

PROPOSED RULEMAKING

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Accountants

[45 Pa.B. 2874]

[Saturday, June 13, 2015]

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

Effective Date

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

Statutory Authority

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

Background and Need for the Proposed Rulemaking

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. An individual who receives an Act 48 citation retains his due process right to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement

efforts. Section 5(b)(4) of Act 48 authorizes the State Board of Accountancy (Board), as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on any licensee or unlicensed person who violates a provision of the CPA Law (act) (63 P. S. §§ 9.1—9.16b) or regulations of the Board. However, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than \$1,000 per violation.

Under authority of Act 48, the Commissioner published a schedule of civil penalties in § 43b.10 for certain violations of the act and the regulations of the Board at 28 Pa.B. 5883 (November 28, 1998). The final-form rulemaking published at 31 Pa.B. 1227 (March 3, 2001) rescinded § 43b.10 and adopted § 43b.10a. The schedule of civil penalties in § 43b.10a was amended at 42 Pa.B. 7275 (December 1, 2012). The Board is separately publishing a proposed rulemaking (16A-5513) to amend certain of its substantive regulations regarding continuing education violations for which civil penalties are included in the schedule. See the proposed rulemaking published at 45 Pa.B. 2878 (June 13, 2015). The Commissioner has determined, based upon the Board's proposed rulemaking, that the Act 48 schedule of civil penalties for violations of the regulations require corresponding amendments.

Description of the Proposed Rulemaking

Current § 11.63(a)(1) (relating to CPE subject areas; relevance to professional competence) requires each licensee to complete at least 16 hours of acceptable continuing professional education (CPE) in accounting and attest subjects during each 2-year reporting period. The current Act 48 schedule provides that a first offense violation of failing to complete this required CPE will expose a licensee to citation with a civil penalty of \$300 for a deficiency of 1 to 4 hours, \$400 for a deficiency of 4 to 8 hours, \$500 for a deficiency of 9 to 12 hours and \$600 for a deficiency of 13 to 16 hours. The Board is proposing to amend § 11.63(a)(1) to increase the required amount of CPE for those who are required to complete CPE in this area to 24 hours. Accordingly, the Commissioner proposes to amend the schedule to provide a civil penalty of \$50 per hour deficient, not to exceed \$1,000. A second or subsequent offense will continue to result in formal action.

Current § 11.63(a)(6) requires each licensee to complete at least 8 hours of acceptable CPE in tax subjects during each reporting period. The current schedule also includes a civil penalty for a first offense violation of this provision. However, the Board is proposing to delete this required minimum to be completed in tax subjects. Accordingly, the Commissioner proposes to delete this item from the schedule.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would not have a fiscal impact on, or create additional

paperwork for, the regulated community, the general public, the Commonwealth or political subdivisions.

Sunset Date

The Commissioner and the Board continuously monitor the effectiveness of the regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 29, 2015, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to the Regulatory Unit Counsel, Department of State, P. O. Box 69523, Harrisburg, PA 17106-9523, RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-5514 (schedule of civil penalties—accountants), when submitting comments.

IAN J. HARLOW,
Acting Commissioner

Fiscal Note: 16A-5514. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

**CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**

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

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

STATE BOARD OF ACCOUNTANCY

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**Violation
under
49 Pa. Code
Chapter 11**

Section 11.62(b)	Failure to complete 20 hours of acceptable continuing professional education during each year of reporting period	1st offense—\$300 2nd or subsequent offense—formal action
Section 11.63(a)(1)	Failure to complete [16] 24 hours of acceptable continuing professional education in accounting and attest subjects during reporting period, if required	1st offense— [1-4 hour deficiency—\$300; 4-8 hour deficiency—\$400; 9-12 hour deficiency—\$500; 13-16 hour deficiency—\$600²] \$50 per hour deficient, not to exceed \$1,000² 2nd or subsequent offense—formal action
[Section 11.63(a)(6)	Failure to complete 8 hours of acceptable continuing professional education in tax subjects during reporting period	1st offense—\$300² 2nd or subsequent offense—formal action]
Section 11.63(a)(7)	Failure to complete 4 hours of acceptable continuing professional education in professional ethics during	1st offense—\$300 ² 2nd or subsequent offense—formal action

	reporting period	
Section 11.67(b)	Failure to timely submit documentation of continuing professional education during Board audit (assumes no other continuing education violation)	1st offense—\$500 2nd or subsequent offense—formal action

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

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

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