

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

**Do Not Mark In this Box**

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Dec. 5, 1990  
ADMINISTRATIVE LAW DIVISION

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Board of Accountancy TITLE NUMBER: 1

CITE AUTHORITY 30-9-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES~~xx~~ NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Board Rules and Regulations and  
Rules of Professional Conduct

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



LANDON R. BROWN  
ASSISTANT ATTORNEY GENERAL  
Counsel for the Board

DATE: December 5, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: West Virginia Board of Accountancy

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Dec. 5, 1990  
ADMINISTRATIVE LAW DIVISION

LEGISLATIVE RULE TITLE:

1. Authorizing statute(s) citation W. Va. Code Section 30-9-1 et seq.

2. a. Date filed in State Register with Notice of Hearing:

October 20, 1989

b. What other notice, including advertising, did you give of the hearing?

In Lieu of a public hearing, a comment period was established during which any interested person could have send comments concerning these proposed rules. This comment period ended on December 19, 1989 at 4:30 p.m.

c. Date of hearing (s): see b.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received                     

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:  
(be exact)

December 5, 1990.

f. Name and phone number of agency person to contact for additional information:

West Virginia Board of Accountancy

201 L&S Building, 812 Quarrier Street

Charleston, West Virginia 25301

(304) 348-3557

1. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable, but see Note below.

- b. Date of hearing: \_\_\_\_\_

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

- d. Attach findings and determinations and reasons:

Attached.

Note:

On March 24, 1989, the Legislature passed Senate Bill 254 to take effect July 1, 1989. Senate Bill 254 amended and reenacted article nine, chapter 30 of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the practice and regulation of public accounting. Because Senate Bill 254 was an entire rewriting of the accounting law in West Virginia, the current regulations needed to be repeated and replaced.

The West Virginia Legislature has declared that the public interest requires the certification and licensure of those persons engaged in the practice of public accounting. Consequently, the changes to the accounting law by Senate Bill 254 affects all aspects of the regulation of the practice of public accounting in West Virginia, including the requirements for certification and licensure, and that in order for the Board of Accountancy to properly protect the public interest and because of the effective date of the new law was July 1, 1989, new rules and regulations are needed.



STATE OF WEST VIRGINIA  
WEST VIRGINIA BOARD OF ACCOUNTANCY  
CHARLESTON, WEST VIRGINIA 25301  
1-304/348-3557

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Dec. 5, 1990  
ADMINISTRATIVE LAW DIVISION

Summary of Comments Received by  
West Virginia Board of Accountancy  
Re: Board Rules and Regulations  
and Rules of Professional Conduct  
30-9-1, et Seq.

The Board of Accountancy received four (4) comment letters from licensees during the required comment period for the proposed Rules and Regulations outlined above. A summary of these are as follows:

1. James W. Taylor, Jr., Charleston, West Virginia - Article 7.3  
Continuing education - Mr. Taylor believes the CPE requirement to be overburdensome. He is concerned about the licensee who is not to be employed full-time in public accounting, the CPA whose employer is not willing to allow the time necessary or assist in costs of CPE and a retiree who wants to supplement his income.

Response - The Board of Accountancy feels the requirement of 120 hours of CPE in a three year period is the standard for CPA's in public practice. The American Institute of Certified Public Accountants requires 120 hours for members in public practice as does the West Virginia Society of Certified Public Accountants. The Board made provisions in the rules for licensees over the age of 65. These persons are entitled to an exemption if they are rendering their services to an accounting firm. The Board feels the Continuing Professional Education requirement protects the public by requiring the CPA's to stay current. A specific number of hours had to be established to meet the requirement and the Board felt using a number of hours already established by CPA organizations was appropriate.

2. Pleasant W. Williams, CPA, Chloe, West Virginia - Article 7.3  
Continuing education - Mr. Williams believes the requirement of 120 hours of CPE by July 1, 1992 is arbitrary. He felt the requirements to be prejudicial in that the rules did not consider differing circumstances such as differing requirements for the elderly, single practitioner, part-time and/or accountants residing and practicing in remote rural areas of the State.

Response - Mr. Williams had several misunderstandings regarding what the regulations require regarding CPE. Those misunderstandings have been addressed directly with Mr. Williams. Many of his concerns came from those misunderstandings; however when establishing rules on items such as continuing professional education a guideline must be set. The intention was to protect the public by requiring all practicing CPAs to obtain a certain level of continuing education. The same public is served by an elderly, single practitioner, part-time and/or accountant residing and practicing in remote rural areas of the State and therefore those practitioners should not be any less qualified to

serve the public than any other practitioner. In addition the proposed rules do allow the Board to provide a waiver due to extenuating circumstances.

3. Robert S. Maust, CPA Professor and Chairman, Department of Accounting, West Virginia University - Dr. Maust's comments fall mainly in the area of the qualifications necessary to sit for the CPA examination and the 150 semester hour requirement.

A. Article 2.7 Domicile - How is domicile interpreted in the case of an individual who is not a U.S. Citizen.

Response - The Board intends to interpret "domicile" to mean permanent residence. Therefore a student who has a student visa or temporary work visa does not have a permanent residence in this State.

B. Article 5.2 - What does over the age of 18 mean?

Response - In a drafting of written qualifications to be sent to candidates the Board will make clear this simply means age 18 and one day. An applicant is not required to be age 19.

C. Article 5.5 (a) Equivalent - Is it necessary to identify what equivalency means?

Response - The Board has provided a written policy regarding what hours are required to sit for the exam. To try to define equivalency any further takes away any latitude the Board has in granting exceptions to the requirement.

D. Article 5.5(b) Applicant - Is "application" limited to the initial or first application to take the CPA exam when applying prior to July 1, 2000; the date after which applicants must have 150 semester hours.

Response - After reviewing Dr. Maust's series of questions regarding this section the Board determined that the rules needed to deal with the transition period relating to the 150 hour requirement. Therefore new language dealing with the transition period has been drafted by the Board and is included in the agency approved copy of the Rules and Regulations being submitted for approval.

E. Article 5.5(c) "Final Semester" - Dr. Maust questioned the logic of allowing graduating seniors to be able to allow for the examination prior to completing the education requirements. This provision encourages graduating seniors to spend their time preparing for the CPA exam as opposed to the final semester of course work.

Response - The Board believed Dr. Maust to have a valid point. The Board did additional research as to what the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy position on the matter was and found both organizations to be in agreement with Dr. Maust for the same reasons. Therefore the Board removed Article 5.5(c) from the regulations. Article 5.5(c) has been removed from the agency approved copy of the Rules and Regulations being submitted for approval.

F. Article 8.5 states that a person who does not hold a valid license shall neither imply that he is tested, competent, qualified or proficient in financial standards -- Dr. Maust's concern addresses the issue of a CPA who is not licensed, for instance on the faculty of a college or university and whether or not this Article prohibits the college or university from asserting that its faculty, consisting of non-licensed CPAs, is competent, qualified or proficient.

Response - The Board's intent with this provision is to keep unlicensed CPAs or non-CPAs from holding out to the public that they are tested, competent, qualified or proficient in financial standards. The Board is concerned with the offering of services to the public and not with an employer's description of an employee. Knowing the interpretation of this provision the Board sees no reason to make any changes to it.

G. Article 10.5 states that an accounting corporation may render public accounting services only through officers, employees and agents who are licensees within this state. Dr. Maust questioned whether the exclusion should be expanded to include sole proprietorships and partnerships as well.

Response - Section 10 of the regulations deals entirely with accounting corporations therefore a reference to sole proprietorships and partnerships would be inappropriate in this Article 10.5. Further, after review the Board feels that Dr. Maust's concerns are addressed in Section 1-1-8, Prohibited Acts.

4. Michael W. Gerber, CPA, Huntington, West Virginia

A. Section 1-1-5 Certification 5.8 - Mr. Gerber does not believe that we should require CPAs licensed in another state to obtain a temporary permit to practice in West Virginia when coming to this State to practice on a temporary basis.

Response - The Board acknowledges that there is a current trend to encourage the interstate practice of public accounting however, the Board also acknowledges that the Board is charged with protecting the public of West Virginia by regulating the practice of public accounting within West Virginia. If we do not require temporary permits to practice the clients that are being served have no regulatory Board to which they could file a complaint nor do we know whether or not the CPA has met the minimum standards necessary to practice public accounting in West Virginia.

B. Section 1-1-7 Licensure 7.3.1(h)(2) - Mr. Gerber feels that presentations to non-professional groups should not automatically be excluded from CPE credit.

Response - The Board feels it has given licensees more than enough latitude in obtaining CPE credit. Most non-professional groups presentations do not require the technical level of preparation which should be present for CPE credit. Further most non-professional group presentations are less than the fifty minutes required for one hour of CPE.

1 CSR 1

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

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Dec. 5, 1990  
ADMINISTRATIVE LAW DIVISION

§ 1-1-1 General.

1.1. Scope. -- These Legislative regulations 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 §30-9-1, et seq.

1.3 Filing Date. --

1.4 Effective Date. --

1.5 Repeal and Replace. -- These Rules repeal and replace July 8, 1982, Rules.

§ 1-1-2 Definitions.

As used in these Rules, the following words and terms shall 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 Article 9, Chapter 30 of the West Virginia Code of 1931, as now or hereafter amended.

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 these Rules or corresponding provisions of prior regulations or a corresponding certificate as a certified public accountant issued after examination under the laws of any other state, and "certificiant" means a person holding such certificate..

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 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 certificant or for purposes of section 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 deemed 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 Regulations 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.

As used in these Rules, the singular and plural and the masculine and feminine are interchangeable unless the context clearly indicates otherwise.

§ 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 shall expire.

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 deemed 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 deem 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 certificants 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.

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 a lack of 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 such 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 required documentation. Such an applicant will be considered to be in compliance with the educational requirement of this Section 5.5 as long as applicant otherwise continues to meet the qualifications for certification examination under Section 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 completed satisfactorily the examination provided for in section 6 of these Rules; provided, that the Board may, in its discretion, issue a certificate to any person who possesses the other qualifications stated in this section 5, and who is the holder of a certificate issued under the laws of any state which extends similar privileges to certificants of this State, provided the requirements for such certificates in the state which has granted the certificate are, in the opinion of the Board, equivalent to those herein required; or who is the holder of a certificate, or the equivalent thereof, granted under the authority of a foreign nation, provided the requirements for such certificates in the foreign nation are, in the opinion of the Board, equivalent to those herein required.

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 theretofore issued 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, however, 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 Section 5.1, 5.2, 5.3, 5.4 and 5.5 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 enter. If the applicant fails to attend three consecutive examinations he must complete a new application for certification examination under the requirements existing at the time said 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 accepted 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 each subject will be given.

All examinations shall be upon materials provided by the Board. Examination papers may not be removed and shall remain the property of 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 completion, the card 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.

The candidate will be required to make a grade of not less than seventy-five percent (75%) in each 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 deemed to have successfully passed. 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.

§ 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 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, certificants applying for licensure shall have completed 120 hours of continuing education as provided in this section 7.3 within the three prior calendar years, with at least 20 hours in each such calendar year; provided, that for licenses effective July 1, 1992 the total hour requirement shall be 80 within calendar years 1990 and 1991, with at least 20 hours in each such calendar year; and provided further, that for licenses effective July 1, 1991, the total hour requirement shall be 40 hours within calendar year 1990.

Any new or other certificant applying for licensure who has not been engaged in the practice of public accountancy during the prior calendar year shall be deemed to have complied with the hourly requirements set forth in this section 7.3; provided, that such certificant complete 40 hours of continuing education during the subsequent calendar year and thereafter satisfy all otherwise applicable provisions of this section 7.3.

Registrants are exempt from the requirements of this section 7.3.

7.3.1 Continuing education program guidelines.

Satisfaction of the requirements of this section 7.3 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 section 7.3.

(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 two additional hours credit for study for each hour taught (three in all) 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 section 7.3 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 section 7.3:

(a) Licensees over the age of 65, all of whose services are rendered to an accounting firm, provided all of said service so rendered is reviewed and approved by another licensee who has satisfied the requirements of this section 7.3; and further provided, the result of all such work going to the public is presented under the firm name. This exemption must be based on a written request from the individual and is subject to approval by the Board.

(b) Such other persons who shall demonstrate good cause for exemption to the Board. A person not meeting the requirements of this section 7.3 may apply to the Board for a waiver due to extenuating circumstances, such as accident, illness, pregnancy, or such other circumstances as deemed 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, certificants 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 section 7.4.

Qualified applicants, who have submitted a complete application prior to June 30, 1991 will have until June 30, 1994 to successfully complete the C.P.A. examination in order to be exempt from the work experience requirement of this Section 7.4.

(b) The record of the applicant's experience must be verified by notarized statements from the 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 certificant (i) applying for licensure or renewal thereof 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 the reimbursement and payment of such reviewers and shall set forth in writing the scope and procedures of such review. Nothing in this section 7.5 shall be deemed 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 claim to hold one; nor shall he practice or offer to practice public accountancy or public accounting; nor shall he 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 section 8.2, 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 thereof 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 section 8.5.

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 herein imposed on persons holding themselves out as certificants, 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 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.

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 the application forms,

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 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 certificant 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 certificant 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 10 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 noticed 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 10, 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 section 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 such authorization. No accounting corporation shall transact business as such until (i) receipt of a certificate of incorporation from the Secretary of State and (ii) filing of 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 section 10.5, 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 10 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 liability

arising out of such a professional service relationship. Except for permitting an accounting corporation, this section 10 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 sections 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 section 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 section 11.3(b).

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 members 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; provide, that 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 certificant 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 deems 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