



## NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

### NOTICE OF FINAL RULEMAKING TITLE 4. PROFESSIONS AND OCCUPATIONS CHAPTER 1. BOARD OF ACCOUNTANCY

[R17-109]

#### PREAMBLE

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| <p><b>1. <u>Articles, Part, or Section Affected (as applicable)</u></b><br/>R4-1-455.03</p> | <p><b><u>Rulemaking Action</u></b><br/>Amend</p> |
|---|--|
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
 Authorizing statute: A.R.S. § 32-703(B)(7)  
 Implementing statute: None
- 3. The effective date of the rule:**  
 June 15, 2017
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**  
 Notice of Rulemaking Docket Opening: 22 A.A.R. 3588, December 23, 2016  
 Notice of Proposed Rulemaking: 22 A.A.R. 3565, December 23, 2016
- 5. The agency's contact person who can answer questions about the rulemaking:**  
 Name: Monica L. Petersen, Executive Director  
 Address: Board of Accountancy  
 100 N. 15th Ave., Suite 165  
 Phoenix, AZ 85007  
 Telephone: (602) 364-0870  
 Fax: (602) 364-0903  
 E-mail: mpetersen@azaccountancy.gov  
 Web site: www.azaccountancy.gov
- 6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**  
 The rule is being amended because it is overbroad and inconsistent with A.R.S. § 32-747.01, and to ensure that the rules reflect the Board's current operational practices, as the Board no longer enforces this rule. The current rule is overbroad and inconsistent with the Board's statutory framework because it requires certified public accountants ("CPAs") who provide any type of public accounting to do so only through a firm registered with the Board, whereas A.R.S. § 32-747.01 only requires those CPAs who perform one specific type of public accounting – attest services – to do so only through a registered firm.
- 7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
 The Board did not review or rely on a study in its evaluation of or justification for a rule in this rulemaking.
- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**  
 Not applicable
- 9. A summary of the economic, small business, and consumer impact:**  
 Amending the rule will not have a fiscal impact, as under the Board's long-time statutory and regulatory framework, CPAs who have registered firms as sole proprietors are not required pursuant to A.R.S. § 32-729(4) to pay a firm registration fee. Amending the rule will result in a positive impact to small business. CPAs who are sole proprietors of accounting firms who do not do attest services as defined in A.R.S. § 32-701(3) will no longer be required to register their firms with the Board and will no longer be required to file biennial firm renewal paperwork. They will also no longer be subject to peer review requirements pursuant to A.A.C. R4-1-454. [Operationally, since the Board has already ceased enforcement of the rule pending its amendment and has notified sole proprietors that they may cancel their firm registrations if they do not provide attest services, this positive impact has



already commenced.] The Board does not foresee a consumer impact, as amending this rule is unlikely to change the rates CPAs charge for their services. In terms of public protection, the Board will continue to regulate the sole proprietor CPAs through their individual certificates but will lose some regulatory oversight with respect to peer review requirements for non-attest services like compilation services.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

No changes were made between the proposed and final rules.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:**

No comments were received regarding the rulemaking. No one presented oral or written comments at the oral proceeding held on January 23, 2017. The record closed at 5:00 p.m. on January 23, 2017.

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The rule does not require a permit.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

There is no federal law regarding CPAs and firm registration.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

**14. Whether the rule was previous made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A), also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

No rule in this rulemaking was previously made, amended, or repealed as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 1. BOARD OF ACCOUNTANCY**

**ARTICLE 4. REGULATION**

Section

R4-1-455.03. Professional Conduct: Other Responsibilities and Practices

**ARTICLE 4. REGULATION**

**R4-1-455.03. Professional Conduct: Other Responsibilities and Practices**

- A. Discreditable acts: A certified public accountant, public accountant, or firm shall not commit an act that reflects adversely on the certified public accountant's, public accountant's, or firm's fitness to engage in the practice of public accounting, including:
  - 1. Violating a provision of R4-1-455, R4-1-455.01, R4-1-455.02, R4-1-455.03 or R4-1-455.04;
  - 2. Violating a fiduciary duty or trust relationship with respect to any person; or
  - 3. Violating a provision of A.R.S. Title 32, Chapter 6, Article 3, or this Chapter.
- B. Advertising practices: A certified public accountant, public accountant, or firm has violated A.R.S. § 32-741(A)(4) and engaged in dishonest or fraudulent conduct in the practice of public accounting in connection with the communication or advertising of public accounting services through any media, if the certified public accountant, public accountant, or firm willfully engages in any of the following:
  - 1. Employs a device, scheme, or artifice to defraud;
  - 2. Makes an untrue statement of material fact or fails to state a material fact necessary to make the statement not misleading;
  - 3. Engages in any advertising that would operate as a fraud or deceit;
  - 4. Violates A.R.S. § 44-1522 and a court finds the violation willful;
  - 5. Engages in fraudulent or misleading practices in the advertising of public accounting services that leads to a conviction pursuant to A.R.S. § 44-1481; or
  - 6. Engages in fraudulent practices in the advertising of public accounting services that leads to a conviction for a violation or any other state or federal law.
- C. Solicitation Practices: A certified public accountant, public accountant, or firm has violated A.R.S. § 32-741(A)(4) and engaged in dishonest or fraudulent conduct in the practice of public accounting in connection with the direct or indirect personal solicitation of public accounting services if the certified public accountant, public accountant, or firm willfully engages in any of the following:
  - 1. Violates a provision of R4-1-455.03(B); or



2. Engages in direct or indirect personal solicitation through the use of coercion, duress, undue influence, compulsion, or intimidation practices.
- D.** Form of practice and name:
1. ~~A certified public accountant or public accountant may practice public accounting, whether as an owner or employee, only in a firm as defined in A.R.S. § 32-701(14).~~
  2. A certified public accountant or public accountant shall not use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter. A firm name or designation shall not include words such as “& Company,” “& Associates” or “& Consultants” unless the terms refer to additional full-time CPAs that are not otherwise mentioned in the firm name.
- E.** Acting through others: A certified public accountant or public accountant shall not knowingly permit others to carry out on behalf of the certified public accountant or public accountant, either with or without compensation, acts which, if carried out by the certified public accountant or public accountant, would violate a provision of R4-1-455, R4-1-455.01, R4-1-455.02, R4-1-455.03 or R4-1-455.04.
- F.** Communications: When requested, a certified public accountant or public accountant shall respond to communications from the Board within 30 days after the communication is mailed by registered or certified mail.