

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
[25 PA. CODE CH. 86]

### Corrective Amendment to 25 Pa. Code § 86.1

The Department of Environmental Protection has discovered a discrepancy between the agency text of 25 Pa. Code § 86.1 (relating to definitions) as deposited with the Legislative Reference Bureau and the official text as published at 29 Pa.B. 5289, 5295 (October 9, 1999), and as currently appearing in the *Pennsylvania Code*. Several definitions were inadvertently omitted.

Therefore, under 45 Pa.C.S. § 901: The Department of Environmental Protection has deposited with the Legislative Reference Bureau a corrective amendment to 25 Pa. Code § 86.1. The corrective amendment to 25 Pa. Code § 86.1 is effective as of October 9, 1999, the date the defective text was published in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 86.1 appears in Annex A, with ellipses referring to the existing text of the regulation.

#### Annex A

### TITLE 25. ENVIRONMENTAL PROTECTION PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE I. LAND RESOURCES

#### CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING

#### Subchapter A. GENERAL PROVISIONS

#### § 86.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Application*—The documents and other information filed with the Department for the issuance of a permit.

*Bond*—A bond by which a permittee assures faithful performance of the requirements of the acts, this chapter, Chapters 87—90 and the requirements of the permit and reclamation plan.

*Coal mining activity*—Surface mining activities, underground mining activities, coal preparation activities or coal refuse disposal activities as these terms are defined in this section.

*Coal preparation activity*—An operation in which coal is subject to chemical or physical processing or cleaning, concentrating or other processing or preparation. The term includes a facility associated with the coal preparation activity and the activity by which the land surface has been or is disturbed as a result of or incidental to coal preparation activity of the operator, including, but not limited to, the following:

- (i) Private ways and roads appurtenant to the area, land excavations and loading facilities.
- (ii) Storage and stockpile facilities.
- (iii) Sheds, shops and other buildings.
- (iv) Water treatment and water storage facilities.
- (v) Settling basins and impoundments.
- (vi) Areas in which are situated facilities, equipment, machines, tools or other materials or property which result from or are used in the coal preparation activity.

*Coal refuse disposal activities*—Activities whereby a plot of land is used as a place for disposing, dumping or storage of coal refuse. These areas may include land thereby affected, including, but not limited to, a deposit of coal refuse on or buried in the earth and intended as permanent disposal of or long-term storage of the material, but not including coal refuse deposited within an active mine itself or coal refuse never removed from a mine. The term includes activities in which the natural land surface has been disturbed as a result of or incidental to the coal refuse disposal activities of the operator, including, but not limited to, private ways and roads appurtenant to the area, land excavations, workings, tailings, repair areas, storage areas, processing areas, shipping areas and areas in which structures, facilities, equipment, machines, tools or other materials or property which result from or are used in coal refuse disposal activities are situated.

\* \* \* \* \*

[Pa.B. Doc. No. 01-26. Filed for public inspection January 12, 2001, 9:00 a.m.]

## Title 31—INSURANCE

INSURANCE DEPARTMENT  
[31 PA. CODE CH. 89]

[Correction]

### Medicare Supplement Insurance

An error appeared in a chart at 30 Pa.B. 6886, 6890 (December 30, 2000). The correct version of this chart appears in Annex A, with ellipses referring to the existing text of the regulation.

#### Annex A

### TITLE 31. INSURANCE PART IV. LIFE INSURANCE

#### CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE

#### Subchapter K. MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

#### § 89.783. Required disclosure provisions.

\* \* \* \* \*

[COMPANY NAME]

Outline of Medicare Supplement Coverage-Cover Page:

Benefit Plans \_\_\_\_\_ (insert letters of plans being offered)

Medicare supplement insurance can be sold in only ten standard plans plus two high deductible plans. This chart shows the benefits included in each plan. Every company must make available Plan A & B.

**Basic Benefits:** Included in All Plans.

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical Expenses: Part B coinsurance (20% of Medicare-approved expenses) or, in the case of hospital outpatient department services under a prospective payment system, applicable copayments.

Blood: First three pints of blood each year.

A	B	C	D	E	F	F*	G	H	I	J	J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits		Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible		Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	
		Part B Deductible			Part B Deductible					Part B Deductible	
					Part B Excess (100%)		Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)	
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	
			At-Home Recovery				At-Home Recovery		At-Home Recovery	At-Home Recovery	
								Basic Drugs (\$1,250 Limit)	Basic Drugs (\$1,250 Limit)	Extended Drugs (\$3,000 Limit)	
				Preventive Care						Preventive Care	

\* Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year \$1,580 deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses are \$1580. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in plan J, the plan's separate prescription drug deductible or, in Plans F and J, the plan's separate foreign travel emergency deductible.

# Title 49—PROFESSIONAL AND VOCATIONAL AFFAIRS

## STATE BOARD OF ACCOUNTANCY

### [49 PA. CODE CH. 11]

#### Commissions and Referral Fees

The State Board of Accountancy (Board), amends § 11.24 (relating to commissions and referral fees) to read as set forth in Annex A.

The amendment revises § 11.24 to permit licensed public accounting firms and licensed certified public accountants and public accountants engaged in public practice to receive or accept commissions and to accept or pay referral fees in accordance with section 12(p) of the CPA Law (63 P. S. § 9.12(p)) which was added by the act of December 4, 1996 (P. L. 851, No. 140) (Act 140 of 1996). The existing § 11.24, adopted in 1970, prohibits commissions and referral fees absolutely. The amendment requires licensees to notify the Board when they receive or intend to receive commissions; to allow peer reviewers access to compensation records for purposes of verifying that commissions were not received for referring products or services to attest clients; to acquire and maintain in good standing any licenses or registrations required by other governmental or private standard-setting bodies relating to the receipt of commissions; to disclose commissions in client engagement letters and representation letters; and to maintain workpapers that document the basis for recommending particular products or services to clients. The amendments also require licensees who accept or pay referral fees to disclose the fees in client engagement and representation letters.

#### *Summary of Comments and Responses to Proposed Rulemaking*

The Board published a notice of proposed rulemaking at 30 Pa.B. 1271 (March 4, 2000) following which the Board entertained public comments for 30 days. The Board received comments from the Pennsylvania Institute of Certified Public Accountants (PICPA), the Pennsylvania Society of Public Accountants (PSPA), the two major professional organizations that represent the public accounting profession in this Commonwealth; H. D. Vest, a leading financial services company; and 158 individual licensees.

The Board received comments from the House Professional Licensure Committee (House Committee) on April 11, 2000, and the Independent Regulatory Review Commission (IRRC) on May 4, 2000, as part of their review of the proposed amendment under the Regulatory Review Act (71 P. S. §§ 745.1—745.14). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (Senate Committee), which also reviewed the proposed amendment under the Regulatory Review Act.

Following is a summary of the comments that the Board received during proposed rulemaking and of the changes the Board has made to the proposed amendment in response to the comments:

The House Committee asked the Board to explain why it took more than 3 years to publish a proposed rulemaking that is intended to implement the provisions of section 12(p) of the CPA Law. In developing an exposure draft of the regulation for preproposal comments under Executive Order 1996-1 (relating to regulatory review and

promulgation), the Board considered several policy options. In June 1998, the Board finalized its exposure draft, and in August 1998 submitted the exposure draft to the major professional organizations for preproposal comments. The Board received preproposal comments through January 1999. In June 1999, the Board conducted a poll of other jurisdictions regarding their restrictions on commissions and referral fees before settling upon a final version of its proposal. In November 1999, the Board submitted its proposal for prepublication regulatory review, which concluded with publication of the notice of proposed rulemaking in March 2000.

#### *§11.24(b) (Notification to the Board)*

Section 11.24(b) requires licensees who receive or intend to receive commissions to report that fact on their applications for biennial renewal of licensure. In its notice of proposed rulemaking, the Board stated that the notification requirement will assist it in determining which licensees require monitoring to ensure compliance with section 12(p) of the CPA Law and § 11.24.

IRRC asked the Board to explain the need for monitoring and how the monitoring will be implemented. The Board believes monitoring is complementary of the complaints process, which is the Board's usual source of information about licensees who may not be in compliance with the CPA Law and the Board's regulations. Consumers who are referred by licensees to commission-based products or services may be unaware of the requirements relating to commissions, and thus may not report noncomplying licensees to the Board. The greatest risk to consumers in the area of commissions stems from licensees who violate the prohibition, in section 12(p)(1) of the CPA Law, against referring or recommending clients to commission-based products or services when the licensees or their firms also perform audit, review or certain other attest services for the clients. To monitor compliance with this prohibition, the Board would furnish peer review administering organizations with a list of licensees who report receiving commissions. The CPA Law mandates periodic peer review of licensees who perform audit or review engagements. The peer reviewers would scrutinize the compensation records of those licensees who report receiving commissions to determine whether commission-based products or services were referred or recommended to attest clients.

IRRC also asked the Board to explain what is meant by the phrase "intends to receive commissions." Licensees will be asked to indicate on their license renewal applications whether they have received commissions during the preceding license renewal period and whether they intend to recommend or refer commission-based products or services to clients during the upcoming license renewal period.

#### *§ 11.24(c) (Cooperation with peer reviewers)*

Proposed § 11.24(c) required licensees who receive commissions and who are subject to peer review to furnish peer reviewers with the necessary documentation to establish the licensees' compliance with section 12(p) of the CPA Law and § 11.24.

IRRC recommended that the Board define what is meant by "necessary documentation." As stated, to determine whether licensees may have received unlawful commissions under section 12(p)(1) of the CPA Law, the peer reviewers must review the compensation records of licensees who perform attest engagements. The Board has revised § 11.24(c) to specify that compensation records comprise the required documentation. (Because their scope of authority is limited to evaluating licensees'

quality control procedures and policies for attest engagements, peer reviewers are unable to serve as the Board's agents in monitoring licensees' compliance with disclosure and other requirements unrelated to the attest function.)

In its notice of proposed rulemaking, the Board stated that licensees who sell commission-based products or services to attest clients would not receive unqualified peer reviews. The PSPA observed that under section 12(p)(1) of the CPA Law, licensees are permitted to sell commission-based products or services to attest clients when the attest services involve compilations of financial statements in which the licensees have disclosed their lack of independence. The Board agrees with the PSPA's clarification that the licensees' receipt of commissions in these circumstances would not make them ineligible for unqualified peer reviews.

*§ 11.24(d) (Related licensure/registration)*

Proposed § 11.24(d) required licensees, prior to receiving commissions, to acquire and maintain in good standing any licenses or registrations required by other governmental or regulatory bodies for the purpose of receiving commissions. The Board stated by way of example in its notice of proposed rulemaking that licensees who desire to receive commissions for the sale of securities may need to be registered with entities such as the Securities Commission (SC), a State agency that regulates certain non-Federally covered broker/dealers, agents and investment advisors and representatives who conduct business in this Commonwealth, or the National Association of Securities Dealers (NASD), a self-regulatory organization that credentials broker/dealers and registered representatives who sell securities on the Nasdaq Stock Market and the over-the-counter securities market.

IRRC asked the Board to explain the purpose of the related licensure/registration requirement and to provide examples of the required licensure or registration in § 11.24(d). IRRC also commented that the NASD is not a governmental or regulatory body but a private standard-setting body, and recommended that the wording of § 11.24(d) be revised to include private standard-setting bodies.

The purpose of the related licensure/registration requirement is to ensure that licensees have acquired a sufficient level of training, understanding and experience regarding commission-based products or services so that they can make knowledgeable and informed recommendations and referrals of those products or services to clients. The minimum competence is established through the licensure/registration requirements of governmental or private standard-setting bodies that regulate or mediate commerce in those products or services. The most common examples of commission-based products and services for which licensure or registration may be required are the sale of securities (such as, PSC, NASD), the sale of insurance (Insurance Department), and the sale of real estate (State Real Estate Commission).

Consistent with IRRC's recommendations, the Board has revised § 11.24(d) to clarify that licensees must obtain appropriate licensure or registration from other governmental or private standard-setting bodies that may be required in order to receive commissions. The Board also has added to § 11.24(d) the examples of the governmental or private standard-setting bodies.

*§ 11.24(f) (Workpapers)*

Section 11.24(f) requires licensees who receive commissions to maintain workpapers that document discussions regarding their clients' investment needs, the investment

strategies considered, and the bases for the investment strategies recommended. The purpose of this requirement is to ensure that licensees have exercised professional judgment in the course of recommending or referring commission-based products or services to clients.

H. D. Vest questioned the Board's legal authority to establish a workpaper requirement, commenting that section 12(p)(4) of the CPA Law only references the Board's authority to promulgate regulations on matters relating to a licensee's disclosure of commissions and referral fees to a client. While section 12(p)(4) of the CPA Law clearly directs the Board to promulgate regulations relating to disclosure requirements, the Board does not interpret that language as limiting the Board's rule-making authority on commissions and referral fees to matters of disclosure only. Section 3(a)(11) of the CPA Law (63 P. S. § 9.3(a)(11)), authorizes the Board to promulgate rules of professional conduct for licensees, while section 3(a)(12) of the CPA Law, authorizes the Board to promulgate other regulations, consistent with the CPA Law, that are necessary and proper to implement the provisions of the CPA Law. Recommending or referring commission-based products or services to clients plainly implicates standards of professional conduct; if that were not the case, there would be no reason for the CPA Law's prohibition against licensees' recommending or referring commission-based products or services to certain attest clients. Section 11.24(f) represents a lawful exercise of the Board's authority to establish a standard of professional conduct.

Both H. D. Vest and the PSPA observed that for commissions related to securities, § 11.24(f) may duplicate the paperwork requirements of Federal and State securities regulations. The Board does not intend to require licensees to maintain redundant workpapers; workpapers maintained by licensees under securities regulations would be considered adequate so long as they reflected discussions of clients' investment needs, the investment strategies considered, and the bases for the investment strategies recommended.

IRRC recommended that because failure to maintain workpapers could expose licensees to disciplinary action, and because there are expenses associated with the retention and storage of those workpapers, § 11.24(f) should be amended to state how long licensees must retain workpapers. The Board does not believe a specific retention period is necessary for licensees' commission-related workpapers. Section 11 of the CPA Law (63 P. S. § 9.11) requires licensees to produce client records upon request but does not establish a specific retention period. Moreover, the workpapers required under § 11.24(f) are not likely to be voluminous; therefore, the costs associated with their retention and storage are likely to be minimal. Significantly, not one of the 158 individual licensees who commented on the proposed rulemaking raised any objection to the costs of retaining workpapers under § 11.24(f).

*§ 11.24(g) (Attest client)*

Proposed § 11.24(g) would have provided that for purposes of section 12(p)(1) of the CPA Law, licensees who perform attest services for clients—except for compilations of financial statements likely to be relied upon by third parties and accompanied by disclosures of lack of independence, as permitted under section 12(p)(ii) of the CPA Law—may not receive commissions for recommending or referring products or services to individuals or entities that can exercise significant influence over the operating, financial or accounting policies of the licensees' attest clients.

Proposed § 11.24(g) would have defined the term “significant influence” to include situations in which the individual or entity: (1) is connected with the client as a promoter, underwriter, voting trustee, general partner or nonhonorary director; (2) is connected with the client in a policymaking position related to the client’s primary operating, financial or accounting policies, such as chief executive officer, chief financial officer or chief accounting officer; or (3) meets the criteria established in Accounting Principles Board Opinion 18, “The Equity Method of Accounting for Investments in Common Stock,” and its interpretations, to determine the ability of an investor to exercise the influence with respect to the client. The proposed significant influence standard was derived verbatim from the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct’s Ethical Interpretation relating to the effect that a certified public accountant’s financial interest in a nonclient has on his independence with a client when the nonclient has an investor or investee relationship with the client (ET § 101.10).

Proposed § 11.24(g) was intended to address a situation, not expressly covered by section 12(p)(1) of the CPA Law, in which licensees receive commissions for products or services sold to individuals or entities that, while not the attest clients of the licensees, could nevertheless substantially impact the business affairs of other clients for whom the licensees perform attest services. The Board strongly believes that licensees’ receipt of commissions in those circumstances may impair their independence as auditors. The licensees’ financial interests in receiving commissions could result, intentionally or unintentionally, in the weakening of their objectivity in evaluating the financial enterprises of attest clients who are subject to the significant influence of the licensees’ commission clients; in some cases, licensees could be in the position of auditing the value or financial consequences of products or services for which they received commissions.

The commentators questioned the Board’s legal authority to promulgate proposed § 11.24(g). Most significantly, the House Committee, noting that the prohibition in section 12(p)(1) of the CPA Law specifically relates to recommendations and referrals made to clients for whom licensees perform certain types of attest services, opined that the Board had “no apparent statutory authority” to expand the scope of section 12(p)(1) to cover other parties, regardless of whether those parties are in a position to exercise significant influence over clients for whom licensees perform attest services. IRRC, in turn, stated that the House Committee’s comments “clearly indicate that the legislative intent was to limit [Section 12(p)(1)] to transactions involving attest clients.” IRRC recommended that the Board seek clarification from the General Assembly before attempting to establish a rule of professional conduct that extends beyond what is currently contemplated by the CPA Law.

In deference to the House Committee’s and IRRC’s view that proposed § 11.24(g) exceeded the Board’s rulemaking authority, the Board has deleted it from the final-form rule. However, the Board remains steadfast in its belief that the current prohibition in section 12(p)(1) is inadequate to protect the public against the adverse impact that commissions may have on licensees’ ability to perform attest services with the requisite independence. The Board intends to ask the General Assembly to amend the CPA Law to specifically prohibit a licensee’s receipt of commissions in circumstances like those set forth in

proposed § 11.24(g) or, alternatively, to give the Board express authority to establish such a prohibition by regulation.

Apart from their objection to the Board’s legal authority to promulgate proposed § 11.24(g), the commentators raised other concerns about proposed § 11.24(g) that should be addressed in view of the Board’s desire to seek its implementation through legislation.

Except for the House Committee, all commentators expressed concerns that the significant influence standard was either vague, ambiguous or confusing. The PICPA, echoing the concerns of the PSPA, H. D. Vest and the individual commentators, said that by linking together two separate engagements (attestation and investment services) and two separate clients (attest client and shareholder, employe, and the like of attest client), the Board had created a difficult interpretative issue because the ethical rules governing licensee independence are written to include only attest activities and thus provide no measurement standard for determining how independence may be impaired by the receipt of commissions. The PICPA had made these same comments in response to a preproposal draft of § 11.24 that would have simply provided that a licensee may not receive a commission from any individual or entity that could impair the licensee’s independence, either by appearance or in fact, with respect to an attest client of the licensee; the PICPA’s recommendation to the Board at the time was to either delete the provision or replace it with the AICPA Code of Professional Conduct’s significant influence standard, which would provide licensees with definitive criteria for assessing when the receipt of commissions could impair independence. Proposed § 11.24(g) incorporated the significant influence standard initially recommended by the PICPA.

IRRC commented that the ambiguity in proposed § 11.24(g) was the use of the word “includes” to introduce the three situations that define how an entity or individual may exercise “significant influence” on the business affairs of an attest client. IRRC observed that “includes” suggests that there are situations other than those listed in the regulation that may define significant influence. IRRC recommended that if the significant influence standard were retained in the final-form amendments, the term should be defined to set forth a complete list of applicable situations. The Board notes that under the AICPA Code of Professional Conduct, the three situations descriptive of significant influence are not considered all-inclusive. The Board will propose that the amendatory language to the CPA Law set forth as comprehensive a definition of significant influence as is possible under current ethical standards.

IRRC also recommended that the reference in proposed § 11.24(g) to section 12(p)(ii) of the CPA Law either be deleted as unnecessary or, if retained, be revised to mirror the exact statutory language. IRRC noted that the Board’s shorthand reference to section 12(p)(ii) had the unintentional effect of expanding the exception to the prohibition of receipt of commissions from attest clients to include situations involving compilations of financial statements with no disclosure of lack of independence; the statutory exception only applies to compilations where lack of independence is disclosed. The Board agrees with IRRC’s recommendation, and will propose that the amendatory language to the CPA Law be consistent with the existing exception in section 12(p)(ii).

IRRC, the PICPA and the individual commentators also raised concerns that proposed § 11.24(g) would have

an adverse fiscal impact on licensees by limiting their ability to offer a full range of services to clients. Clients with financial planning or investment needs may take their business to other financial service professionals in this Commonwealth or to licensees in border states of this Commonwealth with less restrictive commission requirements.

As the Board stated in its notice of proposed rule-making, the adoption of a significant influence standard would certainly result in loss of unspecified commission opportunities for certain licensees. While some of those lost commission opportunities could end up benefitting out-of-State licensees as well as the financial services industry at large, other commission opportunities would simply be transferred to those in-State licensees whose independence would not be impaired by the receipt of commissions. The Board considers it noteworthy that none of the commentators from the public accounting profession have suggested that lost commission opportunities would likely cause financial hardship to licensees, such as the laying off of personnel or the closing of offices. In the absence of a showing of financial hardship to licensees, the Board believes that the salutary impact of the significant influence standard on licensee independence—a factor that redounds to the benefit of attest clients and to those who rely on the attestation services of licensees—outweighs the loss of potential earnings to licensees in the form of commissions.

#### *Statutory Authority*

Section 3(a)(11) and (12) of the CPA Law empowers the Board to promulgate, respectively, regulations relating to professional conduct and administrative regulations necessary to carry out the provisions of the CPA Law. Section 12(p)(4) of the CPA Law empowers the Board to promulgate regulations specifying minimum disclosure requirements when receiving commissions or accepting or paying referral fees.

#### *Fiscal Impact and Paperwork Requirements*

The amendment will not have a fiscal impact on the Commonwealth's agencies or its political subdivisions.

The amendment will require licensees to maintain records of their disclosures of commissions and referral fees as well as workpapers documenting the appropriateness of recommending or referring particular commission-based products or services to clients. The amendment will require the Board to revise its biennial license renewal form to include a question about whether licensees have received or intend to receive commissions; the Board will use this information for the purpose of monitoring compliance with section 12(p)(1) of the CPA Law. The amendment will not create new paperwork requirements for the Commonwealth's other agencies, the Commonwealth's political subdivisions or other segments of the private sector.

#### *Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1 (relating to regulatory review and promulgation), the Board in developing the preproposal version of the amendment, solicited comments from the PICPA and the PSPA on behalf of their memberships.

#### *Regulatory Review*

On February 23, 2000, as required by section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of a notice of proposed rulemaking, published at 30 Pa.B. 1271 to IRRC and the House and Senate Committees for review and comment.

In adopting the final-form rule, the Board considered comments from IRRC, the House Committee and the general public. The Board did not receive comments from the Senate Committee.

On October 30, 2000, the Board submitted the final-form amendment to IRRC and the House and Senate Committees. Under authority of section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), the final-form rule was approved by the House Committee on November 13, 2000, and deemed approved by the Senate Committee on November 20, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 14, 2000, and approved the final-form rule.

#### *Additional Information*

Individuals who desire additional information about the amendment are invited to submit inquiries to Steven Wennberg, Counsel, State Board of Accountancy, P. O. Box 2649, Harrisburg, PA 17105-2649.

#### *Findings*

The Board finds that:

(1) Public notice of the Board's intention to amend 49 Pa. Code Chapter 11, by this order, has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendment adopted by this order is necessary and appropriate for the administration of the CPA Law.

#### *Order*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 11, are amended by amending § 11.24 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The amendment shall take effect upon publication in the *Pennsylvania Bulletin*.

THOMAS J. BAUMGARTNER, CPA,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 6964 (December 30, 2000).)*

**Fiscal Note:** Fiscal Note 16A-557 remains valid for the final adoption of the subject regulation.

#### **Annex A**

### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

#### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

#### **CHAPTER 11. STATE BOARD OF ACCOUNTANCY**

#### **GENERAL PROVISIONS**

#### **§ 11.24. Commissions and referral fees.**

(a) *General.* A licensee engaged in public practice is permitted to receive commissions and accept or pay

referral fees subject to the requirements in section 12(p) of the act (63 P. S. § 9.12(p)) and this section.

(b) *Notification to Board.* A licensee who receives or intends to receive commissions shall report this fact on the application for biennial renewal of the license.

(c) *Cooperation with peer reviewer.* A licensee who receives commissions and who is subject to peer review under section 8.9 of the act (63 P. S. § 9.8i) shall furnish peer reviewers with compensation records for purposes of verifying compliance with section 12(p)(1) of the act.

(d) *Related licensure/registration.* Prior to receiving commissions, a licensee shall acquire and maintain in good standing any license or registration required by another governmental or private standard-setting body for the purpose of receiving commissions. Examples of bodies that may regulate the receipt of commissions are:

(1) The Pennsylvania Securities Commission (sale of securities).

(2) The National Association of Securities Dealers (sale of securities).

(3) The Insurance Department (sale of insurance).

(4) The State Real Estate Commission (sale of real estate).

(e) *Disclosure to client.* A licensee who receives a commission or who accepts or pays a referral fee shall make the disclosures required by section 12(p)(4) of the act in an engagement or representation letter that is signed by the client.

(f) *Workpapers.* A licensee who receives a commission shall maintain workpapers that document discussions regarding the client's investment needs, the investment strategies considered, and the basis for the investment strategy recommended by the licensee.

[Pa.B. Doc. No. 01-27. Filed for public inspection January 12, 2001, 9:00 a.m.]

**STATE BOARD OF ACCOUNTANCY**

**[49 PA. CODE CH. 11]**

**Continuing Education Program Sponsors**

The State Board of Accountancy (Board), by this order, amends Chapter 11, to read as set forth in Annex A, by revising §§ 11.1, 11.4, 11.64, 11.65, 11.71 and 11.72; by adding § 11.69a and 11.71a; and by deleting § 11.70.

The amendments revise the Board's regulatory scheme for approving sponsors of continuing education programs for certified public accountants and public accountants. Specifically, the amendments: (1) require previously approved program sponsors to apply for and obtain reapproval to maintain their eligibility to offer continuing education programs after April 30, 2001; (2) require program sponsors to biennially renew their approval beginning January 1, 2004; (3) modify procedures for program sponsor approval and withdrawal of approval; (4) require program sponsors to be responsible for the development of continuing education programs as well as their presentation; (5) provide for comprehensive offsite reviews of selected program sponsors to ensure compliance with continuing education standards; (6) establish fees for program sponsor approval/reapproval and biennial renewal of approval; and (7) exempt program sponsors

registered with the National Association of State Boards of Accountancy (NASBA) from having to meet Board approval requirements.

*Summary of Comments and Responses to Proposed Rule-making*

The Board published a notice of proposed rulemaking at 30 Pa.B. 888 (February 19, 2000), following which the Board entertained public comment for 30 days. The Board received comments from the Pennsylvania Institute of Certified Public Accountants (PICPA), which supported the proposed amendments, and the Governor's Office of the Budget, which raised concerns about some of the proposed amendments.

The Board received comments from the House Professional Licensure Committee (House Committee) on March 21, 2000, and the Independent Regulatory Review Commission (IRRC) on April 20, 2000, as part of their review of the proposed regulations under the Regulatory Review Act. The Board did not receive comments from the Senate Committee on Consumer Protection and Professional Licensure (Senate Committee), which also reviewed the proposed regulations under the Regulatory Review Act.

Following is a summary of the comments that the Board received during proposed rulemaking and of the changes the Board has made to the proposed amendments in response to the comments.

*§ 11.4 (Fees)*

Proposed § 11.4 established fees of \$145 for approval of a program sponsor and \$120 for biennial renewal of program sponsor approval. As more fully discussed in this Preamble, the Board has extended the implementation date of the new regulatory scheme from January 1, 2001, to May 1, 2001, and has simplified the reapproval procedure for previously approved program sponsors who apply for reapproval prior to May 1, 2001. The revised approval procedure eliminates the need for Board review of timely filed applications of previously approved program sponsors; accordingly, the Board has reduced the reapproval fee for those previously approved program sponsors from \$145 to \$120 to reflect the decreased expense. New program sponsor applicants and previously approved program sponsor applicants that submit their reapproval applications after April 30, 2001, will pay the \$145 fee. The \$120 renewal fee, which will be biennially assessed upon all approved program sponsors beginning with the biennial period commencing January 1, 2004, remains unchanged.

*§ 11.64 (Sources of continuing education credit)*

Proposed § 11.64 set forth the various sources of continuing education credit and provided that continuing education credit will be awarded only for program sponsors approved as of the effective date in § 11.69a (relating to approval of program sponsor). IRRC noted that § 11.64 misstated § 11.69a's proposed effective date as May 1, 2000, instead of January 1, 2001. The Board has amended § 11.64 to reflect the revised effective date of May 1, 2001.

*§ 11.69a (Approval of program sponsor)*

1. *Deadline for reapproval of previously approved program sponsors.* Proposed § 11.69a(a) provided that, ex-

cept for those exempt as NASBA-registered program sponsors under § 11.69a(b), parties desiring to offer continuing education programs after December 31, 2000, must obtain approval under this section; the Board's approximately 2,000 previously approved program sponsors would have to apply for reapproval if they desire to offer continuing education programs after December 31, 2000. In its notice of proposed rulemaking, the Board estimated that about 1,000 of the previously approved program sponsors are still offering continuing education programs to licensees.

The House Committee and IRRC questioned whether the December 31, 2000, deadline affords sufficient time for previously approved program sponsors to apply for reapproval and for the Board to process the applications.

In response to these concerns, the Board has extended the deadline for reapproval from December 31, 2000, to April 30, 2001, and has streamlined the procedures for reapproval under § 11.69a. The Board anticipates that final approval of the amendments under the Regulatory Review Act (71 P. S. §§ 745.1—745.15) will occur by mid-December 2000. Immediately upon final approval of the amendments, the Board will send applications for program sponsor reapproval to all previously approved program sponsors. The only information that will be required on the application is the sponsor's name and address, the title and source of continuing education credit as set forth in § 11.64, and a list of current or planned program offerings. The applications will be routinely processed by Board staff, and will not require review or evaluation by the Board. The Board has revised § 11.69a(a) to provide that qualifying applications for reapproval that are postmarked by April 30, 2001, but not processed by Board staff until after April 30, 2001, will be considered timely filed. The Board has further revised § 11.69a(a) to provide that the Board will not deny continuing education credit to licensees who take courses after April 30, 2001, from previously approved programs sponsors whose timely filed qualifying applications for reapproval are being processed by Board staff.

The primary purpose for reapproval is to determine which of the program sponsors that the Board has approved since 1979 are still active providers. All reapproved program sponsors, as well as all program sponsors whose initial approval occurs after April 30, 2001, will be subject to offsite reviews of their continuing education programs under § 11.71a (relating to offsite review of program sponsor) to ensure their compliance with Board regulations.

2. *Contents of approval application.* Proposed § 11.69a(c) required applications for program sponsor approval to include the following information: name and address of program sponsor; title and source of continuing education credit; names, titles and degrees of instructors; dates, locations and schedules of programs; program outlines and objectives; instruction and evaluation methods; admission requirements; and attendance certification methods. This information would assist the Board in making informed assessments about the qualifications of prospective program sponsors. IRRC observed that some of the required information—such as program dates, locations and schedules and the names and credentials of instructors—might be unknown or subject to change at the time of application, and suggested that the Board consider allowing approved program sponsors to submit any changes, deletions or amendments to the information required in § 11.69a(c) as they occur. The Office of the Budget, which is an approved program sponsor and offers

a wide array of continuing education programs for auditors in various Commonwealth agencies, also commented that specific program offerings, dates, locations and instructors may not be known at the time of application for reapproval.

As noted, the Board has reconsidered the necessity of requiring all the information in proposed § 11.69a(c) from previously approved program sponsors at the time of application for reapproval. To minimize delays in the reapproval process and to lessen potential disruptions to licensees who have scheduled courses after April 30, 2001, with previously approved program sponsors, the Board will require previously approved program sponsors who submit their reapproval applications by April 30, 2001, to provide only basic identifying information plus a list of current program offerings or planned program offerings, if known. New program sponsor applicants and previously approved program sponsor applicants that submit reapproval applications after April 30, 2001, will have to provide the more detailed information. As a result of the concerns raised by IRRC and the Office of the Budget, the Board has eliminated the requirement that program sponsor applicants provide the specific dates, locations, schedules and faculty for each current or planned program offering; this information will be requested only of those approved program sponsors that are selected for offsite reviews under § 11.71a.

3. *Board review of application.* Proposed § 11.69a(e) provided that applications for approval under this section would be reviewed by the Board's Continuing Education Committee (CEC), which would make recommendations to the full Board for approval or disapproval. Disapproved applicants would receive written notification of the grounds for disapproval and would be afforded an opportunity to submit revised applications.

Consistent with its desire to simplify the reapproval process, the Board does not consider it is necessary to have either the full Board or the CEC participate in the review of applications for reapproval of previously approved program sponsors who submit their applications by April 30, 2001, and therefore has modified § 11.69a(e) accordingly. New program sponsor applicants and previously approved program sponsor applicants who submit reapproval applications after April 30, 2001, will continue to be evaluated by the full Board based on the CEC's review.

IRRC recommended that the Board provide time frames for the CEC's review of program sponsor applications and for the submission of revised applications by disapproved applicants. The Board does not believe time frames are required. The CEC and the full Board have not experienced any difficulties in timely evaluating the 50-75 program sponsor applications that have been submitted annually in recent years; nor has any program sponsor applicant ever raised concerns about not receiving a timely decision on its application. The Board also does not believe it is necessary to establish a deadline for disapproved applicants to submit revised applications; applicants should be afforded as much time as is necessary to make the necessary changes to submit qualifying applications.

*§ 11.71. (Responsibilities of program sponsor)*

Proposed § 11.71 prescribed the responsibilities of program sponsors in the areas of disclosures to prospective participants, selection and evaluation of instructors, limitations on program enrollments, adequacy of facilities, program evaluation, retention of records, certificates of

completion and promotional materials. Proposed § 11.71 also imposed on program sponsors new responsibilities relating to the development of programs.

The Office of the Budget expressed concerns about its ability to satisfy the enhanced duties of program sponsors. The Office of the Budget relies on nearly 2 dozen prequalified vendors to develop program materials and to select instructors for its many program offerings. As the Board noted in its proposed rulemaking, while the regulations charge program sponsors with the ultimate responsibility for ensuring compliance with program requirements, program sponsors are not prevented from contracting with other parties for technical assistance in complying with these requirements.

IRRC questioned the need for the requirements, in § 11.71(9) and (10), that program sponsors retain attendance records and course outlines for 5 years. A 5-year record retention period is necessary that licensees who undergo a Board audit of their continuing education hours will have access to records that corroborate the continuing education information provided to the Board at the time of license renewal. Because of due process requirements, audit procedures that result in the filing of disciplinary charges may not be concluded for up to 3 years after the end of the 2-year continuing education reporting period that is the subject of the audit.

Proposed § 11.71(4) required program sponsors to review their program materials periodically to ensure that the materials reflect currently accepted practice standards. IRRC recommended that the Board establish a more specific time frame for this review. The Board has revised § 11.71(4) to require program sponsors to review their program materials annually.

IRRC also recommended editorial changes to proposed § 11.71(1) and (6), to improve understanding and readability. The Board has revised § 11.71(1) and (6) to include those changes.

*§ 11.71a (Offsite review of program sponsor)*

Proposed § 11.71a provided that program sponsors are subject to offsite reviews of their continuing education programs to ensure compliance with Board regulations. An offsite review involves an in-depth audit of all program materials, documents and records maintained by the program sponsor under Board regulations. The Board has revised § 11.71a to clarify that the type of information that must be furnished includes, but is not limited to, the information in § 11.69a(c) as well as program dates, locations and schedules and the names and credentials of instructors.

*§ 11.72 (Withdrawal of approval of program sponsor)*

Proposed § 11.72 set forth the grounds on which the Board may withdraw the approval of program sponsors. IRRC recommended that the Board make clear in the regulation that the Board's withdrawal of a program sponsor's approval does not affect the continuing education credits earned by licensees for completing programs offered by the program sponsor prior to the withdrawal of its approval. The Board has revised § 11.72 to reflect that clarification.

*Statutory Authority*

Section 3(10) of the CPA Law (63 P.S. § 9.3(10)), empowers the Board to promulgate regulations relating to continuing education, including the qualifications of program sponsors. Section 6 of the CPA Law (63 P.S. § 9.6) empowers the Board to fix fees by regulation.

*Fiscal Impact and Paperwork Requirements*

The amendments will require previously approved program sponsors that submit their reapproval applications by April 30, 2001, to pay a reapproval fee of \$120. The Board estimates that about 1,000 previously approved program sponsors will submit reapproval applications by April 30, 2001. The amendments will require new program sponsor applicants and previously approved program sponsors that submit their reapproval applications after April 30, 2001, to pay an approval/ reapproval fee of \$145. Beginning May 1, 2001, the Board expects to receive at least 50 applications each year from new or previously approved program sponsors. The amendments will require approved program sponsors to pay a biennial renewal fee of \$120 starting with the biennial period that begins January 1, 2004.

The amendments will cause the Board to incur costs in conducting offsite reviews of selected program sponsors. These costs will be defrayed by the fees for approval/ reapproval and biennial renewal of approval. The amendments will not have a fiscal impact on the Commonwealth's other agencies or political subdivisions, or other segments of the private sector.

The amendments will require program sponsors selected for offsite reviews to provide detailed documentation to the Board of their continuing education programs. The amendments will require the Board to revise its forms for program sponsor approval. The amendments will not create additional paperwork requirements for the Commonwealth's other agencies, this Commonwealth's political subdivisions or other segments of the private sector.

*Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1 (relating to regulatory review and promulgation), the Board, in developing the amendments, solicited comments from the PICPA and the Pennsylvania Society of Public Accountants, the major professional associations representing the public accounting profession in this Commonwealth and of its largest continuing education sponsors. The Board also published a notice in the *Pennsylvania Bulletin* seeking preproposal comments for other currently approved program sponsors as well as prospective program sponsors.

*Regulatory Review*

On February 7, 2000, as required by section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted copies of the notice of proposed rulemaking, published at 30 Pa.B. 888, to IRRC and the House and Senate Committees for review and comment.

In adopting the final-form amendments, the Board considered comments from IRRC, the House Committee and the general public. The Board did not receive comments from the Senate Committee.

On October 30, 2000, the Board submitted final-form amendments to IRRC and the House and Senate Committees. Under authority of section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), the amendments were approved by the House Committee on November 13, 2000, and deemed approved by the Senate Committee on November 20, 2000. IRRC met on December 14, 2000, and approved the final-form regulations under section 5.1(e) of the Regulatory Review Act.

*Additional Information*

Individuals who desire additional information about the amendments are invited to submit inquiries to Steven

Wennberg, Counsel, State Board of Accountancy, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

(1) Public notice of the Board's intention to amend Chapter 11, by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments adopted by this order are necessary and appropriate for the administration of the CPA Law.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 11, are amended by deleting § 11.70, by adding §§ 11.69a and 11.71a, and by amending §§ 11.1, 11.4, 11.64, 11.65, 11.71 and 11.72, to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The amendments shall take effect upon publication in the Pennsylvania Bulletin.

THOMAS J. BAUMGARTNER, CPA
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 6964 (December 30, 2000).)

Fiscal Note: Fiscal Note 16A-555 remains valid for the adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 11. STATE BOARD OF ACCOUNTANCY
GENERAL PROVISIONS

§ 11.1. Definitions.

The following words and terms, when used in this chapter, have the following meaning, unless the context clearly indicates otherwise:

\* \* \* \* \*

Professor—An instructor who teaches courses in continuing education subject areas at an accredited university or college.

Program sponsor—A party who has assumed the responsibility for presenting continuing education programs.

Public communication—A communication made in identical form to multiple persons as to the world at large, such as by television, radio, motion picture, newspaper, pamphlet, mass mailing, letterhead, business card or directory.

SSARS—Statement of Standards on Accounting and Review Services.

§ 11.4. Fees.

(a) Following is the schedule of fees charged by the Board:

Table with 2 columns: Description of service and Fee amount. Includes items like Application for certification (\$45), Biennial renewal for certified public accountants (\$45), Certification of examination scores (\$15), Initial approval of program sponsor or reapproval of previously approved program sponsor when application is submitted after April 30, 2001 (\$145), Reapproval of previously approved program sponsor when application is submitted by April 30, 2001 (\$120), Biennial renewal of approval of program sponsor beginning January 1, 2004 (\$120), and Verification of licensure (\$10).

(b) Upon implementation, these fees will have retroactive effect to February 1, 1990.

CONTINUING PROFESSIONAL EDUCATION

§ 11.64. Sources of continuing education credit.

The following continuing education programs will be given 1 credit hour of continuing education credit for each 50-minutes of participation if they are in the subject areas in § 11.63 (relating to continuing education subject areas) and, beginning May 1, 2001, they are offered by approved program sponsors under § 11.69a (relating to approval of program sponsors):

(1) Continuing education programs of National or State accounting organizations.

(2) University or college courses.

(i) Credit courses. Applicants will receive 15 credit hours of continuing education credit for each semester credit hour earned and 10 credit hours for each quarter credit hour earned.

(ii) Noncredit courses. Applicants will be given 1 credit hour of continuing education credit for each 50 minutes of in-class participation.

(3) In-house educational programs.

(4) Individual study programs.

(i) Noninteractive individual study programs shall be given credit based upon 1/2 the average completion time calculated by the sponsor. The Board will make a final determination based upon the recommendation of the program sponsor.

(ii) Interactive individual study programs will be given 1 credit hour of continuing education credit for each 50 minutes of participation.

(iii) Credit for individual study programs will only be given in the renewal period in which the certificate of completion is dated.

(iv) Maximum continuing education credit per biennium will be 50% of the biennial requirement.

(5) Programs offered by other qualified organizations. The number of credits will be based upon the nature of the program being offered and which of the categories in paragraphs (1)—(4) it most closely fits.

(6) *Committee meetings.* Credit will be given if the meeting is structured as a continuing education program.

(7) *Service as a lecturer, discussion leader, speaker or professor.* Continuing education credit will be awarded for each 50-minute period if the discussion is one which meets the continuing subject area requirements of § 11.63.

(i) Two additional credit hours will be awarded as preparation time for each credit hour of instruction.

(ii) Credit will not be awarded for subsequent sessions unless in a subsequent session the subject matter has substantially changed.

(iii) The maximum continuing education credit will be 50% of the biennial requirement.

(iv) A professor will be awarded credit for teaching undergraduate courses in auditing, intermediate accounting, cost accounting, income taxation and advanced accounting, and all graduate courses to the extent that the course contributes to the student's professional competence and the professor has not previously claimed credit for the courses or unless the professor can demonstrate that there was a substantial change in the subject matter. Entry level accounting courses are excluded from eligibility for continuing professional education credit.

(8) *Publications, articles, books and continuing professional education courses.* Credit may be claimed by the author of the work if the work contributes to the professional competence of a licensee.

(i) Credit will be given for each 50-minute period of preparation time on a self-declaration basis up to 25% of the biennial requirement. A copy of the publication shall be submitted to the Board with the biennial renewal application.

(ii) In exceptional circumstances, an applicant may request additional credit by submitting a copy of the publication to the Board with an explanation of the circumstances which the applicant believes justifies an award of greater credit. Credit hours awarded will be determined by the Board on a case-by-case basis based upon the complexity of subject matter.

(iii) The maximum credit for publications may not exceed 50% of the continuing education requirement for any biennium.

**§ 11.65. Criteria for continuing education programs.**

To qualify as a continuing education program, a program shall:

(1) Be a program of learning which contributes directly to the maintenance of professional competence of a certified public accountant or public accountant.

(2) Be at least 1 credit hour in length.

(3) Be conducted by a qualified instructor or discussion leader.

(4) Offer subject matter enumerated in § 11.63 (relating to continuing education subject matter).

**§ 11.69a. Approval of program sponsor.**

(a) *Approval requirement.* Except as provided in subsection (b), any individual or entity desiring to offer a program for continuing education credit under this chapter shall apply to the Board for approval as a program sponsor. The approval of a previously approved program sponsor will expire April 30, 2001, unless the program sponsor submits a qualifying application under subsection

(c) that is postmarked by April 30, 2001. The Board will not deny course credit to any licensee who completes a program from a program sponsor that submitted a qualifying application by April 30, 2001, and is awaiting approval of its application.

(b) *Exemption from approval.* An individual or entity that is a member in good standing of the National Association of State Boards of Accountancy's National Registry of Continuing Professional Education Sponsors is deemed an approved program sponsor and is not required to submit an application for approval to the Board.

(c) *Contents of application for approval.* An application for approval shall contain the following information, except that an application from a previously approved program sponsor that is postmarked by April 30, 2001, need only contain the information in paragraphs (1)—(3):

(1) The name and address of the sponsor.

(2) The title and source of continuing education credit as specified in § 11.64 (relating to sources of continuing education credit).

(3) A list of existing or planned program offerings, if known.

(4) The total number of credit hours requested for each program.

(5) The attendance certification method.

(6) The program objectives.

(7) The admission requirements.

(8) The program outlines.

(9) The instruction and evaluation methods.

(d) *Sworn statements.* Statements made in an application shall be sworn to be true and correct to the best of the applicant's knowledge.

(e) *Board review of application for approval.* Except for an application from a previously approved program sponsor that is postmarked by April 30, 2001, an application will be reviewed by the Board's Continuing Education Committee, which will make recommendations to the Board for approval or disapproval. If an application is disapproved, the Board will provide the applicant with written notification of its reasons for disapproval. An applicant may submit a revised application to address the Board's concerns. No Board member will review or vote upon an application in which he has a vested interest.

(f) *Approval number.* Upon approval by the Board, an applicant will be assigned a program sponsor number.

(g) *Biennial renewal of approval.* An approved program sponsor shall renew its approval by January 1 of each even-numbered year, beginning with January 1, 2004. A renewal application shall list the program sponsor's planned program offerings for the upcoming renewal period.

**§ 11.70. (Reserved).**

**§ 11.71. Responsibilities of program sponsor.**

In addition to meeting the requirements in § 11.69a (relating to approval of program sponsor), a program sponsor shall comply with the following:

(1) *Program level of difficulty.* A program sponsor shall specify the level of knowledge to be imparted under the program. The levels of knowledge may be expressed in a variety of ways, all of which should be informative to potential participants. For example, a program may be described as having the objective of imparting technical

knowledge at levels such as basic, intermediate, advanced or overview, which might be defined as follows:

(i) A basic level program teaches fundamental principles or skills to participants having no prior exposure to the subject area.

(ii) An intermediate level program builds on a basic level program in order to relate fundamental principles or skills to practical situations and extend them to a broader range of applications.

(iii) An advanced level program teaches participants to deal with complex situations.

(iv) An overview program enables participants to develop perspective as to how a subject area relates to the broader aspects of accounting or brings participants up-to-date on new developments in the subject area.

(2) *Recommendation of education and experience prerequisites.* A program sponsor shall clearly identify what prerequisites are suggested for enrollment. If no prerequisite is necessary, a statement to that effect should be made. Prerequisites should be specified in precise language so potential participants can readily ascertain whether the program would be beneficial to them or whether the program is above or below their level of knowledge or skill.

(3) *Development of the program.* A program sponsor shall ensure that programs are developed by individuals qualified in the subject matter and in instructional design. This subsection is not intended to require that any individual program sponsor be both technically competent and competent in instructional design. Its purpose is to ensure that both types of competency are represented in the program's development, whether one or more persons are involved in that development. Mastery of the technical knowledge or skill in instructional design may be demonstrated by appropriate experience or educational credentials.

(4) *Program review.* A program sponsor shall review the course materials periodically annually to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued when appropriate, and obsolete material should be deleted. Between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes. If, for example, a new accounting standard is issued, a program will not be considered current unless the ramifications of the new standard have been incorporated into the materials or the instructor appropriately informs the participants of the new standard.

(5) *Disclosure of prospective participants.* A program sponsor shall disclose in advance to prospective participants the objectives, prerequisites, experience level, content, required advanced preparation, teaching method and number of continuing education credits involved in the program.

(6) *Selection and review of instructors.* A program sponsor shall select and assign qualified instructors for the continuing education program. A program sponsor should evaluate the performance of the instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors in the future.

(7) *Number of participants and adequacy of physical facilities.* A program sponsor shall ensure that the number of participants and the physical facilities are consistent with the teaching methods to be utilized. Because

the learning environment is affected by the number of participants and by the quality of the physical facilities, a program sponsor has an obligation to pay serious attention to both of these factors. The maximum number of participants for a case-oriented discussion program, for example, should be considerably less than for a lecture program. The seating arrangement is also very important. For discussion presentation, learning is enhanced as seating is arranged so that participants can easily see and converse with each other. If small group sessions are an integral part of the program format, appropriate facilities should be made available to encourage communication with a small group.

(8) *Program evaluation.* A program sponsor shall provide a program evaluation in accordance with the following:

(i) Evaluations shall be solicited from both the participants and instructors. The objective of evaluations is to encourage the program sponsor to strive for increased program effectiveness. Programs should be evaluated to determine whether:

- (A) Objectives have been met.
- (B) Prerequisites were necessary or desirable.
- (C) Facilities were satisfactory.
- (D) Instructors were effective.
- (E) Advanced preparation materials were satisfactory.
- (F) The program content was timely and effective.

(ii) Evaluations may take the form of pretests for advanced preparation, posttests for effectiveness of the program, questionnaires completed at the end of the program or later, oral feedback to the instructor or sponsor, and so forth. Instructors should be informed of their performance, and the program sponsor should systematically review the evaluation process to ensure its effectiveness.

(9) *Attendance records.* A program sponsor shall maintain and retain accurate records of attendance for a 5-year period.

(10) *Course materials.* A program sponsor shall retain a written outline of course materials for a 5-year period.

(11) *Certificate of completion.* A program sponsor shall provide participants with a certificate of completion evidencing satisfactory completion and attendance of the program.

(12) *Promotional materials.* A program sponsor shall identify the subject area—see § 11.63 (relating to continuing education subject areas)—of the program in the promotional materials.

#### **§ 11.71a. Offsite review of program sponsor.**

A program sponsor shall be subject to an offsite review of its continuing education programs to ensure compliance with this chapter. The review will involve an in-depth audit of all course materials, documents and records maintained by the program sponsor under this chapter, including:

- (1) The information in § 11.69a(c) (relating to approval of program sponsor).
- (2) The dates and locations of programs.
- (3) The program schedules (that is, title of subject, instructor, time allotted, excluding breaks and lunches).
- (4) The names, titles and degrees of instructors.

**§ 11.72. Withdrawal of approval of program sponsor.**

(a) The Board, following notice and hearing under 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies), may withdraw the approval of a program sponsor that the Board finds guilty of:

(1) Having acquired the Board's approval by misrepresentation.

(2) Failing to comply with §§ 11.65, 11.69a or 11.71 (relating to criteria for continuing education programs; approval of program sponsor and responsibilities of program sponsor).

(3) Refusing to provide information requested by the Board pursuant to an offsite review under § 11.71a (relating to offsite review of program sponsor).

(4) Indicating in any manner that it has been approved as a program sponsor prior to a program sponsor number having been issued to it.

(b) The Board's withdrawal of a program sponsor's approval will not affect the credit hours earned by persons who completed programs of the sponsor prior to the withdrawal of its approval.

[Pa.B. Doc. No. 01-28. Filed for public inspection January 12, 2001, 9:00 a.m.]

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