor must receive prior approval from the Board for additional credit.

7.3.3 Compliance monitoring.

(a) Compliance with this subsection will be measured by the calendar year. All licensees shall return an annual continuing education reporting form to the Board by January 31 of the following year.

(b) Reporting forms must contain the licensee's Board certificate and license numbers.

(c) The Board will enter hours reported into the record of the licensee in a master file with the designation of the year and the number of credits and maintain in the master file the licensee's record of the current year and the past two years. In addition, the Board will maintain a file of continuing education reporting forms for each licensee for four years.

(d) The Board will annually provide a mailing to each licensee which will provide a confirmation of the record for review by the licensee so that corrective action can be taken if

there is an error or dispute.

7.3.4 Continuing education exceptions.

The following persons are exempt from the requirements of this subsection:

(a) Licensees over the age of 65, all of whose services are rendered to an accounting firm: Provided, That such services must be reviewed and approved by another licensee who has satisfied the requirements of this subsection. The result of all such services going to the public must be presented under the firm name. This exemption shall be based on a written request from the individual and is subject to approval by the Board.

(b) Other persons who demonstrate good cause for exemption to the Board. A person not meeting the requirements of this subsection may apply to the Board for a waiver due to extenuating circumstances, such as accident, illness, pregnancy, or such other circumstances as determined appropriate by the Board. This request must be received by the Board by January 31 following the reporting period, except for good cause shown.

7.4 Work experience.

(a) Effective July 1, 1991, certificate holders applying for licensure shall have two years of public accounting experience, satisfactory to the Board, or experience of such length and character which, in the opinion of the Board, is considered the equivalent of such public accounting experience. Persons holding certificates prior to July 1, 1991, and registrants are exempt from the requirements of this subsection.

Qualified applicants, who have submitted a complete

application prior to June 30, 1991 will have until June 30, 1994 to successfully complete the certificate examination in order to be exempt from the work experience requirement of this subsection.

(b) The record of the applicant's experience must be verified by notarized statements from the applicant's present or former employers or others who are familiar with such experience. The statements must set forth the specific nature and exact length of each type of qualifying experience. Proper documentation is essential in order that the record of experience may properly be evaluated by the Board.

7.5 Peer Review. -- The Board may, at its discretion, provide for the review of any certificate holder (i) applying for licensure renewal or (ii) who the Board has reason to believe may be in violation of section 11 of these Rules. In such cases, the Board may provide for reimbursement and payment of those persons conducting the review and shall set forth in writing the scope and procedures of the review. Nothing in this subsection is a prerequisite to any other Board action under these Rules, including but not limited to section 13 of these Rules.

§ 1-1-8 Prohibited Acts.

8.1. A person who does not hold a valid license shall not (a) claim to hold one; (b) practice or offer to practice public accountancy or public accounting; or (c) make any other claim of licensure or approval related to the preparation of financial statements or expression of assurances thereon which is false or misleading.

8.2 Except as set forth in this subsection, a person who does not hold a valid certificate shall not claim to hold one or describe himself as or assume any of the following titles or designations: "certified public accountant," "CPA," "public accountant," "PA," "certified accountant," "CA," "chartered accountant," "licensed accountant," "LA," "registered accountant," "RA," "independent auditor," "auditor," or similar designation; provided that registrants may use the titles "public accountant" or "PA."

Partnerships practicing accountancy in this State may use the aforesaid designations or practice as such, only if all the members of the partnership who practice in this State are so licensed.

8.3 A person who does not hold a valid license shall not claim to have used "generally accepted accounting principles," "generally accepted accounting standards," "public accountancy standards," "public accountancy principles," "generally accepted auditing principles," or "generally accepted auditing standards," in connection with his preparation of any financial statement; nor shall he use such terms in describing any complete or partial variation from such standards or principles or to imply complete or partial conformity with such standards or principles.

8.4 A person who does not hold a valid license shall not use the words "audit," "audit report," "independent audit," "attest," "attestation," "examine," "examination," "opinion," or "review" in a report on a financial statement.

8.5 A person who does not hold a valid license shall neither state nor imply that he is tested, competent, qualified, or proficient in financial standards established by (i) the American Institute of Certified Public Accountants or any agency thereof, (ii) the Governmental Accounting Standards Board or any agency thereof, (iii) the Securities and Exchange Commission or any agency thereof, (iv) the Financial Accounting Standards Board, or (v) any successor entity to an entity named in this subsection.

8.6 No person who holds a valid license shall engage in the practice of public accounting under a professional or firm name or designation that contains a name or term other than past or present partners, officers, or shareholders of the firm or of a predecessor firm; nor shall any such person engage in the practice of public accounting under a professional or firm name which is deceptive or misleading.

§ 1-1-9 Inapplicability of Rules.

9.1 Nothing contained in these Rules shall be construed to prevent any person from describing himself as an "accountant" or a "bookkeeper" or from stating that he practices accountancy or bookkeeping; nor, subject to the licensure requirements imposed by these rules on persons holding themselves out as certificate holders, shall these Rules be construed to prevent any person from performing services involving the use of accounting skills, rendering tax services, management advisory or consulting services, or in the keeping of books of account and related accounting records, or from preparing financial statements without the expression of an assurance.

9.2 Nothing contained in these Rules shall be construed to prevent any person from stating that he has prepared, compiled, assembled, or drafted a financial statement if he does not use any additional language which comprises an assurance.

9.3 The prohibitions of section 8 of this rule and the other provisions of these Rules shall not be construed to preclude the use of the following or substantially similar language: "I (We) have compiled the accompanying (financial statements) of (Name of entity) as of (time period) for the (period) then ended. A compilation is limited to presenting in the form of financial statements information that is the representation of management (owners). I (We) have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them. Management has elected to omit substantially all (or certain) required disclosures (and the statement of changes in financial position or cash flows). If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the (entity's) financial position, results of operations, and changes in financial position (or cash flows). Accordingly, these financial statements are not designed for those who are not informed about these matters."

9.4 Nothing contained in these Rules shall be construed to prohibit an employee from furnishing services to his employer.

§ 1-1-10 Accounting Corporations.

10.1 One or more licensees may organize and become shareholders of an accounting corporation subject to the requirements of this section.

10.2 No accounting corporation shall exist or transact business as such without the prior authorization of the Board. Applicants for such authorization shall complete an application form, furnish all other documents and information requested by the Board, and pay the fee set forth in section 12 of these Rules.

10.3 The Board shall not authorize the organization of an accounting corporation unless, in addition to the other requirements set forth in these Rules, the applicants comply with the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with the Act or these Rules: Provided, That the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) Each shareholder of the corporation must be a certificiant or registrant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person shall have any interest in the stock of the corporation. The principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certificiant or registrant of some state in good standing.

(c) At least one shareholder of the corporation must be certified or registered in this State.

(d) Each resident manager in charge of an office of the corporation in this State and each shareholder or director personally engaged within this State in the practice of public accounting must be certified or registered in this State.

(e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any share offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding any holder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be contained in writing on each certificate of corporate stock. The corporation may purchase any amount of its stock for this purpose, notwithstanding any impairment of capital so long as one share remains outstanding.

(f) When not inconsistent with this section, the organization and procedures of accounting corporations shall conform to the requirements of W.Va. Code § 31-1-1, et seq.

10.4 Upon receipt of the authorization required by subsection 10.2 of these Rules, an accounting corporation shall promptly cause to be filed in the office of the Secretary of State a certified copy of the authorization. No accounting corporation shall transact business as such until it has received (i) a certificate of incorporation from the Secretary of State and (ii) filed a certified copy of such certificate with the Board.

10.5 An accounting corporation may render public accounting services only through officers, employees, and agents who are licensees within this State. The term "employee" or "agent," as used in this subsection, does not include secretaries, clerks, typists, or other individuals who are not usually and ordinarily considered by custom and practice to be rendering public accounting services.

10.6 This section does not modify the law as it relates to the relationship between a person furnishing accounting services and his client, nor does it modify the law as it relates to the liability arising out of such a professional service relationship. Except for permitting an accounting corporation, this section is not intended to modify any legal requirement or court rule relating to ethical standards of conduct required of persons providing accounting services.

10.7 The corporate name of an accounting corporation shall contain the last name or names of one or more of its shareholders or include the name or names of former shareholders or of persons who were associated with a predecessor partnership or other organization. The corporate name shall also contain the words "accounting corporation," or the abbreviation "A.C." The use of the word "company," "corporation," or "incorporated," or any other words or abbreviations in the name of an accounting corporation organized under this section 10 which indicate that such corporation is a corporation, other than the words "accounting corporation" or the abbreviation "A.C.," is specifically prohibited.

§ 1-1-11 Rules of Professional Conduct.

11.1 Independence, Integrity, and Objectivity.

(a) A licensee shall be independent in the performance of professional services.

(b) In the performance of any professional service, a licensee shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his judgment to others.

11.2 General Standards; Accounting Principles.

(a) A licensee shall:

- (1) Undertake only those professional services that the licensee or his firm can reasonably expect to be completed with professional competence.
- (2) Exercise due professional care in the performance of professional services.
- (3) Adequately plan and supervise the performance of professional services.
- (4) Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(b) A licensee who performs auditing, review, compilation, management advisory, tax, or other professional services shall comply with the recognized professional standards applicable to such services.

(c) A licensee shall not (1) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or (2) state that he is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from any accounting principle promulgated by bodies designated to establish such principles that has a material effect on the statements or data taken as a whole. If, however, the statements or data contain such a departure and the licensee can demonstrate that due to unusual circumstances the financial

statements or data would otherwise have been misleading, the licensee can comply with the rule by describing the departure, its approximate effects, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

11.3 Responsibilities to Clients.

(a) A licensee shall not disclose any confidential client information without the specific consent of the client. This rule shall not be construed (i) to relieve a licensee of his professional obligations under subsection 11.2(b) and (c) of these Rules, (ii) to affect in any way the obligation to comply with a validly issued and enforceable subpoena or summons, (iii) to prohibit review of a licensee's professional practice under subsection 7.5 of these Rules, or (iv) to preclude a licensee from initiating a complaint with or responding to any inquiry made by a recognized investigative or disciplinary body.

Members of a recognized investigative or disciplinary body and professional practice reviewers shall not use to their own advantage or disclose any licensee's confidential client information that comes to their attention in carrying out their official responsibilities. However, this prohibition shall not restrict the exchange of information with a recognized investigative or disciplinary body or affect, in any way, compliance with a validly issued and enforceable subpoena or summons.

(b) Public accountancy service shall not be rendered or offered for a fee which shall be contingent upon the findings or results of such service. This rule does not apply to cases

involving federal, state, or other taxes, in which findings are those of the tax authorities and not those of the accountant. Fees to be fixed by courts or other public authorities, which are therefore of an indeterminate amount at the time when an engagement is undertaken, are not regarded as contingent fees within the meaning of this subsection.

11.4 Responsibilities to Colleagues [RESERVED]

11.5 Other Responsibilities and Practices.

(a) A licensee shall not commit an act discreditable to the public accounting profession.

(b) A licensee shall not seek to obtain clients by advertising or other forms of solicitation that is false, misleading, or deceptive. Solicitation by the use of coercion, over-reaching, or harassing conduct is prohibited.

(c) The acceptance by a licensee in public practice of a payment for the referral of products or services of others to a client is prohibited. Such action is considered to create a conflict of interest that results in a loss of objectivity and independence.

A licensee shall not make a payment to obtain a client. This rule shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals formerly engaged in the practice of public accounting or payments to their heirs or estates.

(d) A licensee may practice public accounting only in the form of a proprietorship, a partnership, or a professional corporation whose characteristics conform to these Rules.

A licensee shall not practice public accounting under a

firm name that is misleading. Names of one or more past partners or shareholders may be included in the firm name of a successor partnership or corporation. Also, a partner or shareholder surviving the death or withdrawal of all other partners or shareholders may continue to practice under such name which includes the name of past partners or shareholders for up to two years after becoming a sole practitioner.

A firm may not designate itself as a member of a professional organization unless all of its partners or shareholders are members of the organization.

§ 1-1-12 Fees.

Fees for examination (section 6 of these Rules), reexamination (section 6 of these Rules), out-of-state examination proctoring, licenses and renewals (section 1 of these Rules), certificates (section 5 of these Rules), corporation registration (section 10 of these Rules), and such other services as the Board shall prescribe shall be tendered to the Board at the time of filing. All fees are nonrefundable and shall not be prorated. The Board may, in its discretion, return all or part of a fee accompanying a filing which the Board declines to process and returns to the applicant.

§ 1-1-13 Discipline and Enforcement.

13.1 Censure, reprimand, revocation and suspension of certificates, registrations, and licenses. -- After notice and hearing, as provided in W.Va. Code §30-1-1, et seq., the Board may censure or reprimand any certificiant or registrant, revoke or suspend any certificate or registration, and may refuse to issue, or refuse to renew, any license, for any one or combination of the

following causes:

- (a) Fraud or deceit in obtaining a certificate, registration, or license.
- (b) Dishonesty, fraud, or gross negligence in the practice of public accounting.
- (c) Violation of these Rules.
- (d) Conviction of any felony, or any crime an element of which is deceit or fraud, under the laws of any state or of the United States.
- (e) Cancellation, revocation, suspension, or refusal to renew authority to practice public accountancy by any other state, for any cause other than failure to pay an annual license fee in such other state.
- (f) Habitual drunkenness, addiction to the use of habit-forming drugs, mental incompetence, or gross immorality.
- (g) Unlawful practice of law as defined by the Supreme Court of Appeals and/or statutory law of this State.

13.2 Injunction against unlawful acts. -- Any person may bring to the attention of the Board suspected violations of section 6 of the Act. At its discretion, and following whatever investigation it considers appropriate, the Board may apply to any court of competent jurisdiction for an order enjoining such violations as provided in section 8 of the Act.

1687X

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Secretary of State

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September 9, 1993

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Accountancy

RULE: Amendments, Series 1, Board Rules and Rules of Professional Conduct

DATE FILED AS AN EMERGENCY RULE: August 12, 1993

DECISION NO. 20-93

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 10 8 54 AM 1993

FILED



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SECRETARY OF STATE

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DECISION

EMERGENCY RULE DECISION
(ERD 20-93)

AGENCY: West Virginia Board of Accountancy
RULE: Amendments, Series 1, Board Rules and Rules of Professional
Conduct

FILED AS AN EMERGENCY RULE: August 12, 1993

- par. 1 The West Virginia Board of Accountancy (Board) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State August 12, 1993 and with the LRMRC August 12, 1993.

par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code 30-9-1 reads:

The Legislature hereby finds and declares that the public interest requires the certification and licensure of those persons engaged in the practice of public accounting as herein defined in order to aid the citizens of this state in determining the qualifications of such persons; that this function is best served by a state board of accountancy subject to legislative control; and that this article is enacted to further the aforesaid public interest.

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Board are as follows:

The West Virginia Board of Accountancy administers the CPA Exam twice a year, in May and November. This Board, as does all State Boards of Accountancy, administers the CPA Exam that is prepared and developed by the American Institute of CPAs (AICPA). The AICPA is making significant changes to the Exam beginning in May, 1994. Accordingly, the West Virginia Board of Accountancy Rules as they relate to the Exam and its' content need to be changed.

In addition, the West Virginia Board of Accountancy has adopted changes in the "conditioning credits", as outlined in the description of rule changes submitted with the proposed rule on June 30, 1993. The Board believes it would be appropriate to make the changes in the "conditioning requirements" at the same time the changes in content are being made to the Exam.

As stated above, the examination is given in May and November with application deadlines of August 15 for the November exam and February 15 for the May exam. This cutoff is necessary so that the proper materials can be ordered and administrative work completed in the time to administer the exam. The exam is given simultaneously in every State. Therefore, the agency approved proposed rules need to be emergency rules so that when the applications are distributed for the May 1994 exam, they will include the changes made necessary by the change in the exam format by the AICPA and also the changes in conditioning requirements being approved by the West Virginia Board of Accountancy. If the rules are not implemented as emergency rules, the proper information will not have gone to the candidates for the May 1994 exam and the examination given at the May 1994 will not be in accordance with the rules.

Please be advised that the West Virginia Board of Accountancy has been notifying all interested parties of the proposed changes in the examination, as well as, the proposed changes to the "conditioning requirements: since they were approved by the Board at the January 14, 1993 Board meeting. Therefore all candidates will have had over one year's notice before the changes take place.

- par. 13 In order to be able to keep qualified CPAs in this State, the Board must provide examinations which are consistent with other states.
- par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "prevent substantial harm to the public interest" and "time limitation".
- par. 15 This decision shall be cited as Emergency Rule Decision 20-93 or ERD 20-93 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Board of Accountancy, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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FILED